

WSR 22-13-002

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 21-05—Filed June 1, 2022, 2:05 p.m., effective July 2, 2022]

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

Purpose: Ecology is adopting new chapter 173-446A WAC, Criteria for emissions-intensive, trade-exposed industries, to implement portions of the Washington Climate Commitment Act (CCA) (E2SSB 5126) or Greenhouse gas emissions—Cap and invest program (chapter 70A.65 RCW).

This rule making:

- Establishes criteria to identify emissions-intensive, trade-exposed industries (EITE) that will be eligible for no-cost emission allowances.
- Considers the locations of potential EITE industries in relation to overburdened communities while developing the criteria.
- Includes requirements necessary to support the above items, the overall objectives of the statute or chapter, or the goals of CCA.

Citation of Rules Affected by this Order: New WAC 173-446A-010, 173-446A-020, 173-446A-030, 173-446A-040, and 173-446A-050.

Statutory Authority for Adoption: CCA (E2SSB 5126), chapter 316, Laws of 2021, codified as RCW 70A.65.110.

Adopted under notice filed as WSR 22-01-217 on December 22, 2021.

Changes Other than Editing from Proposed to Adopted Version:

Small changes were made for clarity and intent in the adopted rule language that were not significant. To see the specific changes made, please refer to the concise explanatory statement.

A final cost-benefit analysis is available by contacting Katie Wolt, send US mail to: Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-763-2898, for Washington relay service or TTY call 711 or 877-833-6341, email Katie.wolt@ecy.wa.gov, website <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-446A>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 1, 2022.

Laura J. Watson
Director

OTS-3493.2

NEW SECTION

WAC 173-446A-010 Scope. This rule establishes objective criteria for both emissions' intensity and trade exposure for the purpose of identifying emissions-intensive and trade-exposed facilities.

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NEW SECTION

WAC 173-446A-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. If a section does not provide a definition, the definition found in the definitions from chapter 316, Laws of 2021, and from chapter 173-441 WAC apply in order of precedence.

"Manufacturing facility" means a facility, as defined in WAC 173-441-020, that produces a physical product as its primary activity. A manufacturing facility does not include electric utilities or generators, natural gas utilities, steam producers or distributors, or other sectors that do not manufacture a physical product.

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NEW SECTION

WAC 173-446A-030 Emissions-intensive and trade-exposed manufacturing facilities. The provisions of this chapter apply to manufacturing facilities that are covered entities under chapter 316, Laws of 2021 (the Climate Commitment Act) regarding classification as emissions-intensive and trade-exposed.

(1) **Facilities classified as emissions-intensive and trade-exposed.** Facilities engaged in one or more of the processes described by the industry descriptions and codes in the North American Industry Classification System (NAICS) in Table 030-1, as that code is reported under chapter 173-441 WAC, are classified as emissions-intensive and trade-exposed. Use the six digit NAICS codes when available in Table 030-1, otherwise use the shorter NAICS codes listed in Table 030-1 substituting the values in the full reported six-digit NAICS code for "X".

Table 030-1: NAICS Codes and Descriptions for Emissions-Intensive and Trade-Exposed Industries

NAICS Code	Industry Description
331XXX	Metals manufacturing, including iron and steel making, ferroalloy and primary metals manufacturing, secondary aluminum smelting and alloying, aluminum sheet, plate, and foil manufacturing, and smelting, refining, and alloying of other nonferrous metals
322XXX	Paper manufacturing, including pulp mills, paper mills, and paperboard milling
3364XX	Aerospace product and parts manufacturing
321XXX	Wood products manufacturing
327XXX	Nonmetallic mineral manufacturing, including glass container manufacturing
325XXX	Chemical manufacturing

NAICS Code	Industry Description
334XXX	Computer and electronic product manufacturing, including semiconductor and related device manufacturing
311XXX	Food manufacturing
327310	Cement manufacturing
324110	Petroleum refining
324121	Asphalt paving mixtures and block manufacturing from refined petroleum
324122	Asphalt shingle and coating manufacturing from refined petroleum
324199	All other petroleum and coal products manufacturing from refined petroleum

(2) Facilities with NAICS codes reported under chapter 173-441 WAC which are not listed in Table 030-1 may petition the department to be classified as emissions-intensive and trade-exposed according to the process in WAC 173-446A-040.

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NEW SECTION

WAC 173-446A-040 Process to determine emissions-intensive and trade-exposed classification. An owner or operator of a manufacturing facility that is not classified as emissions-intensive and trade-exposed according to WAC 173-446A-030 may petition the department to be classified as emissions-intensive and trade-exposed by following the process described in this section. An owner or operator may submit a petition and the department may issue a determination before emissions year 2027, and use that determination for allowance allocations for the second compliance period, but no determination under this section is effective for the owner or operator of that facility until emissions year 2027. The following requirements apply to the submission, review, and approval or denial of a petition:

(1) **Petition submittal.** An owner or operator must submit a petition, electronically in a format specified by the department, that meets the following conditions before the department may review the petition and issue a determination.

(a) An owner or operator must submit a complete petition no later than 180 calendar days prior to January 1st of the first emissions year the owner or operator wishes the facility to be classified as emissions-intensive and trade-exposed.

(b) The petition must include sufficient information, as described in (c) of this subsection, for the department to determine whether the petitioner meets the criteria for classification as emissions-intensive and trade-exposed. The department will notify the owner or operator within 30 calendar days of receipt of a petition of any additional information the department requires to review the petition. A facility is not classified as emissions-intensive and trade-exposed until the petition is approved by the department.

(c) The petition must include, at a minimum, the following information:

(i) The name, address, email address, telephone number, and facsimile transmission number (if any) of the person submitting the petition;

(ii) Identifying information as specified in WAC 173-441-050 (3) (a), (c), (i), and (j) of the facility that the owner or operator is petitioning to be classified as emissions-intensive and trade-exposed;

(iii) Annual total production data for each primary product manufactured by the facility. The annual total quantity of each primary product manufactured at the facility as well as the quantity exported outside of Washington state for the five years immediately preceding the petition submission date must be submitted. If the facility has been operational for fewer than five years, submit annual total production data for each product since the facility has been operational;

(iv) The facility's annual on-site GHG emissions data. Annual on-site GHG emissions data for the five years immediately preceding the petition submission date as reported per WAC 173-441-120 must be submitted. If the facility has been operational for fewer than five years, submit annual on-site GHG emissions data as reported per WAC 173-441-120 since the facility has been operational;

(v) The location of the facility relative to overburdened communities. Using the Washington state department of health's environmental health disparities map, submit the total environmental health disparities ranking for the census tract in which the facility is located. Indication if the census tract in which the facility is located is covered or partially covered by tribal lands must also be submitted;

(vi) Any other supporting data or information as requested by the department; and

(vii) The signature of the person completing the petition and the date the petition was signed.

(2) **Department review of the petition.** A manufacturing facility must receive department approval before it is classified as emissions-intensive and trade-exposed. The department will issue a determination within 90 calendar days after receiving a complete petition.

(a) To be classified as emissions-intensive and trade-exposed, the facility must:

(i) Be a manufacturing facility located and operating in Washington state;

(ii) Be covered under chapter 316, Laws of 2021 (the Climate Commitment Act) or projected to be covered under chapter 316, Laws of 2021 (the Climate Commitment Act);

(iii) Not be classified as emissions-intensive and trade-exposed under WAC 173-446A-030; and

(iv) Meet the criteria for emissions' intensity and trade exposure pursuant to subsection (2) (b) of this section.

(b) The department must apply the following criteria when evaluating a petition:

(i) Emissions' intensity of the facility.

Use Equation 040-1 to determine the emissions' intensity of the facility. If the annual average emissions' intensity is greater than 25,000 MT CO₂e/year, the facility is deemed emissions-intensive.

$$EI = \frac{\sum_{i=1}^n AE}{n}$$

Eq. 040-1

Where:

EI = Average emissions intensity (MT CO₂e/year)

AE = Average emissions (MT CO₂e/year) from on-site GHG emissions data submitted pursuant to subsection (1)(b)(iv) of this section.

n = number of years of data per subsection (1)(b)(iv) of this section.

(ii) Trade exposure of the facility.

Use Equation 040-2 to determine the trade share of the facility. If the trade share is greater than or equal to 15%, the facility is deemed trade-exposed.

$$TS = \frac{Import + Export}{Shipment + Import}$$

Eq. 040-2

Where:

TS = Trade share (%)

Import = Average value of total physical arrivals of merchandise from foreign countries, whether such merchandise enters the U.S. customs territory immediately or is entered into bonded warehouses or free trade zones under Customs and Border Protection (Customs) custody, for the facility's six-digit NAICS code submitted pursuant to subsection (1)(c)(ii) of this section, taken from the U.S. International Trade Commission DataWeb, for the five years immediately preceding the date of petition submittal, as available (U.S. Dollars)

Export = Average value of goods physically moved out of the U.S. to foreign countries that are grown, produced, or manufactured in the U.S. and commodities of foreign origin that have been changed in the U.S., for the facility's six-digit NAICS code submitted pursuant to subsection (1)(c)(ii) of this section, taken from the U.S. International Trade Commission DataWeb, for the five years immediately preceding the date of petition submittal, as available (U.S. Dollars)

Shipment = Average value of products at the national level sold by manufacturing establishments based on net selling values, free on board plant, after discounts and allowances are excluded, for the facility's six-digit level NAICS code submitted pursuant to subsection (1)(c)(ii) of this section, taken from the Annual Manufacturing Survey compiled by the U.S. Census Bureau for the five years immediately preceding the date of submission of the petition, as available (U.S. Dollars)

(c) The department must consider a facility's location relative to overburdened communities and recommendations, if any, from the Environmental Justice Council when evaluating a petition. The department will notify the Environmental Justice Council when a petition is received. The department may deny a petition based on this consideration upon a determination that air quality in overburdened communities would be unacceptably impacted.

(3) **Appeal of determination.** An approval or denial issued by the department in response to a written petition filed under this subsection is a determination appealable to the pollution control hearings board per RCW 43.21B.110 (1)(h).

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NEW SECTION

WAC 173-446A-050 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

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WSR 22-13-007

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed June 2, 2022, 9:01 a.m., effective July 3, 2022]

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

Purpose: The employment security department (ESD) is adopting rules to transition emergency rules adopted during the COVID-19 response to permanent rules. These rules provide flexibility for employers and claimants in the event of a declared public health emergency, allow for greater access to standby and shared work so that more employers and employees can benefit from those programs, and protects the integrity of the unemployment trust fund by temporarily pausing the payment of benefits on potentially fraudulent claims.

Citation of Rules Affected by this Order: New WAC 192-140-098 and 192-100-901; and amending WAC 192-110-015, 192-110-095, 192-140-090, 192-150-055, 192-180-005, 192-180-025, 192-180-040, 192-270-065, 192-310-030, 192-250-020, 192-250-045, 92-320-082, 192-170-050, and 192-270-035.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to ESD. RCW 50.04.030 allows the commissioner to backdate an initial application for good cause. Under RCW 50.20.010 (1)(a), an individual is required to register and report for work at an employment office as the commissioner may prescribe, except that the commissioner may by regulation waive those requirements in situations that are inconsistent with the purpose of Employment Security Act. RCW 50.20.010 (1)(e) requires an individual to participate in reemployment services unless the commissioner determines there is justifiable cause for the claimant's failure to participate in such services. Under RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii), it is good cause to leave work voluntarily if the separation was necessary because of the illness or disability of a member of the claimant or the claimant's immediate family. RCW 50.20.240 requires ESD to implement job search monitoring. Under RCW 50.20.010 (1)(c), an individual must be actively seeking work. Under RCW 50.20.044, if an otherwise eligible individual fails without good cause, as determined by the commissioner under rules prescribed by the commissioner, to attend a job search workshop or a training or retraining course when directed by ESD and such workshop or course is available at public expense, such individual shall not be eligible for benefits with respect to any week in which such failure occurred. Under RCW 50.22.155 (2)(d), in order for a claimant to continue their eligibility for training benefits, they must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution. RCW 50.12.220(6) authorizes the commissioner to waive penalties for good cause if the failure to file timely, complete, or correctly formatted reports or pay timely contributions was not due to the employer's fault. Under RCW 50.60.030, the commissioner shall approve a shared work compensation plan if certain criteria are met; the commissioner may also take into account any other factors which may be pertinent. Certain contribution-paying base-year employers may receive relief of benefit charges under RCW 50.29.021 (3)(a)(iii) if the benefit charges result from payment to an individual who is unemployed as a result of closure of the employer's worksite for reasons directly attributable to a catastrophic occurrence. RCW 50.29.021(5) authorizes the commissioner to determine whether an employer has good cause for failing to respond timely or adequately to a written request of ESD for informa-

tion relating to claims. RCW 50.20.010 addresses the availability requirements for certain individuals under quarantine or isolation. Under RCW 50.20.050(3), it is good cause to quit if during a public health emergency, the claimant worked at a health care facility, was directly involved in the delivery of health services, and left work for the period of quarantine because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency. RCW 50.20.010 sets forth benefit eligibility conditions. RCW 50.20.160 establishes the circumstances in which ESD may issue a redetermination, including in the case of fraud. Under RCW 50.20.170, benefits shall be paid through employment offices in accordance with such regulations as the commissioner may prescribe. RCW 50.20.190 requires individuals to repay benefits they are paid to which they are not entitled. Under RCW 50.22.155 (2)(b)(iv), ESD has authority to waive training program deadlines established under RCW 50.22.155 (2)(b)(i) and (ii) for reasons deemed by the commissioner to be good cause. Under RCW 50.20.100, in determining whether work is suitable for an individual, the commissioner shall consider factors the commissioner may deem pertinent.

Adopted under notice filed as WSR 22-05-100 on February 16, 2022.

Changes Other than Editing from Proposed to Adopted Version: ESD will not be adopting proposed WAC 192-320-078, defining catastrophic occurrence for the purposes of RCW 50.29.021 (3)(a)(iii). ESSB 5061 (2021) amended RCW 50.29.021 (3)(a)(iii) to reflect the changes made in proposed WAC 192-320-078, making the adoption of such a rule unnecessary.

A final cost-benefit analysis is available by contacting Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 711, email rules@esd.wa.gov, website <https://esd.wa.gov/newsroom/ui-rule-making/>.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 14, Repealed 1.

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 2, 2022.

Dan Zeitlin
Employment System Policy Director

OTS-2115.1

NEW SECTION

WAC 192-100-901 Isolation and quarantine. (1) "Isolation" means the same as the definition in WAC 246-100-011.

(2) "Quarantine" means the same as the definition in WAC 246-100-011.

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OTS-3177.2

AMENDATORY SECTION (Amending WSR 20-03-073, filed 1/10/20, effective 2/10/20)

WAC 192-110-015 Applications by standby workers—RCW 50.20.010.**(1) What is "standby?"**

(a) "Standby" means you are temporarily unemployed because of a lack of work but:

(i) You expect to return to your previous full-time or part-time work with your regular employer within four weeks; or

(ii) You expect to begin full-time work with a new employer within two weeks; or

(iii) You are temporarily unemployed due to natural disaster.

(b) ~~((You do not have))~~ The requirement to register for work ((~~or look for other work while~~)) and search for work is fulfilled so long as you are on standby and take reasonable measures to maintain contact with your employer.

(c) You must be available for all hours of work offered by your regular employer.

(2) How long can I be on standby?

(a) You can ask to be on standby for up to four weeks.

(b) We will ask your employer to verify that you are on standby, including your expected return to work date:

(i) If your employer does not reply, you can be on standby for up to four weeks;

(ii) If your employer confirms you are on standby, you can be on standby until the return to work date given by your employer, subject to the limitations of (c) of this subsection;

(iii) If your employer replies that you are not on standby or do not have a return to work date within eight weeks, we will require you to immediately register for work and to look for work.

(c) Your regular employer may ask that you be placed on standby for a maximum of eight weeks (except as provided in (2)(d) below). This request must be approved by the department. We will consider the following before deciding whether to approve standby for more than four weeks:

(i) How long you have been out of work;

(ii) Whether other suitable work is available;

(iii) The impact on you and your employer if you accept other work; and

(iv) Other factors that apply to your situation.

(d) At ~~((his or her))~~ the discretion of the commissioner, the commissioner may grant standby for more than eight weeks in a benefit year. Exceptions can be made due to natural disaster. Exceptions can also be made in other extraordinary circumstances when the employer applies in writing and shows there are conditions that apply to the business that are so unique or unusual compared to similar businesses that having their employees on standby for more than eight weeks is necessary.

(e) We can approve standby if you have obtained a definite offer of bona fide full-time work that has a probable start date within two weeks, which includes the week of the job offer and up to two additional weeks. The job, however, must be:

(i) With a new employer or with a former employer to whom you are no longer attached as provided in subsection (3)(f) of this section; and

(ii) Covered by Title 50 RCW or the comparable laws of another state or the federal government.

(f) Any weeks of standby you used prior to July 4, 2021, will be disregarded for calculating the number of weeks you are allowed to be on standby.

(3) Are there conditions that apply to a request for standby?

(a) You must have a probable date when you will return to work for your regular employer;

(b) We will not approve standby if you only have prospects of future work with your regular employer or a promise of more work at some unspecified date;

(c) We will not approve standby with your regular employer unless the employment is covered by Title 50 RCW or the comparable laws of another state or the federal government;

~~(d) ((Except for claimants who qualify as part-time eligible workers under RCW 50.20.119, we will not approve standby if you regularly work less than full-time. For purposes of this section, "full-time" means forty hours each week or the number of hours that are full-time for your occupation and labor market area;))~~ Standby is available to all full-time, part-time, and other less than full-time employees;

(e) Any week(s) that you do not qualify for benefits will not be considered as part of the maximum eight weeks of standby; ~~((and))~~

(f) After eight consecutive weeks of unemployment, we will no longer consider you attached to that employer. You must meet the job search requirements specified by RCW 50.20.010 (1)(c) and 50.20.240; and

(g) For any claims between March 22, 2020, and July 3, 2021, you are automatically deemed to be on standby. Such weeks will not count towards the four weeks of standby you may request pursuant to subsection (2)(a) of this section or the eight weeks requested by your employer in subsection (2)(b)(ii) of this section.

(4) When does standby begin?

(a) Standby begins the day of your request unless your request is backdated pursuant to (b) of this subsection.

(b)(i) You may backdate your request for standby up to one week for any reason.

(ii) Your request for standby may also be backdated for the convenience of the department. "For the convenience of the department" means for the purpose of program administration; or those situations where it is difficult or impossible to accept a timely request includ-

ing, but not limited to, equipment breakdowns, lack of available staff, or special handling requirements.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, and 50.20.010. WSR 20-03-073, § 192-110-015, filed 1/10/20, effective 2/10/20. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-17-126, § 192-110-015, filed 8/22/17, effective 10/10/17; WSR 17-01-051, § 192-110-015, filed 12/13/16, effective 1/13/17. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. WSR 05-19-018, § 192-110-015, filed 9/9/05, effective 10/10/05. Statutory Authority: RCW 50.20.010 and 50.12.040. WSR 99-08-073, § 192-110-015, filed 4/5/99, effective 5/6/99.]

OTS-2107.2

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

WAC 192-110-095 May I backdate my application for unemployment benefits (RCW 50.04.030)? (1) **General rule.** A benefit year begins on Sunday of the calendar week in which you file your application for benefits. However, an application may also be backdated for good cause or for the convenience of the department.

(2) **Definitions.** As used in this section:

(a) "Good cause" means factors that would prevent a reasonably prudent person in similar circumstances from filing an application for benefits. These include, but are not limited to, incapacity due to illness or injury, or other serious factors. "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you have not been actually diagnosed with the disease that is the subject of a public health emergency.

(b) "For the convenience of the department" means:

(i) For the purpose of program administration; or
(ii) Those situations where it is difficult or impossible for the department to accept a timely application. These include, but are not limited to, equipment breakdowns, lack of available staff to accept applications, or special handling requirements.

(3) **Limitations on good cause.**

(a) You must file your application for benefits during the first week in which those factors that constitute good cause are no longer present. The effective date will be Sunday of such week.

(b) Backdating will not be allowed if you claim good cause based on information from department staff or agents where you could reasonably be expected to question the accuracy of this information.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-110-095, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-110-095, filed 5/12/10, effective 6/12/10.]

OTS-2108.2

AMENDATORY SECTION (Amending WSR 20-10-056, filed 4/30/20, effective 7/5/20)

WAC 192-140-090 What happens if I do not schedule or report for reemployment services as provided in RCW 50.20.010 (1)(e)? (1) Written directives.

(a) The commissioner may direct you in writing to schedule a time to report in person for reemployment services. The written directive will contain a deadline by which you must schedule and participate in reemployment services.

(b) If you fail to schedule a time to participate in reemployment services by the deadline, you will be ineligible to receive benefits for the week containing the date of the deadline, unless you show justifiable cause.

(c) If you fail to participate in reemployment services at the time you scheduled, you will be ineligible to receive benefits for the week containing the time you scheduled, unless you show justifiable cause.

(d) The department may verify the reasons you failed to schedule or participate in reemployment services. In all such cases, your ability to work or availability for work may be questioned.

(2) **Exceptions.** You will not be required to participate in reemployment services if you:

(a) Are a member of a full referral union and are eligible for dispatch and referral according to union rules;

(b) Are attached to an employer as provided in WAC 192-180-005;

(c) Are participating in a training program approved by the commissioner;

(d) Within the previous year have completed, or are currently scheduled for or participating in, similar services; ~~((or))~~

(e) Are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC; or

(f) Are not able to attend due to the closure of the WorkSource office and the department cannot accommodate an alternative method to deliver the reemployment services.

(3) **Minimum services.** The services will consist of one or more sessions which include, but are not limited to:

(a) Local labor market information;

(b) Available reemployment and training services;

(c) Successful job search attitudes;

(d) Self-assessment of job skills and interests;

(e) Job interview techniques;

(f) The development of a resume or fact sheet; and

(g) The development of a plan for reemployment.

(4) **Justifiable cause.** Justifiable cause for failure to schedule or participate in reemployment services as directed will include factors specific to you which would cause a reasonably prudent person in similar circumstances to fail to schedule or participate in reemployment services. Justifiable cause includes, but is not limited to:

(a) Your illness or disability or that of a member of your immediate family. "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is

the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency;

(b) Conflicting employment or your presence at a job interview scheduled with an employer; or

(c) Severe weather conditions.

[Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-140-090, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 19-12-091, § 192-140-090, filed 6/4/19, effective 7/22/19; WSR 16-21-013, § 192-140-090, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-140-090, filed 12/9/04, effective 1/9/05.]

OTS-3492.2

NEW SECTION

WAC 192-140-098 What happens if the department suspects a claim is impacted by imposter fraud? (1) Imposter fraud occurs when someone files a claim using another individual's name or Social Security number without the individual's knowledge or consent.

(2) If the department discovers it has reason to suspect your claim is impacted by imposter fraud, the department will:

(a) Send you a request for information about the suspected imposter fraud; and

(b) If the claim is a continuing claim as defined in WAC 192-100-020, the department will:

(i) Pause determining your weekly eligibility and qualification for benefits, including any requested backdated weeks, until it resolves the suspected imposter fraud; and

(ii) Not make conditional payments, including for any requested backdated weeks, beginning the week in which the department discovered it had reason to suspect imposter fraud and until the department either issues a determination on the imposter fraud issue or until the end of the week following the week in which the discovery was made, whichever is sooner.

(c) If the claim is not a continuing claim, the department will not make any payments until it issues a determination on the imposter fraud issue. This determination will be made as soon as administratively feasible. If the claim is backdated, this pause will also apply to the backdated weeks.

(3) If you do not respond to the request for information about the suspected imposter fraud, or the information provided is insufficient to show the claim did not involve imposter fraud:

(a) The department will determine you are not eligible for receiving benefits and will deny benefits for an indefinite period of time; and

(b) An overpayment may be assessed for any previous benefits paid.

(4) If you provide the requested information and the department determines that imposter fraud has not occurred, the department will:

(a) If the claim is a continuing claim, resume determining weekly eligibility and qualification for benefits and pay benefits owed, if any.

(b) If the claim is not a continuing claim, determine if you are otherwise eligible and qualified to receive benefits.

(5) If the department has paused payment of your weekly benefits pursuant to subsection (2)(b) of this section and the department has not issued a determination denying benefits within the time frame specified in subsection (2)(b)(ii) of this section, the department will conditionally pay the paused weekly benefits by a payment method of the department's choosing.

(6) If an imposter files a claim using another individual's name or Social Security number without that individual's knowledge or consent:

(a) That individual is not responsible to repay sums improperly paid on the claim, unless the individual actually received the benefit payments; and

(b) The imposter fraud does not affect the individual's eligibility or qualification for benefits.

[]

OTS-2109.3

AMENDATORY SECTION (Amending WSR 10-01-156, filed 12/22/09, effective 1/22/10)

WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii). (1) **General rule.** To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a member of your immediate family, you must demonstrate that:

(a) You left work primarily because of such illness, disability, or death; and

(b) The illness, disability, or death made it necessary for you to leave work; and

(c) You first exhausted all reasonable alternatives prior to leaving work, including:

(i) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060; and

(ii) Asking to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

(2) For claims with an effective date of January 4, 2004, or later, you are not eligible for unemployment benefits unless, in addition to the requirements of subsections (1)(a)-(c) above, you terminate your employment and are not entitled to be reinstated in the same or similar position.

(3) **Exception.** You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by subsection (1)(c) if you can show that doing so would have been a futile act.

(4) **Definitions.** For purposes of this chapter:

(a) "Disability" means a sensory, mental, or physical condition that:

- (i) Is medically recognizable or diagnosable;
- (ii) Exists as a record or history; and
- (iii) Substantially limits the proper performance of your job;

(b) "Immediate family" means your spouse, domestic partner, and the children (including unborn children), siblings, step-children, foster children, or parents of either spouse or domestic partner, whether living with you or not, and other relatives who temporarily or permanently reside in your household;

(c) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work;

(d) "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 34.05.120. WSR 10-01-156, § 192-150-055, filed 12/22/09, effective 1/22/10. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-150-055, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 02-14-035, § 192-150-055, filed 6/25/02, effective 7/26/02.]

OTS-3592.1

AMENDATORY SECTION (Amending WSR 21-16-034, filed 7/26/21, effective 1/2/22)

WAC 192-170-050 Suitable work factors—RCW 50.20.100 and 50.20.110. (1) **Physical fitness.** In determining whether work is suitable as defined by RCW 50.20.100 and 50.20.110, the department will consider whether you have a disability that prevents you from performing the essential functions of the job without a substantial risk to your health or safety.

(a) For purposes of this section, the term "disability" means a sensory, mental, or physical condition that:

- (i) Is medically recognizable or diagnosable;
- (ii) Exists as a record or history; and
- (iii) Substantially limits the proper performance of your job.

(b) The department may determine in individual circumstances that less than full-time work is suitable if:

(i) The disability prevents you from working the number of hours that are customary to the occupation;

(ii) You are actively seeking work for the occupation and hours you have the ability to perform; and

(iii) The restriction on the number of hours you can work, the essential functions you can perform, and the occupations you are seeking does not substantially limit your employment prospects within your general area.

(c) To be considered available for suitable work, you must be available for employment in an occupation in keeping with your prior work experience, shifts of employment, education, or training. If such employment is not available in your general area, you must be willing to accept any employment which you have the physical or mental ability to perform.

(d) Disabilities resulting from pregnancy will be treated the same as other disabilities, except that the department will also consider the risk to your pregnancy when deciding whether work is suitable.

(e) The department will require verification from a physician of your disability, including:

(i) The restrictions on the tasks or work-related functions you can perform;

(ii) The restrictions on the number of hours you can work, if any;

(iii) The expected duration of the disability and resulting work restrictions; and

(iv) The types of tasks or work-related functions you are able to perform with this disability, if known by the physician.

(f) For purposes of this section, "disability" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you have not been actually diagnosed with the disease that is the subject of a public health emergency.

(2) **Definitions.** For the purposes of this chapter:

(a) "General area" means an individual's labor market area and includes the geographic area within which an individual would customarily seek work in a given occupation.

(b) "Physician" means a person licensed to practice one or more of the following professions: Medicine and surgery (including, but not limited to, psychiatry); osteopathic medicine and surgery; chiropractic; naturopathic medicine; podiatry.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042, 50.20.010 and 50.20.100. WSR 21-16-034, § 192-170-050, filed 7/26/21, effective 1/2/22. Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010. WSR 02-08-072, § 192-170-050, filed 4/2/02, effective 5/3/02.]

OTS-2110.3

AMENDATORY SECTION (Amending WSR 20-10-056, filed 4/30/20, effective 7/5/20)

WAC 192-180-005 Registration for work—RCW 50.20.010(1) and 50.20.230. (1) **Am I required to register for work?** You must register for work unless you are:

- (a) Attached to an employer, meaning you are:
- (i) Partially unemployed as defined in WAC 192-180-013(1);
 - (ii) On standby as defined by WAC 192-110-015;
 - (iii) Unemployed because you are on strike or locked out from the worksite as provided in RCW 50.20.090; or
 - (iv) Participating in the shared work program under chapter 50.60 RCW;
- (b) A member of a union that participates in the referral union program (see WAC 192-210-110);
- (c) Participating in a training program approved by the commissioner;
- (d) The subject of an antiharassment order. This includes any court-issued order providing for your protection, such as restraining orders, no contact orders, domestic violence protective orders, and similar documents; ((~~or~~))
- (e) An active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC; or
- (f) Under isolation or quarantine at the request of a medical professional, local health official, or the Secretary of Health as a consequence of a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with a disease that is the subject of a public health emergency.

(2) How soon do I have to register?

(a) If you live within the state of Washington, the department will register you automatically based on information contained in your application for benefits. In unusual circumstances where you are not automatically registered, you must register within one week of the date on which you are notified by the department of the requirement to register for work.

(b) If you live in another state, you must register for work within one week of the date your first payment is issued on your new or reopened claim.

(c) If you have been requested by a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with a disease that is the subject of a public health emergency and were not automatically registered, you must register for work within one week of the date you are no longer requested to be isolated or quarantined.

(3) Where do I register for work? You will be registered for work with the department. However, if you live in another state, you must register for work with the equivalent public employment agency in that state.

(4) What is the penalty if I do not register for work? You will not be eligible for benefits for any week in which you are not registered for work as required by this section.

[Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-180-005, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-01-051, § 192-180-005, filed 12/13/16, effective 1/13/17; WSR 13-09-010, § 192-180-005, filed 4/5/13, effective 5/6/13; WSR 07-22-055, § 192-180-005, filed 11/1/07, effective 12/2/07; WSR 99-13-002, § 192-180-005, filed 6/3/99, effective 7/4/99.]

AMENDATORY SECTION (Amending WSR 17-01-051, filed 12/13/16, effective 1/13/17)

WAC 192-180-025 Job search reviews. (1) **What is a job search review (JSR)?** The JSR is a review of your job search activities by the department. At a minimum, the department will review your job search documentation, your ability to work, availability for work, and your efforts to find work. The department may also promote an active search for work by directing you to resources that will assist you with your job search efforts.

(2) **Will my job search activities be reviewed?** Yes, you must provide your job search log to the department when requested. The department will review your log, review your eligibility for benefits as required by RCW 50.20.010 (1)(c), and, when appropriate, provide feedback on areas in which your job search can be improved.

(3) **How many weeks will be reviewed?** The department will review at least one week of your job search documentation at the initial JSR.

(a) If the documentation shows you met the job search requirements for that week, no further action will be taken at that time except as provided in WAC 192-180-020(2). You may be scheduled for another JSR at a later date.

(b) If the documentation shows that you substantially complied with the job search requirements, you will not be scheduled for an all weeks JSR. However, your benefits may be denied for that week and the department will issue you a work search directive explaining how your job search efforts or documentation of those efforts must be modified.

(c) If the job search documentation fails to show that you substantially complied with the job search requirements, the department will reschedule you for a second JSR in which your job search for all weeks claimed will be reviewed.

(4) **What happens if I do not participate in the initial JSR?** If you fail to participate in the initial JSR, the department will determine if your failure is excused or unexcused.

(a) If you have an excused absence, the department will reschedule you for a JSR of one week of your job search documentation.

You may be excused from participating in the initial JSR only for good cause:

(i) Your illness or disability or that of a member of your immediate family that prevents you from participating. "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with a disease that is the subject of a public health emergency;

(ii) Your employment or presence at a job interview scheduled with an employer;

(iii) Natural disaster or similar acts of nature; or

(iv) Factors specific to your situation which would prevent a reasonably prudent person in similar circumstances from participating.

(b) If you have an unexcused absence, the department will:

(i) Schedule you for a JSR of your job search activities for all weeks claimed; and

(ii) Deny your benefits for the week of the initial JSR unless you can show good cause for not participating. (See WAC 192-180-030.)

(5) **What does "all weeks" mean?** For purposes of this section, "all weeks" means the latest of the following:

(a) Weeks claimed since you filed your application for benefits;
or
(b) Weeks claimed since your last all weeks JSR.

(6) **Will the department verify my identity at the JSR interview?**
Yes, you must be prepared to provide the department with sufficient information to verify your identity.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-01-051, § 192-180-025, filed 12/13/16, effective 1/13/17. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-180-025, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-22-055, § 192-180-025, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-180-025, filed 12/9/04, effective 1/9/05. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 99-13-002, § 192-180-025, filed 6/3/99, effective 7/4/99.]

AMENDATORY SECTION (Amending WSR 20-10-056, filed 4/30/20, effective 7/5/20)

WAC 192-180-040 Directive to attend job search workshop or training course—RCW 50.20.044. (1) The department may direct you, in writing, to attend a job search workshop or training course when it finds that your chances of finding employment will be improved by enrollment in such activity.

(2) You will not be directed to attend a job search workshop or training course if:

(a) You have an offer of bona fide work that begins within two weeks; or

(b) The workshop or training location is outside your labor market or would require you to travel further than the nearest WorkSource office or local employment center;

(c) You are a member in good standing of a full referral union, unless you are also being required to begin an independent search for work or have been identified as a dislocated worker as defined in RCW 50.04.075; or

(d) You are an active registered electrical apprentice in an approved electrical apprenticeship program under chapter 49.04 RCW and chapter 296-05 WAC.

(3) If you receive a directive and fail without good cause to attend a substantial portion of the workshop or training course during a week, you will be ineligible for benefits for the entire week. Good cause includes your illness or disability or that of a member of your immediate family, or your presence at a job interview scheduled with an employer. "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with a disease that is the subject of a public health emergency. Reasons for absence may be verified and may result in a denial of benefits under RCW 50.20.010.

(4) Participation in a job search workshop when directed meets the definition of an "in-person job search activity" as defined in WAC 192-180-010.

(5) When attending a job search workshop or training course as directed, you will not be ineligible for benefits for failure to be available for work or to actively seek work under the provisions of:

- (a) RCW 50.20.010 (1)(c);
- (b) RCW 50.20.240; or
- (c) RCW 50.22.020(1).

[Statutory Authority: RCW 50.12.010, 50.20.010, 50.20.230, 50.20.240, and 50.12.040. WSR 20-10-056, § 192-180-040, filed 4/30/20, effective 7/5/20. Statutory Authority: RCW 50.12.010, 50.12.040, 50.12.042. WSR 05-01-076, § 192-180-040, filed 12/9/04, effective 1/9/05.]

OTS-2170.3

AMENDATORY SECTION (Amending WSR 13-24-016, filed 11/21/13, effective 12/22/13)

WAC 192-250-020 What are the criteria for having a shared work plan approved? In addition to the criteria listed in RCW 50.60.030, employers must:

- (1) ~~((Be current in the payment of all unemployment insurance taxes required under Title 50 RCW, or be current on an approved deferred payment contract on file with the department;~~
- ~~(2-))~~ Include their ESD number on the plan application; and
- ~~((3-))~~ (2) Designate a representative to be a liaison between the department and the employees who participate in the shared work plan.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-016, § 192-250-020, filed 11/21/13, effective 12/22/13. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.60.901. WSR 06-22-004, § 192-250-020, filed 10/19/06, effective 11/19/06.]

AMENDATORY SECTION (Amending WSR 13-24-016, filed 11/21/13, effective 12/22/13)

WAC 192-250-045 Who is not eligible for participation in the shared work program? ~~((1-))~~ The following employees are not eligible for participation in the shared work program:

~~((a-))~~ (1) Employees paid on any basis other than hourly wage. This includes, but is not limited to, employees paid on a piece rate, mileage rate, job rate, salary, or commission basis. The commissioner may waive this provision for employees paid as listed above if an hourly rate of pay can be established ~~((, except that salaried employees may participate only if they are eligible for paid overtime))~~.

~~((b-))~~ (2) Officers of the corporation that is applying for participation.

~~((e-))~~ (3) Seasonal employees during the off season.

~~((2-))~~ The following businesses are not eligible for participation in the shared work program:

~~(a) For weeks of benefits paid before July 1, 2012, and after June 28, 2015, businesses with a tax rate of 5.4 percent or more, not including the social cost factor rate and taxes under RCW 50.24.010 and 50.24.014.~~

~~(b) Nonqualified employers, meaning employers who have reported no payroll for four consecutive quarters.~~

~~(c) Employers not registered in Washington for six months prior to application.)~~

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-016, § 192-250-045, filed 11/21/13, effective 12/22/13. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-11-046, § 192-250-045, filed 5/12/10, effective 6/12/10. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.60.901. WSR 09-13-057, § 192-250-045, filed 6/12/09, effective 7/13/09; WSR 06-22-004, § 192-250-045, filed 10/19/06, effective 11/19/06.]

OTS-3271.1

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

WAC 192-270-035 Time frames. (1) Information about training benefits will be included in the informational notice sent to you at the time you file your application for unemployment benefits (see WAC 192-120-010). For purposes of subsections (2) and (3) of this section, the informational notice is considered your notification of the eligibility requirements for the training benefits program.

(2) Submitting a training plan.

Except for dislocated workers eligible under RCW 50.22.155

(2) (a) (i), you have ninety calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be ninety-five calendar days from the date your application for benefits is filed, which represents ninety days plus five days for the informational notice to reach you if sent by regular mail.

(3) Enrollment in training.

Except for dislocated workers eligible under RCW 50.22.155

(2) (a) (i), you must be enrolled in training within one hundred twenty calendar days, beginning on the date you are notified about the eligibility requirements for training benefits. For new claims, the deadline will be one hundred twenty-five calendar days from the date your application for benefits is filed, which represents one hundred twenty days plus five days for the informational notice to reach you if sent by regular mail.

(4) If you are a dislocated worker eligible under RCW 50.22.155

(2) (a) (i), you must submit a training plan and enroll in training prior to the end of your benefit year.

(5) Except for dislocated workers eligible under RCW 50.22.155

(2) (a) (i), these time frames may be waived for good cause. For purposes of this section, "good cause" includes but is not limited to situations where:

(a) You were employer attached, including being on standby or partially unemployed, when you filed your claim for unemployment benefits but your attachment to your employer subsequently ended;

(b) You acted or failed to act on authoritative advice directly from department or partner staff upon which a reasonable person would normally rely;

(c) You were incapacitated due to illness or injury or other factors of similar gravity. "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you have not been actually diagnosed with the disease that is the subject of a public health emergency; or

(d) Other factors which would effectively prevent a reasonably prudent person, as defined in WAC 192-100-010, facing similar circumstances, from meeting the time frames established under this section.

(6) If you return to work, and subsequently become unemployed, the time frames described in subsections (2) and (3) begin with the date you file your additional claim for benefits.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-270-035, filed 10/7/16, effective 11/14/16; WSR 14-06-019, § 192-270-035, filed 2/24/14, effective 3/27/14. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.22.155(12). WSR 12-09-025, § 192-270-035, filed 4/6/12, effective 7/1/12. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 09-20-095, § 192-270-035, filed 10/7/09, effective 11/7/09. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). WSR 01-11-085, § 192-270-035, filed 5/16/01, effective 6/16/01.]

OTS-2112.3

AMENDATORY SECTION (Amending WSR 12-09-025, filed 4/6/12, effective 7/1/12)

WAC 192-270-065 Certification of satisfactory progress. (1) In order to continue your eligibility for training benefits, the certification that you are making satisfactory progress in training must be signed by the registrar or an equivalent person designated by your educational institution. Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), and disabled individuals as provided in RCW 50.22.155 (2)(c), training must be full-time as determined by the educational institution.

(2) Except as provided in subsection (3), for training benefits purposes the term "satisfactory progress" means:

(a) Your grade point average does not fall below 2.0 for two consecutive terms;

(b) You maintain a grade point average sufficient to graduate from, or receive certification in, your approved area of study; and

(c) You are completing sufficient credit hours to finish your approved course of study within the time frame established under your approved training plan.

(3) In the case of self-paced or ungraded learning programs, "satisfactory progress" means participating in classes and passing certification examinations within the time frame established under your approved training plan.

(4) Reasonable delays directly attributable to an infection from a disease that is the subject of a public health emergency or a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency will not prevent a certification that you are making satisfactory progress in training.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.22.155(12). WSR 12-09-025, § 192-270-065, filed 4/6/12, effective 7/1/12. Statutory Authority: RCW 50.12.010, 50.20.010, and 50.22.150(10). WSR 01-11-085, § 192-270-065, filed 5/16/01, effective 6/16/01.]

OTS-2113.3

AMENDATORY SECTION (Amending WSR 13-23-007, filed 11/7/13, effective 12/8/13)

WAC 192-310-030 What are the report and tax payment penalties and charges? (RCW 50.12.220.) (1) **Penalty for late tax and wage reports.** An employer who does not file a tax or wage report within the time frame required by WAC 192-310-010 (3)(d) must pay a penalty of twenty-five dollars for each violation, unless the penalty is waived by the department.

(2) **Definition of incomplete or incorrect format tax or wage report.** An employer must file tax and wage reports that are complete and in the format required by the commissioner.

(a) An "incomplete report" is any report filed by any employer or their agent where:

- (i) The entire wage report is not filed on time; or
- (ii) A required element is not reported (Social Security number, name, hours worked, or wages paid); or
- (iii) A significant number of employees are not reported; or
- (iv) A significant number of any given element is not reported, for example, missing Social Security numbers, names, hours, or wages; or

(v) Either the employment security department number or Unified Business Identifier (UBI) number is not included with the tax or wage report; or

(vi) The report includes duplicate Social Security numbers, or impossible Social Security numbers as shown by the Social Security Administration (such as 999-99-9991, 999-99-9992, etc.).

(b) An "incorrect format" means any report that is not filed in the format required by the commissioner under WAC 192-310-010 (3)(c). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

(c) For purposes of this section, the term "significant" means an employer who has:

- (i) One employee and reports incomplete wage elements for the one employee; or
- (ii) Two to nineteen employees and reports incomplete wage elements for two or more employees; or
- (iii) Twenty to forty-nine employees and reports incomplete wage elements for three or more employees; or
- (iv) Fifty or more employees and reports incomplete wage elements for four or more employees.

(3) **Penalty for filing an incomplete or incorrectly formatted tax or wage report.** An employer who files an incomplete or incorrectly formatted tax and wage report will receive a warning letter for the first occurrence. For subsequent occurrences of either an incomplete or incorrectly formatted report within five years of the date of the last occurrence (whether or not the last occurrence was before the effective date of this amendatory section), the employer must pay a penalty as follows:

(a) When quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter: Ten percent of the quarterly contributions for each occurrence, up to a maximum of \$250.00, but not less than:

(i)	2nd occurrence	\$75.00
(ii)	3rd occurrence	\$150.00
(iii)	4th and subsequent occurrences	\$250.00

(b) When no quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter:

(i)	2nd occurrence	\$75.00
(ii)	3rd occurrence	\$150.00
(iii)	4th and subsequent occurrences	\$250.00

(c) After five years without an occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

(4) **Penalty for knowingly misrepresenting amount of payroll.** If an employer knowingly (on purpose) misrepresents to the department the amount of his or her payroll that is subject to unemployment taxes, the penalty is up to ten times, in the discretion of the department, the difference between the taxes paid, if any, and the amount of taxes the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer must also pay the department for the reasonable expenses of auditing his or her books and collecting taxes and penalties due as provided in WAC 192-340-100.

(5) **Late tax payments.** All employers must file a tax and wage report every quarter, including employers who have no payroll for a given quarter. If an employer does not report on time, it will be charged a late fee of \$25.00 for each report. If the payment is late, the employer will be charged interest at a rate of one percent of taxes due per month. A late payment penalty is also charged for overdue taxes:

(a) First month: Five percent of the total taxes due or \$10.00, whichever is greater;

(b) Second month: An additional five percent of total taxes due or \$10.00, whichever is greater; and

(c) Third month: An additional ten percent of total taxes due or \$10.00, whichever is greater.

(6) **Nonsufficient funds (NSF)**. The department shall charge \$25.00 for checks dishonored by nonacceptance or nonpayment. This is considered a commercial charge under the Uniform Commercial Code (RCW 62A.3-515).

(7) **Waivers of late filing and late payment penalties**. The department may, for good cause, waive penalties for late filing of a report and late payment of taxes that are due with a report. The commissioner must decide if the failure to file reports or pay taxes on time was not the employer's fault.

(a) The department may waive late penalties when there are circumstances beyond the control of the employer. These circumstances include, but may not be limited to, the following:

(i) The return was filed on time with payment but inadvertently mailed to another agency;

(ii) The delinquency was caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified;

(iii) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family. "Serious illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency;

(iv) The delinquency was caused by the unavoidable absence of the employer or key employee before the filing deadline. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

(v) The delinquency was caused by the accidental destruction of the employer's place of business or business records;

(vi) The delinquency was caused by fraud, embezzlement, theft, or conversion by the employer's employee or other persons contracted with the employer, which the employer could not immediately detect or prevent. The employer must have had reasonable safeguards or internal controls in place; ((or))

(vii) The employer, before the filing deadline, requested proper forms from the department's central office or a district tax office, and the forms were not supplied in enough time to allow the completed report to be filed and paid before the due date. The request must have been timely, which means at least three days before the filing deadline; or

(viii) An infection from a disease subject to a public health emergency occurred at the employer's place of business and caused the employer to close or severely curtail operations.

(b) The department may waive late penalties if it finds the employer to be out of compliance during an employer-requested audit, but the department decides the employer made a good faith effort to comply with all applicable laws and rules;

(c) The department may waive late penalties for failure to file a "no payroll" report for one quarter if a new business initially registered that it would have employees that quarter, but then delayed hiring its first employees until after that quarter; and

(d) The department will not waive late penalties if the employer has been late with filing or with payment in any of the last eight consecutive quarters immediately preceding the quarter for which a waiver is requested. If an employer has been in business for fewer than the eight preceding quarters, then all preceding quarters must have been filed and paid on time and a one-time only waiver may be granted.

(8) **Incomplete reports or incorrect format penalty waivers.** For good cause, the department may waive penalties or not count occurrences for incomplete reports or reports in an incorrect format when the employer can demonstrate that the incomplete or incorrectly formatted report was not due to the fault of the employer.

(9) **Missing and impossible Social Security numbers.** When a Social Security number is impossible or missing, the department may waive penalties for incomplete reports only once for each worker and only when:

(a) The report was incomplete because it included impossible Social Security numbers, but the employer can show that the impossible Social Security numbers were provided to the employer by the employees; or

(b) The report was incomplete because of missing Social Security numbers, but the employer can show that the employee did not work for the employer after failing to provide a valid Social Security card or application for Social Security number within seven days of employment.

(10) **Penalty waiver requests.**

(a) An employer must request a waiver of penalties in writing, include all relevant facts, attach available proof, and file the request with a tax office. In all cases the burden of proving the facts is on the employer.

(b) At its discretion, the department may waive penalties on its own motion without requiring a request from the employer if it finds that the penalty was caused by the department's own error or for other good cause.

(11) **Extensions.** The department, for good cause, may extend the due date for filing a report. If granted, the employer must make a deposit with the department in an amount equal to the estimated tax due for the reporting period or periods. This deposit will be applied to the employer's debt. The amount of the deposit must be approved by the department.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-23-007, § 192-310-030, filed 11/7/13, effective 12/8/13; WSR 10-23-064, § 192-310-030, filed 11/12/10, effective 12/13/10; WSR 07-23-127, § 192-310-030, filed 11/21/07, effective 1/1/08. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.12.042. WSR 05-19-017, § 192-310-030, filed 9/9/05, effective 10/10/05; WSR 04-23-058, § 192-310-030, filed 11/15/04, effective 12/16/04. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 98-14-068, § 192-310-030, filed 6/30/98, effective 7/31/98.]

OTS-3258.1

NEW SECTION

WAC 192-320-078 Catastrophic occurrence. For the purposes of RCW 50.29.021 (3) (a) (iii), "catastrophic occurrence" includes an infection from a disease that is the subject of a public health emergency at the employer's place of business that causes the employer to close or severely curtail operations.

[]

AMENDATORY SECTION (Amending WSR 21-12-068, filed 5/28/21, effective 6/28/21)

WAC 192-320-082 How will the department determine good cause exists for failing to respond timely or adequately?—RCW 50.29.021(5).

(1) The department may find that good cause exists in certain situations when the employer fails to respond due to an unforeseen event outside of the employer's or employer's agent's control, such as:

(a) The death or serious illness of the employer. "Serious illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency;

(b) Destruction of the employer's place of business or business records not caused by, or at the direction of, the employer or the employer's agent;

(c) Fraud or theft against the employer.

(2) The employer is responsible to provide all pertinent facts and evidence or documentation for the department to determine good cause.

[Statutory Authority: RCW 50.12.010, 50.12.040, 50.20.010, 50.20.230, 50.20.240, 50.29.021, 50.29.025 and 50.29.062. WSR 21-12-068, § 192-320-082, filed 5/28/21, effective 6/28/21. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-24-108, § 192-320-082, filed 12/3/13, effective 1/3/14.]

WSR 22-13-008

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed June 2, 2022, 9:06 a.m., effective July 3, 2022]

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

Purpose: The employment security department (department) is adopting rules to transition emergency rules adopted in response to the COVID-19 emergency to permanent rules. The emergency rules cover the means of serving a petition for judicial review on the department, when the department may backdate a claim's reopening date, and how the department charges non-Washington combined-wage claims.

Citation of Rules Affected by this Order: New WAC 192-320-072; amending WAC 192-04-210 and 192-110-050.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the department. RCW 50.20.010, 50.20.140, 50.29.021 (2)(j), 34.05.220, 34.05.542(4), 50.32.090.

Adopted under notice filed as WSR 22-05-094 on February 16, 2022.

A final cost-benefit analysis is available by contacting Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 711, email rules@esd.wa.gov, website <https://esd.wa.gov/newsroom/ui-rule-making/>.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 2, 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 22, 2022.

Dan Zeitlin
Employment System Policy Director

OTS-2767.2

AMENDATORY SECTION (Amending WSR 13-05-033, filed 2/12/13, effective 3/15/13)

WAC 192-04-210 Petitions for judicial review—Service on agency. Delivery pursuant to RCW 34.05.542(4) shall be deemed to have been made when a copy of the petition for judicial review has been (~~received by the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA or~~) received by:

(1) Delivery to the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA;

(2) Mail at the Commissioner's Review Office, Post Office Box 9555, Olympia, WA 98507-9555; or

(3) Email at the commissioner's review office at cro@esd.wa.gov.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 13-05-033, § 192-04-210, filed 2/12/13, effective 3/15/13; WSR 89-24-030, § 192-04-210, filed 11/30/89, effective 1/1/90.]

OTS-2768.1

AMENDATORY SECTION (Amending WSR 16-21-013, filed 10/7/16, effective 11/14/16)

WAC 192-110-050 How do I reopen my claim? (1) If you have stopped claiming for more than four consecutive weeks for any reason, you must reopen your claim.

(a) You may reopen your claim:

(i) By using the department's online services; or

(ii) By calling the unemployment claims center.

(b) You must reopen your claim **before** the end of the week.

(2) (a) Your claim will be reopened effective on Sunday of the week in which you contact the department to reopen your claim, unless you ask the department to backdate your reopening date to a prior week.

(b) The department (~~(will not)~~) may backdate your reopening date (~~(unless you show good cause for not reopening your claim earlier, except)~~):

(i) For "good cause," as that term is defined by WAC 192-110-095

(2) (a);

(ii) For "the convenience of the department" as that term is defined by WAC 192-110-095 (2) (b); or

(iii) As provided in WAC 192-140-005.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 16-21-013, § 192-110-050, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 10-12-026, § 192-110-050, filed 5/24/10, effective 6/24/10. Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 07-22-055, § 192-110-050, filed 11/1/07, effective 12/2/07. Statutory Authority: RCW 50.20.010 and 50.12.040. WSR 99-08-073, § 192-110-050, filed 4/5/99, effective 5/6/99.]

OTS-2917.1

NEW SECTION

WAC 192-320-072 Charging non-Washington combined-wage claims under RCW 50.29.021 (2) (j). For purposes of RCW 50.29.021 (2) (j), the benefits paid under a combined-wage claim, as that term is defined by 20 C.F.R. Sec. 616.6, filed in a state other than Washington, and

Washington is the transferring state, as that term is defined by 20 C.F.R. Sec. 616.6, will be charged as follows:

(1) All benefits paid under the combined-wage claim in the second quarter of 2020 will not be charged to the claimant's base year employer;

(2) All other benefits paid under the combined-wage claim in all other quarters will be charged to the claimant's base year employer, unless the employer is eligible for relief of benefit charges for reasons other than RCW 50.29.021 (2)(j).

[]

WSR 22-13-009

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed June 2, 2022, 9:10 a.m., effective July 3, 2022]

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

Purpose: The employment security department (ESD) is adopting rules to transition emergency rules adopted during the COVID-19 response to permanent rules. The emergency rules cover waiting week requirements, emergency and extended benefits, and standby. Specifically, proposed WAC 192-110-006 waives the one-week waiting period for unemployment insurance benefits when they are fully paid or reimbursed by the federal government. Amended WAC 192-240-070 clarifies what happens if a claimant is paid pandemic unemployment assistance and later is determined to have been eligible for regular unemployment benefits or to have been eligible for pandemic unemployment compensation or extended benefits.

Citation of Rules Affected by this Order: New WAC 192-110-006; and amending WAC 192-240-070.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to ESD. RCW 50.20.010, 50.20.140, 34.05.220, 34.05.542(4), 50.32.090.

Other Authority: Unemployment Insurance Program Letter No. 20-21 (May 5, 2021).

Adopted under notice filed as WSR 22-05-095 on February 16, 2022.

A final cost-benefit analysis is available by contacting Josh Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, fax 844-652-7096, TTY relay 711, email rules@esd.wa.gov, website <https://esd.wa.gov/newsroom/ui-rule-making/>.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 2, 2022.

Dan Zeitlin
Employment System Policy Director

OTS-2616.3

AMENDATORY SECTION (Amending WSR 09-24-011, filed 11/20/09, effective 12/21/09)

WAC 192-240-070 What happens if I am paid emergency or extended benefits when I am eligible for a new unemployment claim? If you are

paid pandemic unemployment assistance established under Sec. 2102 of Public Law No. 116-136, as amended, emergency unemployment compensation (which includes pandemic emergency unemployment compensation under Sec. 2107 of Public Law No. 166-136, as amended), state extended benefits, or any similar state or federal extension, and it is later discovered that you were eligible for a regular unemployment claim during all or part of the period in which you received such benefits, the regular unemployment claim takes priority. If you were paid pandemic unemployment assistance, and it is later discovered that you were eligible for pandemic emergency unemployment compensation or extended benefits, a claim for pandemic emergency unemployment compensation or extended benefits takes priority. The balance on your new unemployment claim will be adjusted for any week(s) at issue, meaning those weeks in which you should have received regular unemployment benefits, subject to the following:

(1) Except as provided in subsection (4) of this section, you may not be paid twice for the same week

(2) If your new weekly benefit amount is equal to the amount you were paid for the weeks at issue, the amount you were paid in pandemic unemployment assistance, emergency unemployment compensation or extended benefits will be deducted from the maximum benefits payable on your new claim.

Example: Your previous weekly benefit amount was (~~five hundred dollars~~) \$500. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of (~~five hundred dollars~~) \$500. The (~~five hundred dollars~~) \$500 paid for eight weeks will be deducted from the maximum benefits payable on your new claim.

(3) If your new weekly benefit amount is lower than the amount you were paid for the weeks at issue, the amount you were paid in pandemic unemployment assistance, emergency unemployment compensation or extended benefits that is equivalent to the weekly benefit amount on your new claim will be deducted from the maximum benefits payable on your new claim. The difference between the amounts paid in pandemic unemployment assistance, emergency unemployment compensation or extended benefits for the week(s) at issue and the weekly benefit amount on your new claim will be waived as provided in RCW 50.20.190.

Example: Your previous weekly benefit amount was (~~five hundred dollars~~) \$500. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of (~~three hundred fifty dollars~~) \$350. The (~~three hundred fifty dollars~~) \$350 for eight weeks will be deducted from the maximum benefits payable on your new claim. The (~~one hundred fifty dollar~~) \$150 difference between your previous weekly benefit amount and your new weekly benefit amount will be waived.

(4) If your new weekly benefit amount is higher than the amount you were paid for the week(s) at issue, the amount you were paid in emergency unemployment compensation or extended benefits will be supplemented so that you receive your new weekly benefit amount for the weeks at issue and the total deducted from the maximum benefits payable on your new claim.

For example: Your previous weekly benefit amount was (~~three hundred fifty dollars~~) \$350. You received emergency unemployment compensation for eight weeks at this amount when it was discovered you were eligible for a new claim in the amount of (~~five hundred dollars~~) \$500. You will be paid an additional (~~one hundred fifty dollars~~)

\$150 for each of the eight weeks at issue and the total deducted from the maximum benefits payable on your new claim.

[Statutory Authority: RCW 50.12.010, 50.12.040, and 50.20.010. WSR 09-24-011, § 192-240-070, filed 11/20/09, effective 12/21/09.]

OTS-2846.2

NEW SECTION

WAC 192-110-006 Waiving the week requirement when the first week of unemployment benefits are federally funded. Starting after the week ending March 7, 2020, through the week ending September 4, 2021, and any other week where the one week waiting period is fully paid or fully reimbursed by the federal government, you will not be required to serve an unpaid waiting week before you receive unemployment insurance benefits.

[]

WSR 22-13-010

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed June 2, 2022, 9:13 a.m., effective July 3, 2022]

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

Purpose: The rules are adopted to clarify how the employment security department will verify that a claimant or an individual living with them has an underlying health condition for purposes of determining (1) whether an individual has good cause to voluntarily quit employment because they or another individual with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency, or (2) whether an individual meets availability requirements when they are available for work which can be performed from the individual's home and the individual or another individual residing with them is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the high-risk individual has an underlying health condition.

Citation of Rules Affected by this Order: New WAC 192-170-015 and 192-150-155.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.010 (4)(b)(ii), 50.20.050 (2)(b)(xii)(C)(II).

Adopted under notice filed as WSR 22-05-060 on February 10, 2022.

A final cost-benefit analysis is available by contacting Joshua Dye, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-890-3472, email Rules@esd.wa.gov, website <https://esd.wa.gov/newsroom/ui-rule-making>.

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

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

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

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

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

Date Adopted: June 2, 2022.

Dan Zeitlin
Employment System Policy Director

OTS-2974.1NEW SECTION

WAC 192-150-155 Verification requirement for an underlying health condition under RCW 50.20.050 (2)(b)(xii)(C)(II). (1)(a) An individual who asserts they have good cause to voluntarily quit employment because they or another individual living with them have an underlying health condition that is identified as a risk factor for a

disease that is the subject of a public health emergency will need to provide certification from a health care provider.

(b) The certification must include:

(i) The name, address, telephone number, and contact information of the health care provider and type of medicine the health provider is licensed to practice; and

(ii) Information from a health care provider sufficient to establish that the individual or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency.

(c) The department will deny benefits under WAC 192-140-105 if the individual fails to provide the certification.

(2) For purposes of this section, the term "health care provider" has the same meaning as in WAC 192-500-090.

[]

OTS-2980.2

NEW SECTION

WAC 192-170-015 Verification requirement for an underlying health condition under RCW 50.20.010 (4) (b) (ii). (1) (a) An individual who limits their availability for work because they or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency may need to provide certification from a health care provider.

(b) The certification must include:

(i) The name, address, telephone number, and contact information of the health care provider and type of medicine the health provider is licensed to practice; and

(ii) Information from a health care provider sufficient to establish that the individual or another individual living with them have an underlying health condition that is identified as a risk factor for a disease that is the subject of a public health emergency.

(c) The department may require the individual to provide additional documentation or certification to substantiate the underlying health condition if:

(i) Circumstances of the underlying health condition change;

(ii) Information is provided to the department that the employee may no longer have an underlying health condition; or

(iii) Other circumstances cause the department to question the existence or continued existence of the individual's underlying health condition.

(d) The department will deny benefits under WAC 192-140-070 if the individual fails to provide the certification when requested.

(2) For purposes of this section, the term "health care provider" has the same meaning as in WAC 192-500-090.

[]

WSR 22-13-015

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed June 3, 2022, 7:39 a.m., effective July 4, 2022]

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

Purpose: The Washington state department of agriculture (WSDA) is amending chapter 16-610 WAC in response to a rule-making petition received from WSDA's livestock identification advisory committee to:

- Reduce the electronic cattle transaction reporting (ECTR) per head fee to \$.80 per head; and
- Allow veterinarians and field livestock inspectors certified by WSDA to conduct inspections at public livestock markets, certified feedlots, slaughter facilities, or special sales when the facilities have received written notification from WSDA that department inspectors are not available.

WSDA is also amending WAC 16-610-021 to clarify the requirement that sellers using ECTR must provide proof of ownership by describing how the seller must provide that documentation.

Citation of Rules Affected by this Order: Amending WAC 16-610-021 and 16-610-060.

Statutory Authority for Adoption: RCW 16.57.350, 16.57.450, 16.58.030, and 16.65.020.

Adopted under notice filed as WSR 22-09-076 on April 20, 2022.

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 Nongovernmental Entity: New 0, Amended 2, 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: June 3, 2022.

Derek I. Sandison
Director

OTS-3732.2

AMENDATORY SECTION (Amending WSR 19-20-022, filed 9/23/19, effective 10/24/19)

WAC 16-610-021 Electronic cattle transaction reporting. (1) Individual private sales, trades, gifting, barter, or any other action that constitutes a change of ownership or movement out of state of cattle are required to obtain inspections under WAC 16-610-020 except when the seller holds an electronic cattle transaction reporting li-

cense under chapter 16.57 RCW and reports transactions through that system.

(2) (a) Any person may apply for an electronic cattle transaction reporting license. Applications shall be made on a form provided by the department to include:

(i) First and last name of the applicant.

(ii) Business name, physical address, mailing address, email address, and phone number.

(b) The license expires annually on June 30th.

(3) The initial license application fee is (~~(thirty-three dollars)~~) \$33. The annual renewal fee is (~~(thirty-three dollars)~~) \$33.

(4) The director may deny, suspend, or revoke an electronic cattle transaction reporting license for failure to comply with any condition of licensure under this section or any requirement of this chapter or chapter 16.57 RCW.

(5) All holders of an electronic cattle transaction reporting license must transmit to the department a record of each transaction containing the unique identification of each individual animal included in the transaction as assigned through a department-authorized identification method. All transactions reported to the department through the electronic cattle transaction reporting system must be reported within (~~(twenty-four)~~) 24 hours of the transaction and include the following information:

(a) Buyer's first and last name, email address, phone number, mailing address, and physical address of destination;

(b) Number of cattle sold;

(c) Electronic official individual identification tag number of each head of cattle sold;

(d) Type and sex of each head of cattle sold;

(e) Breed and color of each head of cattle sold; and

(f) Date the transaction occurred.

(6) The following information is required for cattle that are branded in addition to the requirements in subsection (~~(4)~~) (5) of this section:

(a) Design and location of the brand(s) on each head of cattle sold; and

(b) Washington brand number if the brand is recorded to the seller.

(i) If the brand is not recorded in Washington to the seller, the seller must provide proof of ownership under WAC 16-610-018. Proof of ownership must be uploaded at the time the transaction is reported. Original proof of ownership must be received by the department within seven days of the report of the transaction. Proof of ownership must be mailed to:

Washington State Department of Agriculture

Livestock Identification Program

P.O. Box 42577

Olympia, WA 98504-2577

(ii) A fee of (~~(one-dollar and thirty)~~) 80 cents per head will be assessed for electronically reported transactions, along with any other applicable fees including, but not limited to, the fees listed in subsection (7) of this section. The fees are due and collected at the time of reporting through the electronic cattle transaction reporting system.

(7) Exemptions from mandatory inspections do not exempt cattle owners or sellers from paying beef promotion fees owed to the Washing-

ton state beef commission under chapter 16.67 RCW or the animal disease traceability fee owed to the department under chapter 16.36 RCW.

[Statutory Authority: RCW 16.57.025, [16.57.]350, [16.57.]450(8), 16.58.030, 16.65.020, and [16.65.]350. WSR 19-20-022, § 16-610-021, filed 9/23/19, effective 10/24/19.]

AMENDATORY SECTION (Amending WSR 19-20-022, filed 9/23/19, effective 10/24/19)

WAC 16-610-060 Veterinarian and field livestock inspector certification. (1) (a) The director may certify veterinarians, who are licensed and accredited in Washington state and field livestock inspectors who comply with the requirements of this section, to issue livestock inspection certificates.

(b) Certified veterinarians and field livestock inspectors may not conduct inspections at certified feedlots, slaughter plants, public livestock markets, or special sales unless the department has notified the facility in writing that department inspectors are not available to conduct inspections. If the department notifies a facility that its inspectors are not available to conduct inspections, the facility may use a certified veterinarian or field livestock inspector to conduct inspections during the period, as specified by the department, in which department inspectors are not available.

(c) (i) Certified veterinarians and field livestock inspectors may not perform livestock inspections for an individual or business if a conflict of interest exists.

(ii) For the purpose of this rule, a "conflict of interest" includes, but is not limited to, a financial or other interest, direct or indirect, in the livestock, the facility in which the livestock are presented for sale, or the event at which the livestock are being exhibited.

(2) Veterinarians licensed and accredited in Washington state and field livestock inspectors who wish to issue inspection certificates for livestock must apply for certification on the department's application form (WSDA form #7028). The application must include the following:

(a) The full name, address, telephone number, and email address of the individual applying for certification;

(b) The applicant's Washington state veterinary license number if the applicant is a veterinarian;

(c) The geographic area in which the applicant will issue inspection certificates for livestock;

(d) A statement describing the applicant's experience with large animals, especially cattle and horses;

(e) A brief statement indicating that the applicant is requesting certification to issue inspection certificates for cattle, horses or both;

(f) The signature of the applicant; and

(g) Any other additional information as requested by the director.

(3) All applications must be accompanied by a check or money order for the amount of the certification fee of (~~sixty dollars~~) \$60 per applicant.

(4) Certifications expire on the third December 31st following the date of issuance. For example, if a certification was issued on October 14, 2003, it would expire on December 31, 2005. All applications for renewal of certification must be submitted on AGR Form 930-7089 and accompanied by a check or money order for the amount of the certification fee of (~~sixty dollars~~) \$60 per applicant.

(5) All applicants applying for certification or renewal of certification must complete department-provided training and pass a written test with no less than a score of (~~ninety~~) 90 percent. The department will provide to each person applying for certification or renewal of certification a copy of the most current brand book and any supplements issued to date to each certified veterinarian or field livestock inspector. Training will include, but will not be limited to, the:

- (a) Reading of printed brands;
- (b) Reading of brands or other marks on animals, including the location of brands on animals;
- (c) Reading of a microchip or other electronic official individual identification;
- (d) Completion of official documents; and
- (e) Review of satisfactory ownership documents.

(6) The director will maintain a list of veterinarians and field livestock inspectors certified to perform livestock inspections. Interested parties may request a copy of the list by contacting the department at:

Washington State Department of Agriculture
 Animal Services Division
 1111 Washington Street S.E.
 P.O. Box 42577
 Olympia, WA 98504-2577
 Email: livestockid@agr.wa.gov
 Phone: 360-902-1855
 Website: <https://agr.wa.gov/departments/animals-livestock-and-pets/livestock>

(7) Inspections by certified veterinarians and field livestock inspectors are conducted upon request and provided at the discretion of the veterinarian or field livestock inspector.

(8) Certified veterinarians and field livestock inspectors must submit all required inspection fees to the director and copies of each inspection certificate within (~~thirty~~) 30 days of the date of issue.

(9) The director may deny certification or renewal of certification to issue inspection certificates if the veterinarian or field livestock inspector fails to meet the requirements of this section or knowingly makes false or inaccurate statements regarding his or her qualifications on the certification application.

[Statutory Authority: RCW 16.57.025, [16.57.]350, [16.57.]450(8), 16.58.030, 16.65.020, and [16.65.]350. WSR 19-20-022, § 16-610-060, filed 9/23/19, effective 10/24/19. Statutory Authority: RCW 16.57.160 and chapter 34.05 RCW. WSR 16-21-008, § 16-610-060, filed 10/7/16, effective 11/7/16. Statutory Authority: Chapters 16.57, 16.58, 16.65, and 34.05 RCW. WSR 10-21-016, § 16-610-060, filed 10/7/10, effective 11/7/10; WSR 07-14-057, § 16-610-060, filed 6/28/07, effective 7/29/07; WSR 04-01-171, § 16-610-060, filed 12/23/03, effective 1/23/04.]

WSR 22-13-035
PERMANENT RULES
POLLUTION LIABILITY
INSURANCE AGENCY

[Filed June 6, 2022, 3:25 p.m., effective July 7, 2022]

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

Purpose: The proposed changes to the rule language clarify program procedures for administering the program.

Citation of Rules Affected by this Order: Amending chapter 374-80 WAC, Advice and technical assistance program.

Statutory Authority for Adoption: RCW 70A.330.040; and chapter 70A.305 RCW.

Adopted under notice filed as WSR 22-08-021 on March 25, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 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 6, 2022.

Phi V. Ly
 Legislative and Policy Manager

OTS-3669.3

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-80-010 Authority and purpose. The purpose of this chapter is to establish a program for providing technical assistance (~~to a person~~) regarding a release or suspected release (~~of (1) heating oil from an active, decommissioned, or abandoned heating oil tank; or (2) petroleum~~) from (~~a qualified petroleum~~) an eligible petroleum storage tank system. Under this program, the agency will provide advice and technical assistance regarding a completed or proposed independent remedial action and application of chapters 70A.330 and 70A.305 RCW.

Any opinion provided by the agency under this program is advisory only and not binding upon either the pollution liability insurance agency or the department of ecology. Participation in this program is not a settlement with the state under the Model Toxics Control Act. Persons conducting independent remedial actions do so at their own risk(~~(r)~~) and may be required to take additional remedial actions by the department of ecology if such actions are determined to be necessary under the Model Toxics Control Act.

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-80-010, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 20-02-071, § 374-80-010, filed 12/26/19, effective 1/26/20. Statutory Authority: Chapter 70.148 RCW. WSR 03-06-015, § 374-80-010, filed 2/21/03, effective 3/24/03. Statutory Authority: Chapter 70.149 RCW. WSR 97-20-094, § 374-80-010, filed 9/29/97, effective 10/30/97.]

AMENDATORY SECTION (Amending WSR 22-01-069, filed 12/9/21, effective 1/9/22)

WAC 374-80-020 Definitions. Unless the context requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Abandoned heating oil tank" means a consumptive use heating oil tank system that has been abandoned or decommissioned and is no longer in service or use.

(2) "Active heating oil tank" means a consumptive use heating oil tank system that is in use.

(3) "Agency" means the Washington state pollution liability insurance agency (PLIA).

(4) "Applicant" means the (~~(person)~~) party who is seeking advice and assistance from the (~~(petroleum)~~) advice and technical assistance program, whose application has been accepted by the agency.

(5) "Decommissioned heating oil tank" means a heating oil tank system that has been removed from operation by an approved method such as abandonment in place (e.g., cleaning and filling with an inert material) or by removal from the ground.

(6) "Director" means the director of the Washington state pollution liability insurance agency.

(7) "Eligible petroleum storage tank system" means the following petroleum storage tank systems:

(a) An active, decommissioned, or abandoned heating oil tank; or

(b) A petroleum storage tank system identified by the agency or department of ecology based on the relative risk posed by the release to human health and the environment as determined under chapter 70A.305 RCW, or other factors identified by the department of ecology.

(8) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuel in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or the generation of electrical energy or waste oil, hoists, pipelines, spills from transportation or a form of transport.

~~((8))~~ (9) "Heating oil tank system" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located.

~~((9))~~ (10) "MTCA" means the Model Toxics Control Act, chapter 70A.305 RCW and implementing regulations in chapters 173-340 and 173-204 WAC.

~~((10))~~ (11) "Petroleum" means any petroleum-based substance including crude oil or any fraction that is liquid at standard conditions of temperature and pressure. The term petroleum includes, but is

not limited to, petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, mineral spirits, Stoddard solvents, waste oils and heating oils. The term petroleum does not include propane, asphalt, or any other petroleum product that is not liquid at standard conditions of temperature and pressure. Standard conditions of temperature and pressure are at ~~((sixty))~~ 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

~~((11))~~ (12) "Petroleum storage tank system" means a storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other substances. The systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, used oils, and heating oils. "Petroleum storage tank system" does not include any storage tank system regulated under chapter ~~((70A.305))~~ 70A.300 RCW.

~~((12))~~ (13) "Program" or "technical assistance program" means ~~((petroleum))~~ advice and technical assistance program authorized under RCW 70A.330.040(7).

~~((13)) "Qualified petroleum storage tank system" means a storage tank system that has been identified as eligible for services under the petroleum technical assistance program by the department of ecology based on the relative risk posed by the release to human health and the environment.)~~

(14) "Release" means any intentional or unintentional entry of petroleum into the environment including, but not limited to, a spill, leak, emission, escape, or leaching into the environment.

(15) "Remedial action" has the same meaning as defined in RCW 70A.305.020.

(16) "Sampling and testing" means a PLIA-approved and recognized technique(s) or procedure(s) for measuring or determining the presence and extent of hydrocarbons in ~~((soil and/or water))~~ the environment.

(17) "Site" has the same meaning as "facility" as defined in RCW 70A.305.020.

~~((18)) "Site characterization" means an investigation of the nature and extent of the release.)~~

[Statutory Authority: RCW 70A.01.010 and 70A.01.020. WSR 22-01-069, § 374-80-020, filed 12/9/21, effective 1/9/22. Statutory Authority: RCW 70.149.040. WSR 20-02-071, § 374-80-020, filed 12/26/19, effective 1/26/20. Statutory Authority: Chapter 70.149 RCW. WSR 97-20-094, § 374-80-020, filed 9/29/97, effective 10/30/97.]

AMENDATORY SECTION (Amending WSR 20-02-071, filed 12/26/19, effective 1/26/20)

WAC 374-80-040 Procedures. (1) **Application.** To ~~((receive advice and technical assistance))~~ request services under this program, ~~((a person who is conducting or otherwise interested in independent remedial actions where there is a suspected or confirmed release of petroleum or heating oil from a qualified petroleum storage tank system or a heating oil tank,))~~ an applicant must submit an application ~~((provided by the agency requesting advice and assistance and agreeing))~~ and agree to the terms ~~((of the program))~~ specified by the agency.

(2) **Eligibility.**

(a) To be eligible to request services for a site under the technical assistance program, the applicant must demonstrate the following:

(i) A release from an eligible petroleum storage tank system is suspected or confirmed at the site;

(ii) The release has been reported to the department of ecology in accordance with WAC 173-340-310; and

(iii) The applicant is conducting or otherwise interested in conducting independent remedial actions at the site.

(b) An applicant that has received funding from the PLIA underground storage tank loan and grant program; the heating oil pollution liability insurance program; or the commercial underground storage tank reinsurance program ((are)) is presumed eligible for the technical assistance program unless ~~((a specific determination is made by PLIA))~~ the agency or the department of ecology determines that the applicant does not have ~~((a qualified))~~ an eligible petroleum storage tank system.

(3) **Services.** The agency may provide the following advice and technical assistance under the program:

(a) Observe and/or interpret the results of site investigation including, but not limited to, sampling and testing, ~~((site characterization results,))~~ or other appropriate assessments conducted by the applicant;

(b) Provide technical assistance on how to meet the substantive requirements of MTCA;

(c) Review planned independent remedial actions for a site or property and provide written opinions on whether further remedial action is likely necessary to meet the substantive requirements of MTCA;

(d) Review completed independent remedial actions for a site or property and provide written opinions on whether further remedial action is necessary to meet the substantive requirements of MTCA;

~~((and))~~

(e) Work with the applicant to monitor progress towards milestones and provide written opinions upon request at each stage of cleanup; and

(f) Other appropriate activities approved by the director.

(4) The applicant may select an independent contractor to perform ~~((site characterization, sampling and testing, or other))~~ remedial actions at the site. The independent contractor is not to be considered for any purpose an employee or agent of PLIA. The applicant will enter into an agreement with the contractor regarding scope or extent of work and fees for services.

(5) **Sampling~~((,))~~ and testing~~((, and site characterization))~~ protocols.** The agency will provide requested advice and technical assistance only if sampling~~((,))~~ and testing~~((, and site characterization))~~ are performed in accordance with ~~((protocols))~~ agency-approved ~~((by the director))~~ methodology.

(6) **Rescinding opinions.** The agency may rescind ~~((a no further action determination if PLIA's understanding of the))~~ any written opinion if the agency received information that conditions at the site ~~((change and))~~ changed or the site no longer meets the substantive requirements of MTCA.

(a) Where the issues are minor or administrative in nature, the agency will provide the applicant with ~~((a))~~ written notice ~~((of suspension))~~ detailing the issues to be addressed. The applicant will have ~~((sixty))~~ 60 days to ~~((address the issues. If))~~ respond to the agency with how the issues are addressed ~~((to PLIA's satisfaction, the~~

~~notice of suspension will be removed~~). If the issues are not addressed to PLIA's satisfaction, the agency ~~((will))~~ may issue a letter rescinding the ~~((no further action determination))~~ written opinion. PLIA ~~((may))~~ will notify the department of ecology ~~((of this action))~~ if PLIA rescinds a no further action opinion.

(b) Where the issues are substantive in nature, the agency ~~((will))~~ may issue a letter rescinding the ~~((no further action determination))~~ written opinion. PLIA will notify the department of ecology ~~((of this action))~~ if PLIA rescinds a no further action opinion.

[Statutory Authority: RCW 70.149.040. WSR 20-02-071, § 374-80-040, filed 12/26/19, effective 1/26/20. Statutory Authority: Chapter 70.148 RCW. WSR 03-06-015, § 374-80-040, filed 2/21/03, effective 3/24/03. Statutory Authority: Chapter 70.149 RCW. WSR 97-20-094, § 374-80-040, filed 9/29/97, effective 10/30/97.]

AMENDATORY SECTION (Amending WSR 20-02-071, filed 12/26/19, effective 1/26/20)

WAC 374-80-045 Environmental covenant. (1) **Consultation.** Where PLIA issues a written opinion under this program, and the remedial action requires an environmental covenant, ~~((PLIA))~~ the applicant must consult with and seek comment on the draft environmental covenant from a city or county department with land use planning authority for real property subject to the covenant. The consultation and opportunity for comment must take place before the property owner records the environmental covenant.

(2) **Periodic review.** Where PLIA has issued a written opinion under this program, and the remedial action requires an environmental covenant, PLIA must conduct a review of the effectiveness of the environmental covenant ~~((periodically))~~. The agency must conduct the periodic review at least once every five years.

(3) **Violation.** If the terms of the environmental covenant are not complied with, the agency may rescind the no further action ~~((determination))~~ opinion.

(a) Where the issues are minor or administrative in nature, the agency will provide the applicant with ~~((a))~~ written notice ~~((of suspension))~~ detailing the issues to be addressed. The applicant must address the issues within ~~((sixty))~~ 60 days. ~~((If the issues are addressed to PLIA's satisfaction, the notice of suspension will be removed.))~~ If the issues are not addressed to PLIA's satisfaction, the agency will issue a letter rescinding the no further action ~~((determination))~~ opinion. PLIA ~~((may))~~ will notify the department of ecology of this action.

(b) Where the issues are substantive in nature, the agency will issue a letter rescinding the no further action ~~((determination))~~ opinion. PLIA will notify the department of ecology of this action.

(4) **Termination.** If the conditions at the site requiring an environmental covenant no longer exist, the property owner may petition the agency to have the covenant terminated. PLIA will seek public comment on the proposed termination of the environmental covenant. If, after the public comment period, PLIA agrees to the termination of the environmental covenant, the agency will seek termination by consent of the covenant.

(5) **Reimbursement.** The agency may recover costs related to environmental covenants from the applicant and/or the property owner. These costs are not covered by WAC 374-80-050.

[Statutory Authority: RCW 70.149.040. WSR 20-02-071, § 374-80-045, filed 12/26/19, effective 1/26/20.]

AMENDATORY SECTION (Amending WSR 20-02-071, filed 12/26/19, effective 1/26/20)

WAC 374-80-050 Reimbursement. (1) The agency must collect, from the applicant, a fee to cover the costs incurred in providing advice and technical assistance under the program.

(2) ~~The ((fee for providing advice and technical assistance under this program is:~~

~~(a) One thousand dollars if there is a release or suspected release of heating oil from an active, decommissioned, or abandoned heating oil tank system.~~

~~(b) Seven thousand five hundred dollars if there is a release or threatened release of petroleum from a qualified petroleum storage tank system.)) agency will post the fee for providing advice and technical assistance under this program on the agency's website and in the program guidance.~~

(a) The agency will adjust the enrollment fee on an annual basis in July of each calendar year.

(b) The fee is based on the calculation of the costs incurred providing advice and technical assistance and other factors identified by the agency. The agency will make the fee calculation of identified costs available upon request.

(3) The applicant must pay the fee upon acceptance into the program. No advice or technical assistance will be provided until the fee has been paid.

(4) ~~((The fee is nonrefundable. However, if)) Unless the agency determines that an applicant's petroleum storage tank system is ineligible after the applicant enters the program, ~~((the agency may refund))~~ the fee is nonrefundable.~~

(5) Fees received by the agency under the program must be deposited in the heating oil pollution liability trust account.

[Statutory Authority: RCW 70.149.040. WSR 20-02-071, § 374-80-050, filed 12/26/19, effective 1/26/20. Statutory Authority: Chapter 70.148 RCW. WSR 03-06-015, § 374-80-050, filed 2/21/03, effective 3/24/03. Statutory Authority: Chapter 70.149 RCW. WSR 97-20-094, § 374-80-050, filed 9/29/97, effective 10/30/97.]

AMENDATORY SECTION (Amending WSR 97-20-094, filed 9/29/97, effective 10/30/97)

WAC 374-80-060 Liability. (1) The state of Washington and/or the pollution liability insurance agency accepts no liability, nor portion of liability, from the ~~((heating oil tank owner or operator))~~ applicant.

(2) The state of Washington, the pollution liability insurance agency, and its officers and employees are immune from all liability, and no cause of action arises from any act or omission in providing, or failing to provide, advice, opinion, conclusion, or assistance under this program.

[Statutory Authority: Chapter 70.149 RCW. WSR 97-20-094, § 374-80-060, filed 9/29/97, effective 10/30/97.]

NEW SECTION

WAC 374-80-070 Termination. (1) The issuance of a no further action opinion constitutes notice of termination of the program agreement by the agency.

(2) The agency may terminate a program agreement for other reasons including, but not limited to, inactivity at the site for 12 consecutive months or violating the agency code of conduct.

(3) The applicant may terminate the program agreement at any time. As specified in WAC 374-80-050, the fee is nonrefundable.

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WSR 22-13-038

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed June 7, 2022, 6:45 a.m., effective July 8, 2022]

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

Purpose: This rule-making order establishes chapter 16-171 WAC, Hemp extract certification.

ESB 5372 (chapter 104, Laws of 2021) directs the Washington state department of agriculture to regulate hemp extract processing the same as other food processing and to issue a hemp extract certification in lieu of a food processing license to a hemp processor who meets application requirements.

Citation of Rules Affected by this Order: New WAC 16-171-100, 16-171-110, 16-171-120, 16-171-130, 16-171-140, 16-171-150, and 16-171-160.

Statutory Authority for Adoption: RCW 69.07.020, 69.07.220.

Adopted under notice filed as WSR 22-09-023 on April 11, 2022.

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 7, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, 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 6, 2022.

Derek I. Sandison
Director

OTS-3631.1

**Chapter 16-171 WAC
HEMP EXTRACT CERTIFICATION**

NEW SECTION

WAC 16-171-100 Hemp extract certification—Purpose. The purpose of this chapter is to:

(1) Establish requirements for new hemp extract certification applications and renewals.

(2) Establish an inspection criteria and a rating system that will be used to determine whether a hemp extract certification applicant is in compliance with chapters 69.07 and 15.130 RCW, and regulations adopted thereunder, including Title 21 C.F.R.

(3) Identify steps leading to enforcement actions by the department.

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NEW SECTION

WAC 16-171-110 Hemp extract—Definitions. (1) Definitions for terms used in this chapter may be found in chapters 69.07 and 15.130 RCW, and Title 21 C.F.R. as adopted in WAC 16-167-050, unless otherwise provided in this chapter.

(2) For the purposes of this chapter, the following definitions apply:

(a) "**Adequate**" means that which is needed to accomplish the intended purpose in keeping with good public health practice.

(b) "**Adulterate**" has the same meaning as provided in RCW 15.130.200 except that the department does not consider hemp extract itself to be adulterated when produced in compliance with RCW 69.07.220 and these rules for use as a food ingredient in another state that allows its use as a food ingredient.

(c) "**Certification criteria violation**" means any violation of the inspection criteria that must be met prior to the issuance of a hemp extract certification.

(d) "**Critical violation**" means a violation of the inspection criteria that results in hemp extract adulteration or that has the potential to contribute to conditions resulting in such adulteration.

(e) "**Department**" means the Washington state department of agriculture (WSDA).

(f) "**Director**" means the director of the department.

(g) "**Facility or hemp extract facility**" means any premise, plant, building, room, area, or facility which processes, prepares, or handles hemp for production of hemp extract for use as a food ingredient in another state that allows its use as a food ingredient.

(h) "**Hemp**" has the same meaning as provided for in RCW 15.140.020 and means the plant *Cannabis sativa L.* and any part of the plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(i) "**Hemp extract**" means a substance or compound intended for human ingestion that is derived from, or made by, manufacturing hemp. The term does not include hemp seeds or hemp seed-derived ingredients that are generally recognized as safe by the United States Food and Drug administration.

(j) "**Hemp extract certification**" means a certification issued by the department to a hemp extract facility manufacturing hemp extract for export to other states, which certifies the hemp extract facility's compliance with Washington state's inspection and sanitation requirements.

(k) "**Hemp processor**" has the same meaning as provided for in RCW 15.140.020, and means a person who takes possession of raw hemp material with the intent to modify, package, or sell a transitional or finished hemp product.

(l) **"Sanitize"** means to adequately treat hemp extract contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.

(m) **"Significant violation"** means any violation of the inspection criteria not deemed to be a critical violation as described in WAC 16-171-140.

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NEW SECTION

WAC 16-171-120 Hemp extract facility certification—New application and renewals—Inspection criteria. To qualify for a new hemp extract certification issued under chapter 69.07 RCW, the Washington Food Processing Act, a hemp processor must first make an application to the department. After the department receives a complete application, the department will inspect the facility. The facility must be in compliance with the following requirements prior to issuance of a certification:

(1) The applicant must submit an application that includes:

(a) The full name of the applicant and the location of the hemp extraction facility where the applicant intends to operate, and if the applicant is an entity, the full name of each officer, managing member, or other responsible individuals;

(b) The principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant; and

(c) The type of hemp extracts to be processed, the method of manufacturing, and any other necessary information to make an evaluation.

(2) A hemp processor holding a hemp extract certification must apply for renewal of the certification annually.

(3) The appropriate fee must accompany the application submitted to the department, as follows:

(a) For new applications, the fee is \$1,400.

(b) For a new certification inspection, the fee is \$3,000.

(c) For renewal applications, the fee is \$1,500.

(4) The hemp extract facility must be in substantial compliance with inspection criteria as described in WAC 16-171-150(2). Refer to WAC 16-171-140 for the inspection and certification criteria and WAC 16-171-130 for definitions of certain inspection criteria. For the purposes of certification, a hemp extract facility may incur a one-point debit of a licensing criteria that has sliding scale.

(5) To renew a certification, a hemp extract manufacturer must submit a renewal application and fees before the manufacturer's current certification expires. If the department has received receipt of a submitted renewal application and fees before the certification expiration date, the time period of the prior certification extends until the department either issues the renewed certification or denies the renewal application. If a manufacturer does not timely submit a renewal application or fees, the prior certification expires upon the expiration date.

(6) Upon the approval of the application by the director the applicant shall be issued a new or renewal certification.

[]

NEW SECTION

WAC 16-171-130 Hemp extract certification—Inspection criteria definitions. This section provides definitions for certain criteria the department will use when conducting inspections to determine if a hemp extract facility complies with inspection criteria and good manufacturing practices for hemp extract certification. The complete set of inspection criteria is set forth in WAC 16-171-140.

(1) **"Clean and adequate protective clothing and hair restraints"** means the clothing, or the outside layer of clothing, which can occasionally or incidentally contact hemp extract, either directly or indirectly, is:

(a) Clean at the start of the work shift; and

(b) Changed when the clothing becomes so soiled during the course of the work shift that contamination of hemp extract, hemp extract packaging or hemp extract contact surfaces becomes imminent; and

(c) Suitable to the specific hemp extract manufacturing operation for protection against the contamination of hemp extract, hemp extract packaging, and hemp extract contact surfaces; and

(d) Clean and effective hair restraints, such as hairnets, or beard nets if appropriate, are worn for the protection of hemp extract from contamination. Hats, caps, scarves or other head cover are acceptable if the hair is properly contained to protect hemp extract from contamination. Hair spray and/or tying back the hair in pony-tails, etc., are not considered effective hair restraints.

(2) **"Adequate washing and sanitizing of hands as necessary"** means washing and sanitizing hands thoroughly to protect against contamination of hemp extract from undesirable microorganisms in an adequate hand wash facility by:

Using proper handwashing methods which consist of:

(a) Applying soap to hands;

(b) Using warm water;

(c) Scrubbing hands thoroughly;

(d) Rinsing and drying hands using methods that prevent hemp extract contamination;

(e) Washing hands before beginning work, after each absence from the work station, and any time hands become soiled or contaminated; and

(f) Sanitizing hands when appropriate in addition to, but not in place of, the proper handwashing methods.

(3) **"Garments and personal belongings stored appropriately; not a source of contamination"** means personal belongings and garments, either personal or supplied by the hemp extract facility, are stored or kept separately from hemp extract manufacturing, handling and storage operations such as in an area, locker, cupboard, or other closeable unit that is dedicated to the storing or hanging of personal belongings and clothing so not to become a source of contamination to hemp extract, hemp extract packaging or hemp extract contact surfaces; and

No hemp extract, packaging materials, utensils or equipment used in the hemp extract manufacturing operation are kept, stored or commingled with personal belongings or garments.

(4) **"Processes separated as required"** means there is a separation of processes for the purpose of reducing potential contamination in hemp extract manufacturing operations where contamination is likely to occur. One or more of the following means may accomplish this:

- (a) Location;
- (b) Time;
- (c) Partition;
- (d) Air flow;
- (e) Enclosed systems; or
- (f) Other effective method.

(5) **"Adequate light"** means lighting is provided in handwashing, dressing and locker rooms, toilet rooms and in all areas where hemp extract is examined, manufactured or equipment is cleaned. Shatter resistant light bulbs or fixtures are to be used to protect against hemp contamination.

(6) **"Detergents, sanitizers and toxic materials properly identified"** means:

(a) Labeling any container containing detergent, sanitizer, or toxic material with the:

- (i) Product name;
- (ii) Chemical description;
- (iii) Directions for use;
- (iv) Any required precautionary and warning statements;
- (v) First-aid instructions;
- (vi) Name and address of the manufacturer or distributor; and
- (vii) Any other additional information required by the federal

Environmental Protection Agency or other laws or rules; and

(b) Small transport or use containers for detergents, sanitizers, or toxic materials are used only under the following conditions:

(i) The contents are properly identified on the container. Labeling the container with the common name is acceptable if the original storage container is on hand and properly identified;

(ii) No hemp extract container is used as a container for detergents, sanitizers, or toxic materials;

(iii) No container used for detergents, sanitizers, or toxic materials, is used as a hemp extract container.

(7) **"Product contact surfaces clean and maintained in a sanitary condition, cleaned and sanitized prior to each use or as essential"** means:

(a) Product contact surfaces of equipment, utensils, containers and other articles used in the manufacturing of hemp extract, when its continued use is apparent, are cleaned as frequently as necessary to protect against contamination of hemp extract;

(b) Hemp extract residues are removed from product contact surfaces frequently enough to prevent residues from becoming unwholesome or unfit for food, decomposed, filthy, putrid, or injurious to health; and

(c) The hemp extract product contact surfaces are sanitized prior to use and after cleaning as necessary.

(8) **"Product contact surfaces clean and maintained in a sanitary condition, cleaned and sanitized prior to each use or as essential: Critical violation"** means it is a critical violation if a hemp extract product contacts a surface that is not sanitized after cleaning or prior to use. Product contact surfaces that become contaminated, but

are cleaned and sanitized prior to use, are not considered a critical violation.

(9) **"Nonproduct contact surfaces of equipment cleaned and maintained in a sanitary condition"** means nonproduct contact surfaces of equipment are kept reasonably free from dirt, old hemp extract residues, foreign material, dust, mold, mildew, slime and other accumulations that occur because of day-to-day hemp extract manufacturing operations.

(10) **"In-use hemp contact equipment and utensils appropriately stored: Protected from contamination between uses"** means the utensils used in the manufacturing of hemp, such as knives, scrapers, scoops, shovels, cutters, and other hand tools and equipment, are placed or stored in a manner to prevent hemp extract contact surfaces from being contaminated with filth. Filth includes, but is not limited to, nonpathogenic microorganisms, unsuitable toxic chemicals, and microscopic physical contaminants.

Storage and placement of utensils or equipment in the following manner is considered inappropriate storage:

(a) In contact with the floor, dirty equipment frames, other insanitary nonhemp extract contact surfaces;

(b) In contact with containers of nonpotable water (other than sterilizing solutions); and

(c) In contact with other contaminants.

(11) **"In-use hemp contact equipment and utensils appropriately stored: Protected from contamination between uses: Critical violation"** means that it is a critical violation when a utensil or piece of equipment is or has been stored in a manner that it becomes obviously contaminated with filth and its continued use is apparent.

Utensils and equipment that become contaminated are not considered a critical violation if the utensils and equipment are cleaned and sanitized prior to the next use.

(12) **"Water supply - Safe and of sanitary quality"** means the water supply used in the manufacturing of hemp is potable from an approved source and is monitored in accordance with applicable laws and rules with current satisfactory water tests as applicable. Water from an approved source and monitored in accordance with applicable laws and rules means:

(a) Hemp extract facilities with 25 or more employees and operating 60 days or more annually comply with the state department of health, division of drinking water requirements for a Group A water system (chapter 246-290 WAC).

(b) Hemp extract facilities with less than 25 employees or operating less than 60 days annually, comply with the state department of health, division of drinking water requirements for a Group B water system (chapter 246-291 WAC) unless connected to a Group A public water system.

(c) Private water supplies must meet the department of health, division of drinking water requirements for a Group B water system (chapter 246-291 WAC) with respect to monitoring for bacteriological properties. When water is incorporated into the product, chemical and physical properties must also be monitored.

(13) **"Current satisfactory water test"** means for water obtained from other than a municipal system, analysis verifying the bacteriological, physical and chemical safety of the water has been conducted according to appropriate Group A or B water system monitoring schedules and that reports of analysis are on file at the manufacturing fa-

cility and available for review by the department during routine facility inspection.

(14) **"No cross connections, no back siphonage"** means there is no backflow from or cross connection between piping systems that discharge waste water sewage and piping systems that carry water for hemp extract manufacturing. This includes any cross connection between a potable water system and a nonpotable system.

(15) **"Adequate floor drains and plumbing to convey wastes and sewage from the manufacturing facility, into approved sewage disposal system"** means:

(a) Plumbing is designed, sized, installed and maintained in accordance with applicable state and local plumbing codes so that sewage and liquid disposable waste is readily conveyed from the plant;

(b) Floor drainage is sufficient to prevent excessive pooling of water or other disposable waste;

(c) Plumbing and drains do not provide a source of contamination to hemp or hemp extract, potable water, hemp extract contact surfaces or hemp extract packaging material or create any insanitary condition; and

(d) Sewage is disposed into a municipal sewer system or other system approved by a federal, state or local agency having jurisdiction.

(16) **"Adequate, readily accessible toilet facilities"** means a hemp extract facility provides its employees with toilet facilities that are located within a reasonable distance to the work area, and are maintained in accordance with local zoning ordinances.

(a) Toilet facilities are located on the premises of a hemp extract facility.

(b) If the hemp extract facility shares space in a multiple building complex, toilet facilities are located within the complex and within a reasonable distance from the work area.

(c) Outhouses, chemical toilets, or other nonflushing toilets may not be used.

(17) **"Toilets clean, in good repair, not opening directly into process areas, self-closing doors"** means toilet rooms are kept clean, free of trash and litter, in good repair and all toilet room doors are self-closing and do not open directly into a hemp extract manufacturing area.

(18) **"Handwash facilities adequate and convenient, with hot and cold or tempered water"** means employees and visitors in a hemp extract facility have access to one or more handwashing facilities with hot, cold, or tempered running water, and there is at least one handwash facility located in each restroom and one in the hemp extract manufacturing area in a convenient location for use when hands become soiled.

(19) **"Hemp extract protected from contamination in storage"** means hemp and hemp extract is stored under conditions that protect against physical, chemical and microbial contamination, as well as against deterioration of the hemp extract and the container.

(20) **"Hemp extract protected from contamination in storage: Critical violation"** means it is a critical violation when a storage situation allows potential contamination of products.

(21) **"Packaging material properly handled and stored"** means packaging material is protected from potential sources of contamination during handling and storage. This includes, but is not limited to:

(a) Boxes, liners, and other primary containers are stored off floors or other insanitary surfaces;

(b) Top containers in a nested stack of lined or primary containers are inverted or otherwise protected;

(c) All single service containers, caps, roll stock, liner jars, bottles, jugs, and other preformed containers are stored in closed sanitary tubes, wrappings, boxes or cartons prior to use;

(d) The forming, make-up or other package assembly is conducted in a manner that prevents contamination;

(e) The handling of packaging material and containers prior to filling or wrapping is conducted as not to expose them to contamination by dust, foreign material, or other contaminants.

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NEW SECTION

WAC 16-171-140 Hemp extract facility—Inspection criteria. The following table identifies:

(1) Inspection criteria and whether each criterion also represents a certification requirement;

(2) Whether a violation is critical; and

(3) The debit value for each significant violation.

	Criteria Item-Critical*	Debit Value	Certification Requirement?
1	Hemp extract products free from adulteration.	C	Yes
2	Persons with apparent infections or communicable diseases properly restricted.	C	Yes
3	Adequate washing and sanitizing of hands as necessary, gloves used in food handling sanitary conditions.	C	Yes
4	Product contact surfaces clean and maintained in a sanitary condition; cleaned and sanitized prior to each use or as essential.	C	Yes
5	In use hemp contact equipment and utensils appropriately stored; protected from contamination between uses.	C	No
6	Water used is safe and of adequate sanitary quality; from approved source.	C	Yes
7	No cross connections; no back-siphonage.	C	Yes
8	Hot and cold water, under pressure, in areas where foods are processed or equipment washed.	C	Yes
9	Adequate, readily accessible toilet facilities provided.	C	Yes
10	No evidence of human defecation or urination about the premises.	C	Yes
11	Handwash facilities adequate and convenient, including hot and cold or tempered water.	C	Yes
12	Hemp protected from contamination in storage.	C	No
* A critical violation results in an establishment not being in substantial compliance.			

	Criteria Item-Significant	Debit Value	Certification Requirement?
1	Jewelry, watches other personal items not a source of contamination.	1	No
2	Clean and adequate protective clothing and hair restraints.	1-2	No
3	Use of tobacco, eating and drinking of food and beverages and gum chewing restricted to appropriate areas.	1	No
4	Garments and personal belongings stored appropriately, not a source of potential contamination.	2	No

	Criteria Item-Significant	Debit Value	Certification Requirement?
5	Employee work procedures preclude contamination.	1-2	No
6	Grounds: Free from pest attractions, breeding places, harborage, excessive dust and other contaminants.	1	No
7	Suitable size and location, construction including walls, floors, ceiling, counters, shelving, other fixtures, smooth, readily cleanable and in good repair.	1-5	Yes
8	Processes separated as required.	1-2	Yes
9	No operations in domestic living or sleeping quarters (including domestic kitchens).	0	Yes
10	Adequate light.	1-2	Yes
11	Lights; glass over food protected; breakproof.	1	No
12	Adequate ventilation to minimize vapors, steams, noxious fumes.	1-2	Yes
13	Drip or condensate from ceiling, fixtures, pipes, ducts not a potential source of contamination.	1-3	No
14	Screened or protected to exclude pests.	1-2	No
15	Building, fixtures, facilities clean; including transport vehicles.	1-5	Yes
16	Detergents, sanitizers, toxic materials safely used and stored.	1-3	No
17	Detergents, sanitizers and toxic materials properly identified.	1-2	No
18	Product contact surfaces clean and maintained in a sanitary condition; cleaned and sanitized prior to each use or as essential.	1-2	No
19	Nonproduct contact surfaces of equipment clean and maintained in a sanitary condition.	1-2	No
20	In use hemp extract contact equipment and utensils appropriately stored; protected from contamination between uses.	1-2	No
21	Effective measures taken to exclude pests from the facility. No harborage/breeding areas.	1-2	No
22	Pesticides safely used and stored.	1-3	No
23	No evidence of rodents, insects, birds or other animals.	1-5	Yes
24	Current satisfactory water supply test.	5	Yes
25	Water supply sufficient in quantity for intended operations.	2	Yes
26	Adequate floor drains and plumbing to convey wastes and sewage from plant.	1-2	Yes
27	Sewage and waste lines protected not a source of contamination.	1-2	Yes
28	Adequate offal, rubbish and waste disposal.	1-2	Yes
29	Toilet facilities clean and in good repair, no direct opening to process area, self-closing door.	1-2	Yes
30	Soap and single service towels or suitable drying devices provided at handwash facilities. Adequate refuse receptacles provided.	1-2	No
31	Readily understandable handwash signs provided at handwash facilities.	1	No
32	Hand dips provided as necessary.	1-2	No
33	Design, material and workmanship durable, readily cleanable and in good repair. Contact surfaces nontoxic and corrosion resistant.	1-3	Yes
34	Design and use preclude contamination with lubricants, fuel, contaminated water, paint, rust, compressed air/gas and other contaminants.	1-3	No
35	Freezers and cold storage units equipped with adequate thermometers.	1	No

	Criteria Item-Significant	Debit Value	Certification Requirement?
36	Incoming raw materials or ingredients are from an approved source, in an obvious sanitary condition. Items inspected on receipt, suitable for intended use, segregated as necessary and properly stored (clean storage containers, facilities, products properly covered), ingredients properly identified; raw materials washed or cleaned as required.	1-5	No
37	No contaminating material used, stored or transported with supplies, ingredients or processed foods.	1-2	No
38	Packing material properly handled and stored.	1	No
39	Cleaning operations - Conducted to minimize contamination.	1-3	No

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NEW SECTION

WAC 16-171-150 Hemp extract facility inspection rating system—Inspection score. (1) A hemp extract facility is evaluated at the completion of an inspection conducted by the department as follows:

(a) A hemp extract facility will be debited the point value assigned to the inspection item listed in WAC 16-171-140 for each violation found during an inspection.

(b) The maximum point value possible is 100.

(c) The sum of the points debited for an inspection are subtracted from the maximum point value of 100. The remaining sum is the facility's score for that inspection.

(d) When the department identifies a critical violation during inspection of a hemp extract facility a failing score of "critical" will be listed unless the violation is satisfactorily corrected during the inspection.

(2) A hemp extract facility is considered in substantial compliance with the inspection criteria if:

(a) No critical violations are found, or if critical violations are found, they are corrected prior to completion of the inspection; or

(b) The facility's inspection score is 90 points or above.

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NEW SECTION

WAC 16-171-160 Hemp extract facilities—Basis for enforcement action. (1) The department may issue a notice of correction for:

(a) Hemp extract facilities that score less than 90 points on an inspection; or

(b) Critical violations found during an inspection of a hemp extract facility.

(2) The department may review and consider initiating enforcement action, such as certification suspension, civil penalties, and/or other actions provided in chapter 69.07 or 15.130 RCW when:

(a) Hemp extract facilities score less than 90 points on two separate inspections within a consecutive three-year period; or

(b) Hemp extract facilities fail to correct critical violations during an inspection.

(3) Nothing herein shall prevent the department from:

(a) Choosing not to pursue a case administratively.

(b) Issuing a notice of correction in lieu of pursuing enforcement action.

(c) Negotiating settlement(s) of cases on such terms and for such reasons as it deems appropriate.

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WSR 22-13-044

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed June 7, 2022, 2:19 p.m., effective October 1, 2022]

Effective Date of Rule: October 1, 2022.

Purpose: The agency is amending WAC 182-550-4550 to provide hospitals an administrative day rate for days in which a postpartum parent does not meet criteria for acute inpatient level of care, but their infant is still an inpatient being observed for potential post-in-utero exposure to substances that may lead to physiologic dependence and continuous care by the postpartum parent, is the appropriate first line treatment.

Citation of Rules Affected by this Order: Amending WAC 182-550-4550.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-01-015 on December 2, 2021.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 7, 2022.

Wendy Barcus
Rules Coordinator

OTS-3475.1

AMENDATORY SECTION (Amending WSR 19-18-026, filed 8/28/19, effective 9/28/19)

WAC 182-550-4550 Administrative day rate and swing bed day rate.

(1) Administrative day rate.

(a) The medicaid agency allows hospitals an administrative day rate for those days of hospital stay in which a client does not meet criteria for acute inpatient level of care, but is not discharged because:

(i) An appropriate placement outside the hospital is not available (no placement administrative day); or

(ii) The postpartum parent's newborn remains on an inpatient claim for monitoring post-in utero exposure to substances that may lead to physiologic dependence and continuous care by the postpartum parent is the appropriate first-line treatment (newborn administrative day). "Postpartum parent" means the client who delivered the baby(ies).

~~((a))~~ (b) The agency uses the annual statewide weighted average nursing facility medicaid payment rate to update the all-inclusive administrative day rate on November 1st of each year.

~~((b))~~ (c) The agency does not pay for ancillary services, except for pharmacy services and pharmaceuticals, provided during administrative days.

~~((e))~~ (d) The agency identifies administrative days during the length of stay review process after the client's discharge from the hospital.

~~((d))~~ (e) The agency pays for up to five newborn administrative days. The agency pays for additional days with expedited prior authorization (EPA). For EPA, a hospital must establish that the clinically appropriate EPA criteria outlined in the agency's published billing guides have been met. The hospital must use the appropriate EPA number when billing the agency.

(f) The agency pays the hospital the administrative day rate starting with the date of hospital admission if the admission is solely for a no placement administrative day stay (~~until an appropriate subacute placement can be made~~).

(g) The agency pays the hospital the newborn administrative day rate only if:

(i) The postpartum parent rooms in with their newborn and provides parental support/care; and

(ii) The hospital provides all prescribed medications to the postpartum parent for the duration of the stay, including medications prescribed to treat substance use disorder.

(2) **Swing bed day rate.** The agency allows hospitals a swing bed day rate for those days when a client is receiving agency-approved nursing service level of care in a swing bed. The agency's aging and disability services administration (ADSA) determines the swing bed day rate.

(a) The agency does not pay a hospital the rate applicable to the acute inpatient level of care for those days of a hospital stay when a client is receiving agency-approved nursing service level of care in a swing bed.

(b) The agency's allowed amount for those ancillary services not covered under the swing bed day rate is based on the payment methods provided in WAC 182-550-6000 and 182-550-7200. These ancillary services may be billed by the hospital on an outpatient hospital claim, except for pharmacy services and pharmaceuticals.

(c) The agency allows pharmacy services and pharmaceuticals not covered under the swing bed day rate, that are provided to a client receiving agency-approved nursing service level of care, to be billed directly by a pharmacy through the point of sale system. The agency does not allow those pharmacy services and pharmaceuticals to be paid to the hospital through submission of a hospital outpatient claim.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-18-026, § 182-550-4550, filed 8/28/19, effective 9/28/19; WSR 15-18-065, § 182-550-4550, filed 8/27/15, effective 9/27/15. WSR 11-14-075, recodified as § 182-550-4550, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 2009-11 Omnibus Operating Budget (ESHB 1244). WSR 09-12-062, § 388-550-4550, filed 5/28/09, effective 7/1/09.]

WSR 22-13-051
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed June 8, 2022, 11:02 a.m., effective July 9, 2022]

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

Purpose: The Washington state liquor and cannabis board adopted amendments to WAC 314-55-108 to update technical chemical isomer information for some types of pesticides included in cannabis quality control testing, and to clarify the number of significant digits testing laboratories are expected to use for reporting numerical pesticide testing results.

Other amendments were completed to ensure consistency with WAC 314-55-102 concerning remediation of marijuana products that have failed quality control testing, remove redundant rule language contained [in] subsections (4) and (5), and to update the term "quality assurance testing" to "quality control testing."

Citation of Rules Affected by this Order: Amending WAC 314-55-108.

Statutory Authority for Adoption: RCW 69.50.345 and 69.50.348.

Other Authority: RCW 69.50.345 and 69.50.348.

Adopted under notice filed as WSR 22-08-038 on March 30, 2022.

Changes Other than Editing from Proposed to Adopted Version: The term "marijuana" was replaced throughout WAC 314-55-108 with the term "cannabis" for conformance with 2SHB 1210 (section 168, chapter 16, Laws of 2022).

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 8, 2022.

David Postman
Chair

OTS-3688.3

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-108 Pesticide action levels. (1) Only pesticides allowed under WAC 314-55-084 may be used in the production of (~~marijuana~~) cannabis, and they must be registered by the Washington state department of agriculture (WSDA) under chapter 15.58 RCW.

(2) Pursuant to WAC 314-55-102, if the WSLCB, WSDA, other designee of the WSLCB, or certified lab identifies a pesticide that is not allowed under subsection (1) of this section and is above the action levels provided in subsection (3) of this section, that lot or batch from which the sample was deducted has failed quality ((assurance)) control testing and may be subject to a recall as provided in WAC 314-55-225.

(3) The action levels for pesticides are provided in the table below. The action level for all other pesticides that are not listed in the table below or not allowed under subsection (1) of this section is 0.1 ppm.

((Analyte	Chemical Abstract Services (CAS) Registry Number	Action-Level ppm
Abamectin	71751-41-2	0.5
Acephate	30560-19-1	0.4
Aeequinoeyl	57960-19-7	2
Acetamiprid	135410-20-7	0.2
Aldicarb	116-06-3	0.4
Azoxystrobin	131860-33-8	0.2
Bifenazate	149877-41-8	0.2
Bifenthrin	82657-04-3	0.2
Boscalid	188425-85-6	0.4
Carbaryl	63-25-2	0.2
Carbofuran	1563-66-2	0.2
Chlorantraniliprole	500008-45-7	0.2
Chlorfenapyr	122453-73-0	†
Chlorpyrifos	2921-88-2	0.2
Clofentezine	74115-24-5	0.2
Cyfluthrin	68359-37-5	†
Cypermethrin	52315-07-8	†
Daminozide	1596-84-5	†
DDVP (Dichlorvos)	62-73-7	0.1
Diazinon	333-41-5	0.2
Dimethoate	60-51-5	0.2
Ethoprophos	13194-48-4	0.2
Etofenprox	80844-07-1	0.4
Etoxazole	153233-91-1	0.2
Fenoxycarb	72490-01-8	0.2
Fenpyroximate	134098-61-6	0.4
Fipronil	120068-37-3	0.4
Flonicamid	158062-67-0	†
Fludioxonil	131341-86-1	0.4
Hexythiazox	78587-05-0	†
Imazalil	35554-44-0	0.2
Imidacloprid	138261-41-3	0.4
Kresoxim-methyl	143390-89-0	0.4

((Analyte	Chemical Abstract Services (CAS) Registry Number	Action Level ppm
Malathion	121-75-5	0.2
Metalaxyl	57837-19-1	0.2
Methiocarb	2032-65-7	0.2
Methomyl	16752-77-5	0.4
Methyl parathion	298-00-0	0.2
MGK-264	113-48-4	0.2
Myelobutanil	88671-89-0	0.2
Naled	300-76-5	0.5
Oxamyl	23135-22-0	1
Pacllobutrazol	76738-62-0	0.4
Permethrins ^a	52645-53-1	0.2
Phosmet	732-11-6	0.2
Piperonyl butoxide ^b	51-03-6	2
Prallethrin	23031-36-9	0.2
Propiconazole	60207-90-1	0.4
Propoxur	114-26-1	0.2
Pyrethrins ^{bc}	8003-34-7	1
Pyridaben	96489-71-3	0.2
Spinosad	168316-95-8	0.2
Spiromesifen	283594-90-1	0.2
Spirotetramat	203313-25-1	0.2
Spiroxamine	118134-30-8	0.4
Tebuconazole	80443-41-0	0.4
Thiacloprid	111988-49-9	0.2
Thiamethoxam	153719-23-4	0.2
Trifloxystrobin	141517-21-7	0.2

^aPermethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8 respectively).

^bAction level applies to marijuana concentrates, marijuana extracts, intermediate products, and imported cannabinoids.

^cPyrethrins should be measured as the cumulative residues of pyrethrin 1, cinerin 1, and jasmolin 1 (CAS numbers 121-21-1, 25402-06-6, and 4466-1-2 respectively).))

Analyte	µg/g (ppm)	CAS#
Abamectin (Sum of Isomers)	0.50	71751-41-2
• Avermectin B1a		65195-55-3
• Avermectin B1b		65195-56-4
Acephate	0.40	30560-19-1
Acequinocyl	2.0	57960-19-7
Acetamiprid	0.20	135410-20-7
Aldicarb	0.40	116-06-3
Azoxystrobin	0.20	131860-33-8
Bifenazate	0.20	149877-41-8

<u>Analyte</u>	<u>µg/g (ppm)</u>	<u>CAS#</u>
<u>Bifenthrin</u>	<u>0.20</u>	<u>82657-04-3</u>
<u>Boscalid</u>	<u>0.40</u>	<u>188425-85-6</u>
<u>Carbaryl</u>	<u>0.20</u>	<u>63-25-2</u>
<u>Carbofuran</u>	<u>0.20</u>	<u>1563-66-2</u>
<u>Chlorantraniliprole</u>	<u>0.20</u>	<u>500008-45-7</u>
<u>Chlorfenapyr</u>	<u>1.0</u>	<u>122453-73-0</u>
<u>Chlorpyrifos</u>	<u>0.20</u>	<u>2921-88-2</u>
<u>Clofentezine</u>	<u>0.20</u>	<u>74115-24-5</u>
<u>Cyfluthrin</u>	<u>1.0</u>	<u>68359-37-5</u>
<u>Cypermethrin</u>	<u>1.0</u>	<u>52315-07-8</u>
<u>Daminozide</u>	<u>1.0</u>	<u>1596-84-5</u>
<u>DDVP (Dichlorvos)</u>	<u>0.10</u>	<u>62-73-7</u>
<u>Diazinon</u>	<u>0.20</u>	<u>333-41-5</u>
<u>Dimethoate</u>	<u>0.20</u>	<u>60-51-5</u>
<u>Ethoprophos</u>	<u>0.20</u>	<u>13194-48-4</u>
<u>Etofenprox</u>	<u>0.40</u>	<u>80844-07-1</u>
<u>Etoxazole</u>	<u>0.20</u>	<u>153233-91-1</u>
<u>Fenoxycarb</u>	<u>0.20</u>	<u>72490-01-8</u>
<u>Fenpyroximate</u>	<u>0.40</u>	<u>134098-61-6</u>
<u>Fipronil</u>	<u>0.40</u>	<u>120068-37-3</u>
<u>Flonicamid</u>	<u>1.0</u>	<u>158062-67-0</u>
<u>Fludioxonil</u>	<u>0.40</u>	<u>131341-86-1</u>
<u>Hexythiazox</u>	<u>1.0</u>	<u>78587-05-0</u>
<u>Imazalil</u>	<u>0.20</u>	<u>35554-44-0</u>
<u>Imidacloprid</u>	<u>0.40</u>	<u>138261-41-3</u>
<u>Kresoxim-methyl</u>	<u>0.40</u>	<u>143390-89-0</u>
<u>Malathion</u>	<u>0.20</u>	<u>121-75-5</u>
<u>Metalaxyl</u>	<u>0.20</u>	<u>57837-19-1</u>
<u>Methiocarb</u>	<u>0.20</u>	<u>2032-65-7</u>
<u>Methomyl</u>	<u>0.40</u>	<u>16752-77-5</u>
<u>Methyl parathion</u>	<u>0.20</u>	<u>298-00-0</u>
<u>MGK-264</u>	<u>0.20</u>	<u>113-48-4</u>
<u>Myclobutanil</u>	<u>0.20</u>	<u>88671-89-0</u>
<u>Naled</u>	<u>0.50</u>	<u>300-76-5</u>
<u>Oxamyl</u>	<u>1.0</u>	<u>23135-22-0</u>
<u>Paclobutrazol</u>	<u>0.40</u>	<u>76738-62-0</u>
<u>Permethrins (Sum of Isomers)</u>	<u>0.20</u>	<u>52645-53-1</u>
• <u>cis-Permethrin</u>		<u>54774-45-7</u>
• <u>trans-Permethrin</u>		<u>51877-74-8</u>
<u>Phosmet</u>	<u>0.20</u>	<u>732-11-6</u>
<u>Piperonyl butoxide</u>	<u>2.0</u>	<u>51-03-6</u>
<u>Prallethrin</u>	<u>0.20</u>	<u>23031-36-9</u>
<u>Propiconazole</u>	<u>0.40</u>	<u>60207-90-1</u>
<u>Propoxur</u>	<u>0.20</u>	<u>114-26-1</u>

<u>Analyte</u>	<u>µg/g (ppm)</u>	<u>CAS#</u>
<u>Pyrethrins (Sum of Isomers)</u>	<u>1.0</u>	<u>8003-34-7</u>
• <u>Pyrethrin I</u>		<u>121-21-1</u>
• <u>Pyrethrin II</u>		<u>121-29-9</u>
<u>Pyridaben</u>	<u>0.20</u>	<u>96489-71-3</u>
<u>Spinosad (Sum of Isomers)</u>	<u>0.20</u>	<u>168316-95-8</u>
• <u>Spinosyn A</u>		<u>131929-60-7</u>
• <u>Spinosyn D</u>		<u>131929-63-0</u>
<u>Spiromesifen</u>	<u>0.20</u>	<u>283594-90-1</u>
<u>Spirotetramat</u>	<u>0.20</u>	<u>203313-25-1</u>
<u>Spiroxamine</u>	<u>0.40</u>	<u>118134-30-8</u>
<u>Tebuconazole</u>	<u>0.40</u>	<u>80443-41-0</u>
<u>Thiacloprid</u>	<u>0.20</u>	<u>111988-49-9</u>
<u>Thiamethoxam</u>	<u>0.20</u>	<u>153719-23-4</u>
<u>Trifloxystrobin</u>	<u>0.20</u>	<u>141517-21-7</u>

(4) For the purposes of this section, limits have been written to the number of significant digits that laboratories are expected to use when reporting to the board and on associated certificates of analysis.

(5) Except as otherwise provided in this section, licensed ((~~marijuana~~) cannabis producer or processor that provided a sample that fails quality ((~~assurance~~) control testing must dispose of the entire lot or batch from which the sample was taken as provided by ((~~marijuana~~) cannabis waste disposal requirements in WAC 314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and recordkeeping requirements in WAC 314-55-087. A licensee's sample that does not test above the pesticide action levels under this section where test results show the presence of a pesticide that is not allowed under subsection (1) of this section may still be subject to an administrative violation if the disallowed pesticide was applied.

~~((5) Except as otherwise provided in this section, a licensed marijuana producer or processor which provided a sample that fails quality assurance testing must dispose of the entire lot or batch from which the sample was taken as provided by marijuana waste disposal requirements in WAC 314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and recordkeeping requirements in WAC 314-55-087.)~~

(6) Pursuant to WAC 314-55-102, at the request of the producer or processor, the WSLCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor requesting the retest.

~~(7) ((Producers and processors may remediate failed harvests, lots, or batches so long as the remediation method does not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to a licensed retailer or consumer upon request. The entire harvest, lot, or batch the failed sample(s) were deducted from must be remediated using the same remediation technique. No remediated harvest, lots or batches may be~~

~~sold or transported until the completion and successful passage of quality assurance testing as required in this section and WAC 314-55-102.~~

(8)) Pursuant to WAC 314-55-102, upon request a ((marijuana)) cannabis licensee must disclose and make available all quality ((as-
surance)) control tests and retest results for the lot or batch of usable ((marijuana, marijuana)) cannabis, cannabis concentrates, or ((marijuana-infused)) cannabis-infused products to the ((marijuana)) cannabis licensee or retail customer who is considering purchasing the usable ((marijuana, marijuana)) cannabis, cannabis concentrates, or ((marijuana-infused)) cannabis-infused products.

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 17-12-032, § 314-55-108, filed 5/31/17, effective 8/31/17.]

WSR 22-13-052
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed June 8, 2022, 11:38 a.m., effective July 9, 2022]

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

Purpose: The department is establishing, by rule, a new process for periodically assessing the rate of regular interest. Additionally, the department is establishing a new daily interest methodology for all regular interest credited to member account balances beginning July 1, 2022.

Citation of Rules Affected by this Order: Amending WAC 415-02-060, 415-02-150, and 415-02-510.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 22-10-060 on May 2, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 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 8, 2022.

Tracy Guerin
Director

OTS-3735.2

AMENDATORY SECTION (Amending WSR 01-08-043, filed 3/30/01, effective 4/30/01)

WAC 415-02-060 What happens if I do not cash a warrant or check?

(1) *Warrant for defined benefit retirement allowance.* A warrant for your monthly retirement allowance will be canceled if it is not cashed within the time frame set by RCW 43.08.062. If the warrant is canceled, the department will attempt to contact you for instructions. You will not earn regular interest on the warrant amount pending reissue of your payment.

(2) *Warrant for defined benefit withdrawal.* When you request a withdrawal of some or all of your defined benefit accumulated contributions:

(a) Once the department issues the warrant you will stop receiving regular interest.

(b) Whether payable to you or to a qualified investment account, the warrant will be canceled if it is not cashed within the time frame set by RCW 43.08.062.

(c) After the department receives notice that the warrant has been canceled, the department will attempt to contact you and ask for further instructions.

(3) *Check for defined contribution distribution.* When you request a withdrawal of some or all of your defined contribution fund:

(a) The requested amount will be liquidated (~~(and the department's third-party recordkeeper will transfer the funds into a noninterest-bearing account)~~).

(b) You will not receive interest, earnings, or losses after the third-party recordkeeper processes your request.

(c) Whether you request that the refund check be sent directly to you or to a qualified investment account, the check will be canceled if it is not cashed within (~~(one hundred eighty)~~) 180 days from the date on the check.

(d) If the check is canceled:

(i) The funds will continue to receive no interest, earnings, or losses while the recordkeeper waits to receive instructions from you; and

(ii) The department or the third-party recordkeeper will attempt to contact you and ask for further instructions.

[Statutory Authority: RCW 41.50.050(5), 43.08.062, 41.50.055(5), 41.50.260. WSR 01-08-043, § 415-02-060, filed 3/30/01, effective 4/30/01. Statutory Authority: RCW 41.50.050. WSR 00-10-016, § 415-02-060, filed 4/21/00, effective 5/22/00. Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-02-060, filed 2/15/78.]

OTS-3736.2

AMENDATORY SECTION (Amending WSR 18-07-063, filed 3/15/18, effective 4/15/18)

WAC 415-02-150 How is regular interest (~~(awarded and)~~) credited to Plan 1 and Plan 2 individual accounts? (~~((1) You are required to make contributions to your retirement plan each pay period.~~

~~(2) Your contributions are tracked in an individual account in your name.~~

~~(3) If the amount in your individual account on the last day of a quarter is more than zero dollars, the department will calculate an amount of regular interest to be credited to your account on the last day of the quarter using the following formula:~~

$$1/4 \times R \times B$$

~~Regular interest will be credited consistent with this subsection, whether or not you are in active service.~~

~~(a) In the formula in subsection (3) of this section, "R" represents the rate of regular interest. The director has the statutory authority to set the rate of regular interest. Consistent with that authority, the rate of regular interest is set at 5.5 percent per year, until changed by the director consistent with his or her discretionary authority.~~

~~(b) In the formula in subsection (3) of this section, "B" represents the balance in your individual account at the close of business on the last day of the prior quarter. "B" may be equal to zero dollars.~~

~~(4) The calculated amount of regular interest will be credited to your individual account on the last day of the quarter. The total amount in your individual account (i.e., all your member contributions plus all the regular interest that has been credited to the account) are your "accumulated contributions."~~

~~(5) Your individual account does not "earn" or accrue regular interest on a day by day basis.~~

~~(6) Example: Jon had \$50,000 in his PERS Plan 2 individual account at the end of the day on September 30, 2017 (the last day of the third quarter). He has \$50,200 in his PERS Plan 2 individual account on December 31, 2017, immediately before regular interest for fourth quarter is credited. For fourth quarter, the regular interest to be credited to his account is calculated as follows:~~

$$\frac{1}{4} \times 5.5\% \times \$50,000 = \$687.50$$

~~This regular interest is credited to his individual account for a total of \$50,887.50 (\$50,200.00 + \$687.50) at the end of the day on December 31, 2017.~~

~~(a) If Jon transfers from PERS Plan 2 to PERS Plan 3 on January 25, 2018, he receives no additional regular interest for the period from January 1 through January 25.~~

~~(b) If Jon separates from service on February 15, 2018, and withdraws the amount in his individual account, he receives no additional regular interest for the period from January 1 through February 15.~~

~~(7) This rule applies retroactively to November 3, 1977, to all Plan 1 and Plan 2 individual accounts in the public employees' retirement system, teachers' retirement system, law enforcement officers' and fire fighters' retirement system, school employees' retirement system, and public safety employees' retirement system, and prospectively for the Washington state patrol retirement system Plan 1 and Plan 2.)~~

The director has the statutory authority to set the terms of regular interest and modify those terms consistent with RCW 41.50.033. This rule summarizes how regular interest is credited to Plan 1 and Plan 2 individual accounts effective July 1, 2022.

(1) You are required to make contributions to your retirement plan each pay period.

(2) The department maintains an individual account in your name. In your individual account, the department tracks your contributions and the regular interest credited to your account consistent with this rule. Taken together, your contributions plus the regular interest that has been credited to your account are defined to be your accumulated contributions.

(3) Amounts in your individual account (both contributions and previously credited regular interest) accrue regular interest daily at the rate currently in effect. As long as your individual account is in existence, regular interest will continue to accrue, regardless of whether or not you are in active employment.

(4) Regular interest is calculated and credited to your account periodically.

(a) In WSPRS, regular interest is calculated and credited monthly, on the last day of the month. (If you withdraw your accumulated contributions mid-month, the department will calculate and credit your

account with the regular interest accrued during the partial month prior to your withdrawal.)

(b) In all other plans 1 and 2, regular interest is calculated and credited quarterly. (If you withdraw your accumulated contributions or transfer your accumulated contributions to another plan mid-quarter, the department will calculate and credit your account with the regular interest accrued during the partial quarter prior to your withdrawal or transfer.)

(c) Because regular interest is calculated on both your contributions and previously credited regular interest, regular interest is compound interest.

(5) Rate of regular interest. The director has the statutory authority to set the rate of regular interest.

(a) During each odd year, the director will consider whether to change the rate of regular interest.

(b) If the rate is to be changed, the new rate will be effective July 1st of the following even year.

(c) In setting the rate, the director will consider the inflation assumption published by the Office of the State Actuary in the bi-annual Economic Experience Study and adopted by the Pension Funding Council.

(6) Example 1. For illustration purposes only, examples will assume the rate of regular interest is 5.5 percent per year. John begins PERS Plan 2 employment. John's employer submits the following contributions to PERS Plan 2:

<u>3/11</u>	<u>\$100</u>
<u>3/27</u>	<u>\$100</u>
<u>4/10</u>	<u>\$100</u>
<u>4/26</u>	<u>\$100</u>
<u>5/12</u>	<u>\$100</u>
<u>5/27</u>	<u>\$100</u>
<u>6/11</u>	<u>\$100</u>
<u>6/25</u>	<u>\$100</u>
<u>7/11</u>	<u>\$100</u>

(a) On March 31st, regular interest of \$0.36 is credited to John's account. This is calculated as follows (except where noted, calculations are rounded to four decimal places):

(i) \$0.2411 on the account balance of \$100 from 3/12 to 3/27. That is \$100 for 16 days, the regular interest for this balance is:

$$\underline{.055 * 16/365 * 100 = \$0.2411}$$

(ii) \$0.1205 on the account balance of \$200 from 3/28 to 3/31. That is \$200 for four days, the regular interest for this balance is:

$$\underline{.055 * 4/365 * 200 = \$0.1205}$$

(iii) The total regular interest credited for the first quarter is \$0.36 (\$0.2411 + \$0.1205 = \$0.3616 which rounds to \$0.36).

(iv) The balance in John's account on March 31st, is \$200.36 - New Contributions (\$200) + Regular Interest (\$0.36).

(b) On June 30th, regular interest of \$6.56 is credited to John's account. This is calculated as follows:

(i) \$0.3019 on the account balance of \$200.36 from 4/1 to 4/10. That is \$200.36 for 10 days, the regular interest for this balance is:

$$.055 * 10/365 * 200.36 = \$0.3019$$

(ii) \$0.7242 on the account balance of \$300.36 from 4/11 to 4/26. That is \$300.36 for 16 days, the regular interest for this balance is:

$$.055 * 16/365 * 300.36 = \$0.7242$$

(iii) \$0.9653 on the account balance of \$400.36 from 4/27 to 5/12. That is \$400.36 for 16 days, the regular interest for this balance is:

$$.055 * 16/365 * 400.36 = \$0.9653$$

(iv) \$1.1310 on the account balance of \$500.36 from 5/13 to 5/27. That is \$500.36 for 15 days, the regular interest for this balance is:

$$.055 * 15/365 * 500.36 = \$1.1310$$

(v) \$1.3570 on the account balance of \$600.36 from 5/28 to 6/11. That is \$600.36 for 15 days, the regular interest for this balance is:

$$.055 * 15/365 * 600.36 = \$1.3570$$

(vi) \$1.4775 on the account balance of \$700.36 from 6/12 to 6/25. That is \$700.36 for 14 days, the regular interest for this balance is:

$$.055 * 14/365 * 700.36 = \$1.4775$$

(vii) \$0.6030 on the account balance of \$800.36 from 6/26 to 6/30. That is \$800.36 for five days, the regular interest for this balance is:

$$.055 * 5/365 * 800.36 = \$0.6030$$

(viii) The total regular interest credited for the second quarter is \$6.56 (\$0.3019 + \$0.7242 + \$0.9653 + \$1.1310 + \$1.3570 + \$1.4775 + \$0.6030 = \$6.5599 which rounds to \$6.56).

(ix) The account balance on June 30th is \$806.92 - March 31st Balance (\$200.36) + New Contributions (\$600) + Regular Interest (\$6.56).

(7) Example 2. John terminates PERS Plan 2 employment on July 1st, after making one contribution for the third quarter. He chooses to withdraw the amount in his individual account. On July 17th, he receives a warrant for \$907.74, calculated as follows:

(a) John receives \$2.16 in regular interest for the period from July 1st through July 17th.

(i) \$1.3375 on the account balance of \$806.92 from 7/1 to 7/11. That is \$806.92 for 11 days, the regular interest for this balance is:

$$.055 * 11/365 * \$806.92 = \$1.3375$$

(ii) \$0.8200 on the account balance of \$906.92 from 7/12 to 7/17. That is \$906.92 for six days, the regular interest for this balance is:

$$.055 * 6/365 * \$906.92 = \$0.8200$$

(iii) The total regular interest credited for the third quarter is \$2.16 (\$1.3375 + \$0.8200 = \$2.1575 which rounds to \$2.16).

(b) The total withdrawal is \$909.08 - June 30th Balance (\$806.92) + New Contributions (\$100) + Regular Interest (\$2.16).

[Statutory Authority: RCW 41.50.033 and 41.50.050. WSR 18-07-063, § 415-02-150, filed 3/15/18, effective 4/15/18.]

OTS-3737.2

AMENDATORY SECTION (Amending WSR 06-18-009, filed 8/24/06, effective 9/24/06)

WAC 415-02-510 How can a property division dissolution order give my ex-spouse an interest¹ in my Plan 1 or 2 retirement account?

(1) Who may use this section?

(a) You **MUST** use this section if you are a member of LEOFF Plan 1, WSPRS Plan 1, JRF or JRS, or a **nonvested** member of LEOFF Plan 2, PERS Plan 1 or 2, PSERS, SERS Plan 2, TRS Plan 1 or 2, or WSPRS Plan 2.

(b) You **MAY** use this section if you are a **vested** member of LEOFF Plan 2, PERS Plan 1 or 2, PSERS, SERS Plan 2, TRS Plan 1 or 2, or WSPRS Plan 2. If you are splitting your retirement account with your ex-spouse, use WAC 415-02-520.

(2) What language must the property division dissolution order or amendment include? The order must include the language in RCW 41.50.670(2), provided below. The order or amendment must state either a specific dollar amount or percentage of the benefit. It cannot state both. (See example in WAC 415-02-500(15).)

If _____ (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to _____ (the obligee) _____ dollars from such payments or _____ percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

If _____ (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to _____ (the obligee) _____ dollars plus regular interest at the rate paid by the department of retirement systems on member contributions. Such regular interest to accrue from the date of this order's entry with the court of record.

(3) How will my account be affected if the department accepts the property division dissolution order BEFORE I retire?

(a) Your ex-spouse will not receive any payments from the department until you terminate your employment or retire.

(b) If you terminate your employment and request a withdrawal of your accumulated contributions, the department will pay your ex-spouse his or her share when you receive your payment. If you terminate your employment and do not request a withdrawal of contributions, your ex-spouse will be unable to receive his or her share until you withdraw your accumulated contributions.

(c) If you die before retirement, the department will pay your ex-spouse his or her share of your accumulated contributions in a lump-sum payment.

(4) How will my account be affected if the department accepts the property division dissolution order AFTER I retire?

(a) If included in the dissolution order, the department will begin paying your ex-spouse his or her portion of your monthly retirement allowance the first month after the department has accepted the order.

(b) If your ex-spouse dies before you, the portion of your monthly retirement allowance that was being paid to your ex-spouse will be paid to you.

(c) If you die before your ex-spouse, payments to your ex-spouse stop unless the department accepted the order at least ~~((thirty))~~ 30 days before you retired and the order required the department to name your ex-spouse as a survivor beneficiary (if allowed by your retirement system and plan). See RCW 41.50.700(1) and 41.50.790.

(d) If you are a member of LEOFF Plan 1 or WSPRS Plan 1 and if one of the provisions in RCW 41.50.700(3) applies:

(i) Your ex-spouse may be eligible to receive payments for the life of your surviving spouse; or

(ii) If you are a member of LEOFF Plan 1, your ex-spouse may be eligible to receive payments for his or her lifetime.

(5) **Is there a maximum payment amount that a property division dissolution order can award to my ex-spouse?** Yes. See RCW 41.50.670(4) and WAC 415-02-500(10) for information.

(6) **If the property division dissolution order directs the department to make payments to my ex-spouse, how will the payments be made?** The department will make the required payments as specified in the dissolution order directly to your ex-spouse.

~~(7) ((How much is the fee the department charges for making payments directly to my ex-spouse? See RCW 41.50.680 and WAC 415-02-500(11) for information.~~

~~(8-))~~ **What happens if I transfer to Plan 3 after the department has accepted my property division dissolution order or most recent amendment?** See WAC 415-02-550 for information.

~~((9-))~~ **(8) Can I amend my existing order to remove my ex-spouse as my survivor beneficiary?** Yes. To remove your ex-spouse as your survivor beneficiary, you must submit a "conformed copy" of the court order splitting your account. A conformed copy is a copy of the order that has been signed by the judge or commissioner on or after July 1, 2003, and filed with the court. Removing your ex-spouse as survivor beneficiary will change your retirement benefit. See WAC 415-02-520(9) for the language that must be used.

~~((10-))~~ **(9) Terms used:**

(a) Department's acceptance - That the department's determination that a dissolution order fully complies with the department's requirements and with chapter 41.50 RCW.

(b) Dissolution order - RCW 41.50.500.

(c) Obligee - RCW 41.50.500(5).

(d) Obligor - RCW 41.50.500(6).

(e) Plan 3 - WAC 415-111-100.

(f) Vested - The status of a member who has the amount of service credit required by the member's system and plan for a service retirement when the age requirement is met.

Footnote to section:

¹ When a court awards an interest in your retirement account, the department is required to pay a portion of your monthly retirement allowance or a portion of your contributions to your ex-spouse.

[Statutory Authority: RCW 41.50.050(5), 41.50.670, 41.50.680, 41.50.790. WSR 06-18-009, § 415-02-510, filed 8/24/06, effective

9/24/06. Statutory Authority: RCW 41.50.050(5), 41.50.500,
[41.50.]670-[41.50.]710, [41.50.]790 and 2002 c 158. WSR 03-12-014, §
415-02-510, filed 5/27/03, effective 7/1/03.]

WSR 22-13-053
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed June 8, 2022, 11:40 a.m., effective July 9, 2022]

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

Purpose: This rule-making action will clarify when a member's choice for Plan 2 or Plan 3 becomes irrevocable.

Citation of Rules Affected by this Order: Amending WAC 415-02-030.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 22-10-068 on May 3, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 8, 2022.

Tracy Guerin
 Director

OTS-3626.1

AMENDATORY SECTION (Amending WSR 21-16-020, filed 7/23/21, effective 8/23/21)

WAC 415-02-030 Definitions. This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCW and WAC.

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010 (TRS); RCW 41.35.010 (SERS); RCW 41.40.010 (PERS); and RCW 41.37.010 (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120.

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the (~~twelve~~) 12 named months of the year, extending from the first day of the named month through the last day.

For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is **not** a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means (~~(thirty)~~) 30 consecutive calendar days. For example: Kim's retirement date is August 1st. August 31st would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010 and 41.32.345 (TRS); RCW 41.35.010 (SERS); RCW 41.37.010 (PSERS); and RCW 41.40.010 (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030 (LEOFF), 41.32.010 (TRS), 41.34.020 (Plan 3), 41.35.010 (SERS), 41.37.010 (PSERS) and 41.40.010 (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500.

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030.

(18) **First employed by an eligible employer in an eligible position** means, for purposes of plan default, first employment with an employer, in an eligible position, with which a member has fully exhausted their plan choice rights.

(19) **HERPs** mean higher education retirement plans described in chapter 28B.10 RCW, which are non-DRS retirement plans offered by institutions of higher education, such as, but not limited to, University of Washington retirement plan (UWRP) and Western Washington University retirement plan (WWURP).

(20) **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

(21) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

(22) **Indexed retirement allowance** means a defined benefit retirement allowance from an indexed retirement plan, payable to a member who separates after having completed at least ~~((twenty))~~ 20 service credit years, that is increased by ~~((twenty-five one-hundredths of one))~~ 0.0025 percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

(23) **Indexed retirement plan** means one of the following retirement plans, which are administered by the department of retirement systems and provide an indexed retirement allowance: Law Enforcement Officers' and Firefighters Retirement System Plan 2 (RCW 41.26.530), Public Employees' Retirement System Plan 3 (RCW 41.40.790), School Employees' Retirement System Plan 3 (RCW 41.35.620), and Teachers' Retirement System Plan 3 (RCW 41.32.840).

(24) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

(25) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

(26) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

(27) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

(28) **Nonadministrative position or nonadministrative capacity** refers to retirees returning to work in a position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school which:

(a) Does not require an administrative certification, as defined by the office of the superintendent of public instruction, (currently positions requiring the certification include: Principal, vice principal, program administrator, conditional administrator, superintendent or program administrator certifications); or

(b) Does not evaluate staff.

(29) **Normal retirement** means qualifying for retirement based on the standard age and service credit requirements as specified in RCW 2.10.100 (JRS), 2.12.020 (JRF), 41.26.090 (LEOFF Plan 1), 41.26.430(1) (LEOFF Plan 2), 41.32.470 (TRS Plan 1), 41.32.765(1) (TRS Plan 2), 41.32.875(1) (TRS Plan 3), 41.35.420(1) (SERS Plan 2), 41.35.680(1) (SERS Plan 3), 41.37.210(1) (PSERS), 41.40.180 (PERS Plan 1), 41.40.630(1) (PERS Plan 2), 41.40.820(1) (PERS Plan 3), or 43.43.250 (WSPRS).

(30) **Participant** means an eligible employee who participates in a deferred compensation plan.

(31) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation plan.

(32) **Pension plan** is a plan that provides a lifelong post retirement payment of benefits to employees.

(33) **PERS** means the Washington public employees' retirement system created by chapter 41.40 RCW.

(34) **Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director.

The department's petitions examiner performs the review under chapter 415-04 WAC.

(35) **Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

(36) **Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

(37) **Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

(38) **Plan choice rights** refers to a member's right, within a ~~((ninety-day))~~ 90-day period, to make an irrevocable choice to become a member of Plan 2 or Plan 3 or be defaulted into a plan after the full ~~((ninety-day))~~ 90-day period has expired.

(a) A member will be reported in Plan 2 until plan choice rights have been exercised.

(b) A member must make a choice within ~~((ninety))~~ 90 calendar days (computed as described in RCW 1.12.040) from the first day of employment in an eligible position.

(c) A member will be defaulted into a plan if they continue employment in an eligible position past the ~~((ninety-day))~~ 90-day plan choice period without making a choice.

(d) A member may exercise plan choice rights only once per system.

(e) Once a member makes a plan choice, that choice cannot be changed, even if the member is still within 90 days of hire.

(39) **Plan year** is the ~~((twelve-month))~~ 12-month period that begins on January 1st and ends on December 31st of the same calendar year.

(40) **Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

(41) **PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

(42) **Public record** is defined in RCW 42.56.010.

(43) **Restoration** is the process of restoring a member's service credit for prior periods.

(44) **Retirement system employer - See "employer."**

(45) **Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

(46) **Separation date** is the date a member ends employment in a position eligible for retirement.

(47) **SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

(48) **Split account** is the account the department establishes for a member or retiree's ex-spouse.

(49) **Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

(50) **Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

(51) **Survivor benefit** is a feature of a retirement plan that provides continuing payments to a designee after the death of a member or retiree.

(52) **TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

(53) **The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

(54) **WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-02-030, filed 7/23/21, effective 8/23/21; WSR 20-13-064, § 415-02-030, filed 6/15/20, effective 7/16/20; WSR 20-01-079, § 415-02-030, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.50.050(5). WSR 16-17-047, § 415-02-030, filed 8/11/16, effective 9/11/16; WSR 16-08-008, § 415-02-030, filed 3/24/16, effective 4/24/16; WSR 10-24-099, § 415-02-030, filed 12/1/10, effective 1/1/11. Statutory Authority: RCW 41.50.050(5) and 41.04.640. WSR 09-01-021, § 415-02-030, filed 12/8/08, effective 1/8/09. Statutory Authority: RCW 41.50.050(5). WSR 06-18-009, § 415-02-030, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.40.010(42), 41.40.037. WSR 04-04-037, § 415-02-030, filed 1/29/04, effective 3/1/04. Statutory Authority: RCW 41.50.050(5). WSR 02-23-037, § 415-02-030, filed 11/13/02, effective 1/1/03; WSR 02-01-120, § 415-02-030, filed 12/19/01, effective 1/19/02. Statutory Authority: RCW 41.50.050. WSR 00-10-016, § 415-02-030, filed 4/21/00, effective 5/22/00; WSR 94-09-039, § 415-02-030, filed 4/19/94, effective 5/20/94; Order 4, § 415-02-030, filed 7/27/77.]

WSR 22-13-054
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed June 8, 2022, 11:41 a.m., effective July 9, 2022]

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

Purpose: The Washington state liquor and cannabis board adopted new WAC 314-03-060 regarding axe throwing at liquor licensed premises, and amendments to WAC 314-29-030 regarding group 3 license violations, to provide a framework to address and mitigate the public health and safety concerns that arise when alcohol service is combined with axe throwing.

Citation of Rules Affected by this Order: New WAC 314-03-060; and amending WAC 314-29-030.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 22-07-058 on March 16, 2022.

A final cost-benefit analysis is available by contacting Audrey Vasek, Policy and Rules Coordinator, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1758, fax 360-704-5027, email rules@lcb.wa.gov, website lcb.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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 8, 2022.

David Postman
Chair

OTS-3661.1

NEW SECTION

WAC 314-03-060 Axe throwing at liquor licensed premises. (1) Axe throwing combined with alcohol consumption is considered a high-risk activity. Licensees should follow industry best practices for safe axe throwing participation. A liquor licensee must receive approval from the board's licensing division prior to providing axe throwing activities at liquor licensed premises.

(2) The liquor licensee or liquor license applicant must submit a safety operating plan addressing how the licensee will mitigate safety concerns associated with axe throwing at the liquor licensed premises. The safety operating plan must include the following:

- (a) Protocols for monitoring alcohol consumption and ensuring patrons are not intoxicated prior to axe throwing, including:
 - (i) Designated MAST-certified staff in the axe throwing area at all times to monitor alcohol consumption;
 - (ii) Prohibiting patrons who appear intoxicated from axe throwing;
 - (iii) Deescalating patrons who appear intoxicated and are uncooperative or hostile; and
 - (iv) Training employees on the protocols included in the safety operating plan; and
- (b) A floor plan for the premises. The floor plan must include the following:
 - (i) The designated consumption areas where alcohol may be sold, served, or consumed on-premises; and
 - (ii) The axe throwing areas. The axe throwing areas must be separate from the designated consumption areas. Alcohol is not allowed in the axe throwing areas. The axe throwing areas must have barriers to separate the axe throwing activity from the designated consumption areas. Barriers must prevent axes from traveling out of the axe throwing areas, including behind the throwers. "Barriers" means walls, fences, cages, or similar physical obstructions.
- (3) Changes to a licensee's safety operating plan must be submitted to the board's licensing division for approval. The safety operating plan must remain in effect until the licensee's change request is approved by the board's licensing division or the board determines changes are necessary due to safety concerns.
- (4) Failure to adhere to the licensee's approved safety operating plan is subject to the penalty structure outlined in WAC 314-29-030, violations of a board approved operating plan.

[]

OTS-3662.1

AMENDATORY SECTION (Amending WSR 09-21-050, filed 10/14/09, effective 11/14/09)

WAC 314-29-030 Group 3 license violations. Group 3 violations are violations involving licensing requirements, license classification, and special restrictions.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
True party of interest violation. RCW 66.24.010(1) WAC 314-12-030	Cancellation of license			
Failure to furnish required documents. WAC 314-12-035	Cancellation of license			
Misrepresentation of fact. WAC 314-12-010	Cancellation of license			

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th Violation in a two-year window
Misuse or unauthorized use of liquor license (operating outside of license class, lending or contracting license to another person/entity). Chapter 66.24 RCW WAC 314-02-015 WAC 314-02-041 WAC 314-02-045 WAC 314-02-065 WAC 314-02-070 WAC 314-02-075 WAC 314-02-090 WAC 314-02-095 WAC 314-02-100 WAC 314-02-105 WAC 314-02-110 WAC 314-12-030	5 day suspension or \$1,500 monetary option	Cancellation of license		
Operating plan: Violations of a board-approved operating plan. <u>WAC 314-03-060</u> WAC 314-16-270 WAC 314-16-275	5 day suspension or \$500 monetary option	7 day suspension or \$1,500 monetary option	10 day suspension with no monetary option	Cancellation of license
Sale of alcohol in violation of a board-approved local authority restriction. Chapter 66.24 RCW	5 day suspension or \$500 monetary option	7 day suspension or \$1,500 monetary option	10 day suspension with no monetary option	Cancellation of license
Sale of alcohol in violation of a board-approved alcohol impact area restriction. WAC 314-12-215	5 day suspension or \$500 monetary option	7 day suspension or \$1,500 monetary option	10 day suspension with no monetary option	Cancellation of license
Catering endorsement violation. WAC 314-02-060 WAC 314-02-061	5 day suspension or \$250 monetary option	5 day suspension or \$1,500 monetary option	10 day suspension or \$3,000 monetary option	Cancellation of license

[Statutory Authority: RCW 66.08.030. WSR 09-21-050, § 314-29-030, filed 10/14/09, effective 11/14/09. Statutory Authority: RCW 66.08.030, 66.24.010, 66.24.120. WSR 03-09-015, § 314-29-030, filed 4/4/03, effective 5/5/03.]

WSR 22-13-055

PERMANENT RULES

GRAYS HARBOR COLLEGE

[Filed June 8, 2022, 11:59 a.m., effective July 9, 2022]

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

Purpose: Updating the student conduct code and complying with Title IX regulations.

Citation of Rules Affected by this Order: Repealing chapter 132B-310 WAC; and amending WAC 132B-125-430 and 132B-125-440.

Statutory Authority for Adoption: RCW 28B.50.130.

Adopted under notice filed as WSR 22-10-100 on May 4, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, Repealed 1; 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 8, 2022.

Darin Jones
Human Resources

OTS-3700.1

AMENDATORY SECTION (Amending WSR 21-12-008, filed 5/19/21, effective 6/19/21)

WAC 132B-125-430 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) **Relevance:** The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) (~~**Cross-examination required:** If a party or witness does not submit to cross-examination during the live hearing, the committee~~

~~must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(5-))~~ **No negative inference:** The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

~~((6-))~~ **(5) Privileged evidence:** The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

- (a) Spousal/domestic partner privilege;
- (b) Attorney-client and attorney work product privileges;
- (c) Privileges applicable to members of the clergy and priests;
- (d) Privileges applicable to medical providers, mental health therapists, and counselors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060 Who is disqualified—Privileged communications.

[Statutory Authority: RCW 28B.50.140(13). WSR 21-12-008, § 132B-125-430, filed 5/19/21, effective 6/19/21.]

AMENDATORY SECTION (Amending WSR 21-12-008, filed 5/19/21, effective 6/19/21)

WAC 132B-125-440 Title IX appeals. ~~((1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132B-125-320 Appeal from disciplinary action.~~

~~(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).~~

~~(3) The president's office shall serve the final decision on the parties simultaneously.)~~

(1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely

response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

(5) The president's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

[Statutory Authority: RCW 28B.50.140(13). WSR 21-12-008, § 132B-125-440, filed 5/19/21, effective 6/19/21.]

WSR 22-13-056
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 8, 2022, 12:57 p.m., effective August 1, 2022]

Effective Date of Rule: August 1, 2022.

Purpose: The office of superintendent of public instruction amended WAC 392-401-020 to include absences due to mental and behavioral health as excusable absences in compliance with HB 1834 (2022). Previously, WAC only included physical health illnesses, appointments, and treatments. Including language specifying mental health makes clear that mental health has as much significance as physical health and is similarly important to one's overall well-being. Including language concerning behavioral health further clarifies the intent.

Citation of Rules Affected by this Order: Amending WAC 392-401-020.

Statutory Authority for Adoption: RCW 28A.300.046.

Adopted under notice filed as WSR 22-09-084 on April 20, 2022.

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

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

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

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

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

Date Adopted: June 8, 2022.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-3701.2

AMENDATORY SECTION (Amending WSR 21-17-088, filed 8/13/21, effective 9/13/21)

WAC 392-401-020 Excused absences. (1) Absences due to the following reasons must be excused:

(a) Physical health or mental health symptoms, illness, health condition or medical appointment ((-including, but)) for the student or person for whom the student is legally responsible. Examples of symptoms, illness, health conditions, or medical appointments include, but are not limited to, medical, counseling, mental health wellness, dental, optometry, pregnancy, and behavioral health treatment (which can include in-patient or out-patient treatment for chemical dependency or mental health) ((for the student or person for whom the student is legally responsible));

- (b) Family emergency including, but not limited to, a death or illness in the family;
 - (c) Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction;
 - (d) Court, judicial proceeding, court-ordered activity, or jury service;
 - (e) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;
 - (f) State-recognized search and rescue activities consistent with RCW 28A.225.055;
 - (g) Absence directly related to the student's homeless or foster care/dependency status;
 - (h) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010;
 - (i) Absences due to suspensions, expulsions or emergency expulsions imposed pursuant to chapter 392-400 WAC if the student is not receiving educational services and is not enrolled in qualifying "course of study" activities as defined in WAC 392-121-107;
 - (j) Absences due to student safety concerns, including absences related to threats, assaults, or bullying;
 - (k) Absences due to a student's migrant status;
 - (l) Absences due to an approved activity that is consistent with district policy and is mutually agreed upon by the principal or designee and a parent, guardian, or emancipated youth; and
 - (m) Absences due to the student's lack of necessary instructional tools, including internet access or connectivity.
- (2) In the event of emergency school facility closure due to COVID-19, other communicable disease outbreak, natural disaster, or other event when districts are required to provide synchronous and asynchronous instruction, absences due to the following reasons must be excused:
- (a) Absences related to the student's illness, health condition, or medical appointments due to COVID-19 or other communicable disease;
 - (b) Absences related to caring for a family member who has an illness, health condition, or medical appointment due to COVID-19, other communicable disease, or other emergency health condition related to school facility closures;
 - (c) Absences related to the student's family obligations during regularly scheduled school hours that are temporarily necessary because of school facility closures, until other arrangements can be made; and
 - (d) Absences due to the student's parent's work schedule or other obligations during regularly scheduled school hours, until other arrangements can be made.
- (3) Districts may define additional categories or criteria for excused absences. A school principal or designee has the authority to determine if an absence meets the criteria in subsections (1) and (2) of this section and school district policy for an excused absence.

[Statutory Authority: RCW 28A.300.046 and 2021 c 119 § 3. WSR 21-17-088, § 392-401-020, filed 8/13/21, effective 9/13/21. Statutory Authority: RCW 28A.300.046. WSR 18-11-011, § 392-401-020, filed 5/3/18, effective 8/1/18.]

WSR 22-13-058

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed June 8, 2022, 2:36 p.m., effective July 9, 2022]

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

Purpose: The agency is increasing the excess equity amount allowed for homeowners who are eligible for apple health long-term services and supports benefits to the maximum amount allowed under federal law.

Citation of Rules Affected by this Order: Amending WAC 182-513-1350.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-10-089 on May 3, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 8, 2022.

Wendy Barcus
Rules Coordinator

OTS-3704.2

AMENDATORY SECTION (Amending WSR 17-18-023, filed 8/28/17, effective 9/28/17)

WAC 182-513-1350 Defining the resource standard and determining resource eligibility for SSI-related long-term care (LTC) services.

(1) General information.

(a) This section describes how the agency or ((its)) the agency's designee defines the resource standard and countable or excluded resources when determining a person's eligibility for SSI-related long-term care (LTC) services.

(b) "Resource standard" means the maximum amount of resources a person can have and still be resource eligible for program benefits.

(c) For a person not SSI-related, the agency applies program specific resource rules to determine eligibility.

(2) Resource standards.

(a) The resource standard for the following people is \$2000:

(i) A single person; or

(ii) An institutionalized spouse.

(b) The resource standard for a legally married couple is \$3000, unless subsection (3)(b)(ii) of this section applies.

(c) The resource standard for a person with a qualified long-term care partnership policy under WAC 182-513-1400 may be higher based on the dollar amount paid out by a partnership policy.

(d) Determining the amount of resources that can be allocated to the community spouse when determining resource eligibility is under WAC 182-513-1355.

(3) Availability of resources.

(a) General. The agency or ~~((its))~~ the agency's designee applies the following rules when determining available resources for LTC services:

(i) WAC 182-512-0300 SSI-related medical—Resources eligibility;

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources; and

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(b) Married couples.

(i) When both spouses apply for LTC services, the resources of both spouses are available to each other through the month in which the spouses stopped living together.

(ii) When both spouses are institutionalized, the agency or ~~((its))~~ the agency's designee determines the eligibility of each spouse as a single person the month following the month of separation.

(iii) If the agency or ~~((its))~~ the agency's designee has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, but after eligibility has been established and services authorized for the institutionalized spouse, then the agency applies the standard under subsection (2)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the agency applies subsection (2)(b) of this section for the couple.

(iv) The resources of the community spouse are unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless (v) or (vi) of this subsection applies.

(v) When a single institutionalized individual marries, the agency or ~~((its))~~ the agency's designee redetermines eligibility applying the resource and income rules for a legally married couple.

(vi) A redetermination of the couple's resources under this section is required if:

(A) The institutionalized spouse has a break of at least ~~((thirty))~~ 30 consecutive days in a period of institutional status;

(B) The institutionalized spouse's countable resources exceed the standard under subsection (2)(a) of this section, and WAC 182-513-1355 (2)(b) applies; or

(C) The institutionalized spouse does not transfer the amount, under WAC 182-513-1355 (3) or (5), to the community spouse by either:

(I) The end of the month of the first regularly scheduled eligibility review; or

(II) A reasonable amount of time necessary to obtain a court order for the support of the community spouse.

(4) Countable resources.

(a) The agency or ~~((its))~~ the agency's designee determines countable resources using the following sections:

(i) WAC 182-512-0200 SSI-related medical—Definition of resources.

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources.

- (iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.
- (iv) WAC 182-512-0300 SSI-related medical—Resources eligibility.
- (v) WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources;
- (vi) WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources;
- (vii) WAC 182-512-0450 SSI-related medical—Life insurance excluded as a resource; and
- (viii) WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources.
- (ix) Chapter 182-516 WAC, Trusts, annuities, life estates, and promissory notes—Effect on medical programs.
- (b) The agency or (~~its~~) the agency's designee determines excluded resources based on federal law and WAC 182-512-0550, except:
 - (i) For institutional and HCB waiver programs, pension funds owned by a nonapplying spouse are counted toward the resource standard.
 - (ii) For long-term services and supports (LTSS), based on the need for either nursing facility level of care or intermediate care facility for the intellectually disabled level of care, one home is excluded only if it meets the home equity limits of subsection (8) of this section. See WAC 182-512-0350 (1)(b).
 - (c) The agency or (~~its~~) the agency's designee adds together the countable resources of both spouses if subsections (3)(b)(i) and (iv) apply, but not if subsection (3)(b)(ii) or (iii) apply. For a person with a community spouse, see WAC 182-513-1355.
- (5) Excess resources.
 - (a) For LTC programs, a person may reduce excess resources by deducting incurred medical expenses under subsection (6) of this section;
 - (b) The amount of excess resources is limited to the following amounts:
 - (i) For LTC services provided under the categorically needy (CN) program:
 - (A) In a medical institution, excess resources and available income must be under the state medicaid rate based on the number of days the person spent in the medical institution in the month.
 - (B) For HCB waiver eligibility, incurred medical expenses must reduce resources within allowable resource standards. The cost of care for the HCB waiver services cannot be allowed as a projected expense.
 - (ii) For LTC services provided under the medically needy (MN) program, see:
 - (A) WAC 182-513-1395 for LTC programs; and
 - (B) WAC 182-513-1245 for hospice.
 - (c) Excess resources not otherwise applied to medical expenses will be applied to the projected cost of care for services in a medical institution under WAC 182-513-1380.
 - (6) Allowable medical expenses.
 - (a) The following incurred medical expenses may be used to reduce excess resources:
 - (i) Premiums, deductibles, coinsurance, or copayment charges for health insurance and medicare;
 - (ii) Medically necessary care defined under WAC 182-500-0070, but not covered under the state's medicaid plan. Information regarding covered services is under chapter 182-501 WAC;

(iii) Medically necessary care defined under WAC 182-500-0070 incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the specific facility that provided the services.

(b) To be allowed, the medical expense must:

(i) Have been incurred no more than three months before the month of the medicaid application;

(ii) Not be subject to third-party payment or reimbursement;

(iii) Not have been used to satisfy a previous spenddown liability;

(iv) Not have been previously used to reduce excess resources;

(v) Not have been used to reduce participation;

(vi) Not have been incurred during a transfer of asset penalty under WAC 182-513-1363; and

(vii) Be an amount for which the person remains liable.

(7) Nonallowable expenses. The following expenses are not allowed to reduce excess resources:

(a) Unpaid adult family home (AFH) or assisted living facility expenses incurred prior to medicaid eligibility;

(b) Personal care cost in excess of approved hours determined by the CARE assessment under chapter 388-106 WAC; and

(c) Expenses excluded by federal law.

(8) Excess home equity.

(a) A person with an equity interest in a primary residence in excess of the home equity limit is ineligible for long-term services and supports (LTSS) that are based on the need for either nursing facility level of care or intermediate care facility for the intellectually disabled level of care, unless one of the following persons lawfully resides in the home:

(i) That person's spouse; or

(ii) That person's dependent child under age (~~twenty-one~~) 21, blind child, or disabled child.

(b) The home equity provision applies to all applications for LTSS received on or after May 1, 2006.

(c) (~~Effective January 1, 2016,~~) The excess home equity limit is (~~\$552,000~~) the federal maximum allowed. On (~~January 1, 2017, and on~~) January 1st of each year (~~thereafter~~), this standard may change by the percentage in the consumer price (~~index-urban-~~) index for all consumers (CPI-U). The current maximum home equity limit is posted by the Centers for Medicare and Medicaid Services. (See subsection (9) of this section for institutional resource standards.)

(d) A person who is denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver under WAC 182-513-1367.

(9) Institutional resource standards are found at (~~http://www.hca.wa.gov/free-or-low-cost-health-care/program-administration/program-standard-income-and-resources~~) <https://www.hca.wa.gov/health-care-services-supports/program-standard-income-and-resources>.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-18-023, § 182-513-1350, filed 8/28/17, effective 9/28/17. Statutory Authority: RCW 41.05.021, 41.05.160, P.L. 111-148, 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 17-03-116, § 182-513-1350, filed 1/17/17, effective 2/17/17. WSR 13-01-017, recodified as § 182-513-1350, filed 12/7/12, effective 1/1/13. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, section 6014 of the Deficit Reduction Act of 2005 (DRA), and 2010 1st sp.s. c 37 § 209(1).

WSR 12-21-091, § 388-513-1350, filed 10/22/12, effective 11/22/12. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, and 74.09.575. WSR 09-12-058, § 388-513-1350, filed 5/28/09, effective 7/1/09. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530. WSR 08-13-072, § 388-513-1350, filed 6/16/08, effective 7/17/08. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.575, 74.09.500, and 74.09.530. WSR 07-19-128, § 388-513-1350, filed 9/19/07, effective 10/20/07. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.09.575, 2005 Federal Deficit Reduction Act (DRA) P.L. 109-171, and Section 1924 of the Social Security Act (42 U.S.C. 1396r-5). WSR 07-01-073, § 388-513-1350, filed 12/18/06, effective 1/18/07. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 42 U.S.C. 9902(2). WSR 05-07-033, § 388-513-1350, filed 3/9/05, effective 4/9/05. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.575; 2003 1st sp.s. c 28, and section 1924 of the Social Security Act (42 U.S.C. 1396R-5). WSR 04-04-072, § 388-513-1350, filed 2/2/04, effective 3/4/04. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500 and Section 1924 (42 U.S.C. 1396R-5). WSR 01-18-055, § 388-513-1350, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 11.92.180, 43.20B.460, 48.85.020, 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530, 74.[09.]575, 74.09.585; 20 C.F.R. 416.1110-1112, 1123 and 1160; 42 C.F.R. 435.403 (j) (2) and 1005; and Sections 17, 1915(c), and 1924 (42 U.S.C. 1396) of the Social Security Act. WSR 00-01-051, § 388-513-1350, filed 12/8/99, effective 1/8/00. Statutory Authority: RCW 74.08.090 and 74.09.500. WSR 99-06-045, § 388-513-1350, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, 74.09.575 and Section 1924 (42 U.S.C. 1396r-5). WSR 98-11-033, § 388-513-1350, filed 5/14/98, effective 6/14/98. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090 and 74.09.575. WSR 97-09-112, § 388-513-1350, filed 4/23/97, effective 5/24/97. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 95-44. WSR 96-09-033 (Order 3963), § 388-513-1350, filed 4/10/96, effective 5/11/96. Statutory Authority: RCW 74.08.090 and Title XIX State Agency Letter 94-49, notice of increase in SSI level. WSR 95-05-022 (Order 3832), § 388-513-1350, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 74.08.090. WSR 94-23-129 (Order 3808), § 388-513-1350, filed 11/23/94, effective 12/24/94; WSR 94-10-065 (Order 3732), § 388-513-1350, filed 5/3/94, effective 6/3/94. Formerly parts of WAC 388-95-337 and 388-95-340.]

WSR 22-13-075
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed June 9, 2022, 4:51 p.m., effective July 10, 2022]

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

Purpose: To enact the language required by RCW 43.101.801 to provide agency rules and interpretations due to the changes contained in chapter 323, Laws of 2021, which provided substantial changes to peace, tribal police, and correction officer certification, decertification, written complaints, and other impacted WAC.

Citation of Rules Affected by this Order: New chapter 139-17 WAC and WAC 139-05-911; repealing WAC 139-05-912, 139-06-090 and 139-06-120; and amending WAC 139-01-010, 139-01-310, 139-03-010, 139-05-200, 139-05-210, 139-05-241, 139-05-300, 139-05-915, 139-06-010, 139-06-020, 139-06-030, 139-06-040, 139-06-050, 139-06-060, 139-06-070, 139-06-080, 139-06-100, 139-06-110, 139-06-130, 139-06-140, 139-06-150, 139-06-160, 139-07-010, 139-07-020, 139-07-030, and 139-07-040.

Statutory Authority for Adoption: RCW 43.101.080.

Other Authority: RCW 43.101.801.

Adopted under notice filed as WSR 22-10-092 on May 3, 2022.

Changes Other than Editing from Proposed to Adopted Version: Included specific language regarding the agency's ability to audit background checks, clarified specific processes related to eligibility of reinstatement, and modified written complaint WAC to require more process on the referral of criminal charges.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 26, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 27, Repealed 3.

Number of Sections Adopted using Negotiated Rule Making: New 1, Amended 27, 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 8, 2022.

Derek Zable
Records Manager

OTS-3681.6

Chapter 139-01 WAC
GENERAL ADMINISTRATION AND DEFINITIONS

AMENDATORY SECTION (Amending WSR 04-07-146, filed 3/23/04, effective 4/23/04)

WAC 139-01-100 Description of central and field organization.

The ~~((Washington state criminal justice training))~~ commission consists of the executive director, staff, and ~~((fourteen))~~ 21 commissioners. The executive director will approve recommendations for training ((pursuant to commission)) consistent with adopted goals and standards ((may be approved by the executive director of the commission. Other recommendations will be reviewed by the commissioners for approval or rejection. Approved)). The executive director will approve recommendations and other matters of the commission ((necessitating implementation or)) that require staff involvement ((will be assigned by the executive director)) to implement and will direct such assignments to appropriate personnel. The commissioners will review other recommendations for approval or rejection. The commissioners determine agency policy and the director and staff implement the policy established by the commissioners. The commissioners approve agency policies that establish or change the direction of the commission. The commissioners empower the executive director to make decisions regarding all internal functions related to the operation of the commission. This includes, but is not limited to, management of personnel decisions, budget and finance, development and implementation of internal operational and organizational policies and procedures. The executive director will develop a strategic plan for the future of the agency with input and final approval from the commissioners.

The business office of the commission is located at 3060 Willamette Drive N.E., Lacey, Washington 98516. The mailing address is Post Office Box 40905, Olympia, Washington 98504. It is maintained by the commission's executive director and staff from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and the days the commission is closed, and serves as a central repository for the commission's records of administration and operation.

The Criminal Justice Training Center, 19010 1st Avenue, Burien, Washington 98148, serves as the commission's primary training site. Other training is conducted locally, regionally, or at centralized locations statewide, as determined by staff.

[Statutory Authority: RCW 43.101.080. WSR 04-07-146, § 139-01-100, filed 3/23/04, effective 4/23/04; WSR 00-17-017, § 139-01-100, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-01-100, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 86-19-021, filed 9/10/86)

WAC 139-01-310 (~~"Commission" defined.~~) Definitions for Title 139 WAC. ~~((As used in this chapter "commission" means the Washington state criminal justice training commission.))~~ The following definitions apply to Title 139 WAC, unless otherwise defined in a specific chapter or subchapter of this title.

(1) **Affiliation** means advocating for or providing material support or resources to extremist organizations by:

(a) Knowingly or publicly displaying, posting, or wearing associated items, symbols, costumes, insignias, slogans, tattoos, or body

modifications on public property, private property, online, or digitally;

(b) Making public statements in support of an extremist group's activities including, but not limited to, online statements;

(c) Fund-raising for, or making personal contributions through donations, services, or payments of any kind to a group or organization that engages in extremist activities;

(d) Organizing or participating in the activities of an extremist organization;

(e) Recruiting or training others to engage in extremist activities;

(f) Recruiting or training others on behalf of an extremist organization;

(g) Creating, organizing, or taking a leadership role in a group or organization that engages in or advocates for extremist activities; or

(h) Actively demonstrating or rallying in support of extremist activities.

(2) **Applicant** means an individual who must satisfy the requirements of RCW 43.101.095 as a condition of employment.

(3) **Certified officer**, unless otherwise specified, means any full-time, general authority peace officer, tribal police officer with a recognized certified tribe, and corrections officer as defined in RCW 43.101.010 (6), (10), and (12).

(4) **Commission** means the Washington state criminal justice training commission.

(5) **Conclusion** means the final disposition issued by an employing agency after it has conducted an investigation into alleged misconduct or policy violation.

(6) **Day** means one calendar day. Computation of time does not include the day of the act or event from which the designated period of time begins to run. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next weekday that is not a legal holiday.

(7) **Denial** means a commission decision to refuse to grant certification to a prospective certified officer.

(8) **Discipline** means an oral reprimand (where a written record of the reprimand has been placed in an employee's file), written reprimand, suspension, demotion, or termination. Discipline does not include performance reviews, work plans, or corrective actions that do not include a reprimand or other adverse employment action.

(9) **Executive** means the head of a law enforcement agency, such as chiefs, sheriffs, directors, or other equivalent positions.

(10) **Expired certification** means that a certified officer has had a break in service of over 60 months and their certification is no longer valid.

(11) **Extremist organization** means an organization or persons that:

(a) Seeks to undermine the democratic process through intimidation, violence, unlawful threat, or by depriving individuals of their rights under the United States Constitution or Washington state Constitution;

(b) Promotes the changing of American government structures through undemocratic means involving violence, unlawful threat, or intimidation;

(c) Promotes hatred, intolerance, unlawful discrimination, intimidation or violence against, public marginalization, or disenfranchisement of protected classes, including on the basis of sex, sexual orientation, gender, perceived gender, or gender expression, race, color, religion, ability, or national origin and other protected classes under RCW 49.60.030 and 43.101.105 (3) (h);

(d) Espouses, advocates, or engages in using force, violence, or unlawful threat to further explicit racism, antisemitism, anti-Muslim, white supremacy or any white nationalist ideology, or any ideology that discriminates based on religion or belief; or

(e) Espouses or advocates that the powers held by local law enforcement executives, and their interpretation of the law, supersedes those of any other federal, state, or local authority.

(12) **Final disposition** means an employing agency's final decision on a misconduct investigation. The final disposition is not dependent upon any appeals brought by an officer.

(13) **Findings or findings of fact and conclusion of law** means a determination based on a preponderance of the evidence whether alleged misconduct occurred; did not occur; occurred but was consistent with law and policy; or can neither be proven or disproven.

(14) **General authority Washington law enforcement agency** means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, as distinguished from a limited authority Washington law enforcement agency, and any other unit of government expressly designated by statute as a general authority Washington law enforcement agency. The Washington state patrol and the department of fish and wildlife are general authority Washington law enforcement agencies.

(15) **General authority Washington peace officer** means any full-time, fully compensated and elected, appointed, or employed officer of a general authority Washington law enforcement agency who is commissioned to enforce the criminal laws of the state of Washington generally.

(16) **Lapsed certification** means that a certified officer has had a break in service of at least 24 months, but no more than 60 months, and that as a condition of continuing employment the officer must complete the commission's equivalency process.

(17) **Limited authority Washington law enforcement agency** means any agency, political subdivision, or unit of local government of this state, and any agency, department, or division of state government, having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas including, but not limited to, the state department of natural resources and social and health services, the state gambling commission, the state department of corrections, and the office of independent investigations.

(18) **Limited authority Washington peace officer** means any full-time fully compensated officer of a limited authority Washington law enforcement agency empowered by that agency to detect or apprehend violators of the laws in some or all of the limited subject areas for which that agency is responsible.

(19) **Petitioner** means the commission's certification division.

(20) **Probationary periods or probationary terms** means a determination by a hearing panel that a certified officer may work under supervision based on agreed-upon terms.

(21) **Reserve officer** means any person who does not serve as a peace officer of this state on a full-time basis, but who, when called by an agency into active service, is fully commissioned on the same basis as full-time officers to enforce criminal laws of this state.

(22) **Respondent** means the certified officer against whom the petitioner has filed a statement of charges.

(23) **Retraining** means the teaching or reteaching of skills and conduct required to succeed as a certified officer and imposed by the commission's hearings panel in a final order pursuant to RCW 43.101.105.

(24) **Revocation** means to cancel a certified officer's certification.

(25) **Serious injury** means **substantial bodily harm** and **great bodily harm** as defined in RCW 9A.04.110 (4) (b) and (c).

(26) **Specially commissioned Washington peace officer** means any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under as a general authority Washington peace officer for that commissioning agency, specifically including reserve peace officers, and specifically commissioned full-time, fully compensated peace officers duly commissioned by the states of Oregon and Idaho or any such peace officer commissioned by a unit of local government of Oregon or Idaho.

(27) **Surrender** means that a holder of a certificate voluntarily relinquishes their certificate. This may happen while pending potential discipline or for any other reason.

(28) **Suspension** means a determination by a hearing panel on agreed-upon terms that a certified officer's certification will be withheld and the officer will be temporarily prevented from performing the duties of a certified officer during the determined period.

[Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-01-310, filed 9/10/86.]

OTS-2600.4

AMENDATORY SECTION (Amending WSR 05-07-049, filed 3/11/05, effective 4/11/05)

WAC 139-03-010 Adoption of model rules of procedure. Practice and procedure before the commission shall (~~be in accordance~~) comport with the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended. The model rules hereby adopted are found in chapter 10-08 WAC. Other procedural rules adopted in this title are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and the procedural rules adopted in this title, the procedural rules adopted in this title shall govern.

((Peace)) Certified officer ((certification)) proceedings before the commission are governed by chapter 139-06 WAC.

[Statutory Authority: RCW 43.101.080. WSR 05-07-049, § 139-03-010, filed 3/11/05, effective 4/11/05; WSR 00-17-017, § 139-03-010, filed 8/4/00, effective 9/4/00.]

OTS-2597.9

AMENDATORY SECTION (Amending WSR 19-07-036, filed 3/13/19, effective 4/13/19)

WAC 139-05-200 Requirement of basic law enforcement training for ((general authority peace)) officers. (1) ((Unless certification eligibility has been reinstated,)) A peace officer or tribal police officer whose certification ((, commission and/or licensing)) has been revoked ((, sanctioned,)) or suspended, or is under review by this state or any other state or territory, is not eligible for a basic law enforcement academy ((certificate, regardless of the officer's prior years of law enforcement service)) diploma.

(2) ((All fully commissioned law enforcement officers of a city, county, or political subdivision of the state of Washington, and officers of the Washington state patrol, unless otherwise exempted by the commission must, as a condition of continued employment, successfully complete a basic law enforcement academy or an equivalent basic academy sponsored or conducted by the commission. Basic law enforcement training must be commenced within the initial six-month period of law enforcement employment, unless otherwise extended by the commission.)) As a condition of continued employment, unless exempted by the commission, all peace officers must commence training in the basic law enforcement academy or the basic law enforcement equivalency academy within the initial six-month period of employment and then successfully complete the training.

(3) Law enforcement personnel exempted from the requirement of subsection (2) of this section include commissioned personnel:

(a) ((Individuals holding the office of sheriff of any county on September 1, 1979; and

(b) ~~Commissioned personnel:~~

(i) ~~Whose initial date of full-time, regular and commissioned law enforcement employment within the state of Washington precedes January 1, 1978;~~

(ii) ~~Who have received a certificate of completion in accordance with the requirement of subsection (2) of this section, and thereafter have engaged in regular and commissioned law enforcement employment without break or interruption in excess of twenty-four months duration; or~~

(iii) ~~Who are employed as tribal police officers in Washington state, natural resource investigators employed by the Washington department of natural resources, special agents employed by the Washington state gambling commission, and liquor enforcement officers employed by the Washington state liquor control board who have received a certificate of successful completion from the basic law enforcement academy or the basic law enforcement equivalency and thereafter engage~~

~~in regular and commissioned law enforcement employment with that agency without break or interruption in excess of twenty-four months duration.~~

~~(4) Each law enforcement agency of the state of Washington, or any political subdivision thereof, must immediately notify the commission by approved form of each instance where a commissioned officer begins continuing and regular employment with that agency.~~

~~(5) Failure to comply with any of the above requirements of basic law enforcement training will result in notification of noncompliance by the commission to:~~

~~(a) The individual in noncompliance;~~

~~(b) The head of his/her agency; and~~

~~(c) Any other agency or individual, as determined by the commission.) Who have met the training requirements in subsection (2) of this section and who have been employed with no break in service in this state for more than 24 months.~~

(b) Who have met the training requirements of subsection (2) of this section and within 24 months of completion are employed as a peace or tribal officer with a general authority law enforcement agency. This includes any limited authority personnel as defined in RCW 10.93.020 and in the definitions of this chapter.

(4) Law enforcement agencies must use an approved form to immediately notify the commission when an officer begins ongoing regular employment with the agency.

[Statutory Authority: RCW 43.101.080 and 43.101.200. WSR 19-07-036, § 139-05-200, filed 3/13/19, effective 4/13/19. Statutory Authority: RCW 43.101.080. WSR 06-17-021, § 139-05-200, filed 8/7/06, effective 9/7/06; WSR 05-20-029, § 139-05-200, filed 9/28/05, effective 10/29/05; WSR 03-19-123, § 139-05-200, filed 9/17/03, effective 10/18/03; WSR 00-17-017, § 139-05-200, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 89-13-024 (Order 14D), § 139-05-200, filed 6/13/89; WSR 87-19-104 (Order 14-D), § 139-05-200, filed 9/18/87; WSR 86-19-021 (Order 1-B), § 139-05-200, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 14-01-044, filed 12/11/13, effective 1/11/14)

WAC 139-05-210 ((Basic law enforcement certificate of) Process for equivalency. (1) ((A peace)) An officer whose certification, commission, ((and/or)) or licensing has been revoked((, sanctioned,)) or suspended, or is under review by this state or any other state or territory is not eligible ((for a certificate of equivalency)) to receive certification through an equivalency academy, regardless of the officer's prior years of ((law enforcement)) service.

(2) A ((certificate of completion)) diploma of equivalent basic law enforcement ((training)) academy or corrections officers academy is issued to applicants who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" includes all documentation and prerequisites set forth in subsection ((+6)) (9) of this section and successful completion of all knowledge and skills requirements within the equivalency academy.

(3) Participation in the equivalency process is limited to:

(a) Certified officers whose certification, commission, or licensing has lapsed because of a break in service in Washington or any other state or territory for more than 24 months but less than 60 months;

~~(b) Fully commissioned ((peace officers of a city, county, or political subdivision of the state of Washington,))~~ officers of a general authority or certified tribal law enforcement agency in Washington state who otherwise are eligible to attend the basic law enforcement academy; ((or

~~(b-)) (c) Fully commissioned ((peace officers who have attained commissioned law enforcement status by completing a basic training program in this or another state. For this purpose, the term "basic training program" does not include any military or reserve training program or any federal training program not otherwise approved by the commission; or~~

~~(e-))~~ officers who have been certified by completing a basic training program in Washington or another state;

(d) Corrections officers as defined in RCW 43.101.010(6) who otherwise are eligible to attend the corrections officers academy;

(e) Corrections officers who have successfully completed an approved corrections officers academy in Washington or another state; or

(f) Persons who have not attained commissioned ((peace)) officer status but have successfully completed a basic law enforcement academy recognized as ((a full)) fully equivalent to ((the)) Washington's ((state)) basic law enforcement academy by the commission and within ((twelve)) 12 months of the date of completion ((been made)) has received a conditional offer of employment as a fully commissioned ((peace)) officer in Washington state((; or

~~(d) Persons whose peace officer certification, commission, and/or licensing has lapsed because of a break in service as a full-time, fully commissioned peace officer in this or any other state or territory for more than twenty-four months but less than sixty months and who are required to attend the equivalency academy).~~

(4) For the purposes of this section, the term "basic training program" does not include any military or reserve training or any federal training program not otherwise approved by the commission.

(5) Applicants who ((are required to)) must participate in the equivalency academy ((for the purpose of becoming)) to become a certified ((peace)) officer must attend ((the first available session of the equivalency academy)) an academy within six months of hire as a condition of ((certification as a peace officer. Applicants approved to participate in the equivalency academy for training purposes only, will be admitted on a space available basis)) employment.

(6) It is the responsibility of ((the)) an applicant's agency to ensure that all necessary backgrounding forms and documentation are completed and submitted to the commission in a timely manner((, and as necessary, to ensure that the participation provided by this section is affected)) and all requirements within this section are met.

~~((5))~~ (7) The decision to request an officer's participation in the equivalency process is ((discretionary with)) at the discretion of the ((head)) sheriff or chief of the officer's employing agency((;)) who must advise the commission of that decision ((by appropriate notation upon the hiring notification form. Upon receipt of such notification, the commission will provide all necessary forms and information)). The commission has final approval of the officer's acceptance into the equivalency academy.

~~((6) Upon approval of an applicant's eligibility to participate in the equivalency process,))~~ (8) The commission shall have authority to approve an applicant for participation in the equivalency process.

(9) The applicant's employing agency must submit to the commission the following documentation as a ~~((precondition of participation within such))~~ condition of participating in the equivalency process:

~~(a) A statement of the applicant's health and physical condition ((by an examining physician))~~ including a physician signature;

~~(b) ((A record of the applicant's firearms qualification;~~

~~(e)) A liability release agreement by the applicant; ((and~~

~~(d) A criminal records check regarding such applicant.~~

~~(7) If comparable emergency vehicle operations training))~~ (c) Previous employment agencies with dates of employment;

(d) Documentation of completion of the previous training program;

(e) Written syllabus detailing specific areas of training and hours of training;

(f) Documentation of current certification status; and

(g) For peace and tribal officers:

(i) A record of the applicant's firearms qualification;

(ii) Verification of comparable emergency vehicle operations training (EVOC).

If this has not been completed previously, the applicant ~~((will be required to))~~ must complete the commission's current basic law enforcement ~~((academy emergency vehicle operation course, as scheduled by the commission))~~ EVOC, either by an instructor certified by the commission or through the Washington state patrol; all costs associated with this training will be the responsibility of the law enforcement agency.

~~((8))~~ (10) Upon completion of the equivalency process and review and evaluation of the applicant's performance, the commission ~~((will:~~

~~(a)) shall issue a ((certificate of completion of equivalent basic law enforcement training; or~~

~~(b)) diploma and a certificate of certification.~~

(11) If the officer has not met the qualifications to satisfactorily complete the equivalency academy, the commission shall:

(a) Issue a ~~((certificate of completion of equivalent basic law enforcement training upon the applicant's successful completion of additional training as the commission may require; or~~

(c) Require completion of the commission's)) diploma and certificate of certification upon satisfactory completion of any required additional training; or

(b) Require the officer to attend the basic law enforcement academy or the corrections officers academy.

[Statutory Authority: RCW 43.101.080. WSR 14-01-044, § 139-05-210, filed 12/11/13, effective 1/11/14. Statutory Authority: RCW 43.101.080 and [43.101].085. WSR 08-20-010, § 139-05-210, filed 9/18/08, effective 10/19/08. Statutory Authority: RCW 43.101.080. WSR 05-20-029, § 139-05-210, filed 9/28/05, effective 10/29/05; WSR 04-13-070, § 139-05-210, filed 6/15/04, effective 7/16/04; WSR 03-07-099, § 139-05-210, filed 3/19/03, effective 4/19/03; WSR 00-17-017, § 139-05-210, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-210, filed 9/10/86.]

AMENDATORY SECTION (Amending WSR 14-01-045, filed 12/11/13, effective 1/11/14)

WAC 139-05-241 Sponsored reserve officer requirements for basic law enforcement academy training. (1) A law enforcement agency may sponsor a reserve officer, as defined by WAC 139-05-810, as an applicant for the basic law enforcement (~~(training)~~) academy.

(2) The commission has sole discretion to admit or deny admittance to the basic law enforcement academy. Priority for admittance to the basic law enforcement academy shall be given to applicants currently employed as fully commissioned (~~(law enforcement)~~) officers.

(3) Reserve officer applicants who are admitted to the basic law enforcement academy are responsible for the full cost of attendance (~~(at the basic law enforcement academy,)~~) including payment for room and board if (~~(room and board are requested by the applicant)~~) needed. Full payment for attendance at the basic law enforcement academy must be paid in advance (~~(as a condition of attendance)~~) and is nonrefundable.

(4) Reserve officer applicants must provide proof of agency labor and industries coverage or adequate medical insurance coverage as a condition of admission to the basic law enforcement academy. Such applicants must maintain said medical insurance throughout the duration of the academy(~~(r)~~) and must immediately notify the commission in the event that medical insurance terminates, changes, or coverage and liability under the policy is substantially changed. The commission has sole discretion to determine what constitutes adequate medical insurance coverage for attendance at the basic law enforcement academy.

(5) Reserve officer applicants must satisfy all other requirements for admittance to and continued participation in the basic law enforcement academy(~~(r)~~) to include those requirements set forth in WAC 139-05-220, 139-05-230, and 139-05-240.

(6) Reserve officers are not eligible for peace officer or tribal police officer certification.

[Statutory Authority: RCW 43.101.080. WSR 14-01-045, § 139-05-241, filed 12/11/13, effective 1/11/14.]

AMENDATORY SECTION (Amending WSR 18-13-057, filed 6/14/18, effective 7/15/18)

WAC 139-05-300 Requirement for in-service training. The commission recognizes that continuing education and training is the cornerstone for a successful career as a peace officer in providing competent public safety services to the communities of Washington state.

(1) (~~(Effective January 1, 2006,)~~) Every peace or tribal officer certified under RCW 43.101.095 or 43.101.157 will complete a minimum of (~~(twenty-four)~~) 24 hours of in-service training annually.

(a) (~~(This requirement is effective January 1, 2006, for incumbent officers.~~

~~(b))~~) The in-service training requirement for each newly hired officer must begin on January 1st of the calendar year following their certification as a result of successful completion of the basic law enforcement academy, equivalency academy, or approved waiver as provided by WAC 139-03-030.

~~((e))~~ (b) Training may be developed and provided by the employer or other training resources.

~~((d))~~ (c) The commission will publish guidelines for approved in-service training.

~~((e) As of July 1, 2018, the twenty-four))~~ (d) The 24 hours must include the successful completion of the ~~((training))~~ commission's ~~((two-hour))~~ annual online crisis intervention course prescribed under RCW 43.101.427.

(2) ~~((Effective January 1, 2016,))~~ Every reserve peace officer as defined by WAC 139-05-810 will complete a minimum of ~~((twenty-four))~~ 24 hours of in-service training annually.

(a) The in-service training requirement for each newly appointed reserve ~~((peace officer/tribal))~~ peace officer must begin on January 1st of the calendar year following their appointment as a result of successful completion of the basic ~~((reserve))~~ law enforcement academy, basic reserve academy equivalency process, or approved waiver as provided by WAC 139-03-030.

(b) Training may be developed and provided by the employer or other training resources.

(c) The commission will publish guidelines for approved in-service training.

(d) As of July 1, 2018, the ~~((twenty-four))~~ 24 hours must include the successful completion of the ~~((training))~~ commission's ~~((two-hour))~~ annual online crisis intervention course prescribed under RCW 43.101.427.

(3) All records for training required for this rule must be maintained by the employing agency and be available for review upon request by an authorized commission representative.

(a) The commission will maintain records of successfully completed commission-registered courses.

(b) Upon request, the commission will furnish a recordkeeping template for use by agencies to track training.

(4) The sheriff or chief of an agency may request an extension of three months for ~~((peace))~~ officers in their employ by notification in writing to the commission, identifying those specific officers.

(a) A sheriff or chief may request a three-month personal extension of the requirement by doing so in writing to the commission.

(b) Written requests submitted under the provision of this subsection must be received by December 1st of the calendar year in question.

(c) The three-month extension under this provision provides the individuals named until March 31st to complete the mandated ~~((twenty-four))~~ 24 hours.

(d) Any training obtained during this three-month extension only counts towards the previous year being audited.

(5) The commission ~~((auditor))~~ executive director or designee may, on a case-by-case basis, grant exceptions for individuals with extenuating circumstances where the employing agency has made every reasonable effort to obtain training for the officer.

[Statutory Authority: RCW 43.101.080 and 2018 c 32. WSR 18-13-057, § 139-05-300, filed 6/14/18, effective 7/15/18. Statutory Authority: RCW 43.101.080. WSR 16-19-040, § 139-05-300, filed 9/14/16, effective 10/15/16; WSR 15-19-042, § 139-05-300, filed 9/10/15, effective 10/11/15; WSR 09-16-098, § 139-05-300, filed 8/4/09, effective 9/4/09; WSR 05-20-029, § 139-05-300, filed 9/28/05, effective 10/29/05; WSR 05-01-112, § 139-05-300, filed 12/15/04, effective 1/15/05.]

NEW SECTION

WAC 139-05-911 Tribal certification. Tribal governments may voluntarily request certification for their police officers.

(1) Tribal governments requesting certification for their police officers must enter into a written agreement with the commission.

(2) The agreement must require the tribal law enforcement agency and its officers to comply with all certification requirements as those requirements are applied to all other officers certified under this chapter and the policy of the commission.

(3) To ensure clarity regarding the requirements with which the tribal government and its police officers must comply should the tribal government request certification, a tribal government may first request consultation with the commission.

(4) Applicants for certification as tribal police officers shall meet the requirements of this chapter and the policy of the commission as those requirements are applied to certification of all officers. Application for certification as a tribal police officer shall be accepted and processed in the same manner as those for certification of all officers.

[]

AMENDATORY SECTION (Amending WSR 17-10-055, filed 5/2/17, effective 6/2/17)

WAC 139-05-915 (~~Requirements of training for law enforcement and corrections dog handlers and certification of canine teams.~~) Canines—Training and certification. (1) Canine teams working in the state of Washington shall be certified to the adopted standards as set by (~~criminal justice training commission (CJTC)~~) commission policy.

(a) The standards shall be maintained by the commission (~~staff~~) and readily available to (~~stakeholders~~) the public.

(b) These standards include the minimum performance standards for canine teams performing specific law enforcement or corrections functions.

(c) As a condition of certification, each handler must ensure that the canine performs to a level that is deemed acceptable by the commission in the category for (~~the~~) a team's intended use.

(2) An evaluator shall be (~~a person who is recognized and~~) appointed by the (~~CJTC~~) commission to perform the testing of the canine teams.

(a) The qualifications to become an evaluator (~~relating to~~) for canine certification shall be outlined in the evaluation policy adopted by the (~~CJTC~~) commission.

(b) In evaluating the proficiency of (~~the~~) a canine team, evaluators shall use the standards approved by the commission for that particular discipline.

(c) Each certification issued pursuant to these rules will remain valid as set forth in (~~CJTC~~) commission policy, as long as the composition and responsibility of the canine team does not change.

(d) A canine team's certification shall automatically expire if the specific handler and canine, originally paired at the time of cer-

tification(~~(r)~~) cease to perform canine team functions together or if the function for which the team was certified changes.

(3) This process is not related to(~~(r, nor does it have any effect upon r)~~) and does not change the requirements for (~~(peace)~~) officer certification.

(4) Nothing in these rules is intended to limit the use of canine teams employed by other state or federal agencies for law enforcement purposes, or the use of volunteer canine teams where the handler is not a Washington (~~(peace officer or corrections)~~) officer.

(5) Certified canine teams shall have the knowledge and ability to comply with the canine model policy established on December 28, 2021, pursuant to section 3, chapter 320, Laws of 2021. This model policy provides the following:

(a) Canine certification training requirements - Set forth in the commission canine training policy;

(b) Considerations of canine deployment;

(c) Appropriate canine deployment;

(d) Strategies for minimizing law enforcement canine bites;

(e) Circumstances where a canine handler should consider the use of tactics other than deploying a canine;

(f) Prohibited use of a police canine;

(g) Use of canines to apprehend suspects;

(h) Agency canine team reporting protocols;

(i) Circumstances that would warrant the decertification of canine teams; and

(j) Circumstances where the use of voluntary canines and canine handlers may be appropriate.

(6) To report a use of force as outlined in the canine model policy, canine teams should follow the guidelines set forth in WAC 139-06-020.

[Statutory Authority: RCW 43.101.080. WSR 17-10-055, § 139-05-915, filed 5/2/17, effective 6/2/17; WSR 17-01-059, § 139-05-915, filed 12/14/16, effective 1/14/17; WSR 05-20-029, § 139-05-915, filed 9/28/05, effective 10/29/05; WSR 05-01-114, § 139-05-915, filed 12/15/04, effective 1/15/05; WSR 03-07-100, § 139-05-915, filed 3/19/03, effective 4/19/03; WSR 00-17-017, § 139-05-915, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). WSR 86-19-021 (Order 1-B), § 139-05-915, filed 9/10/86.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 139-05-912	Requirement of training for state fire marshals.
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OTS-3682.9

Chapter 139-06 WAC

~~((CERTIFICATION, DENIAL, REVOCATION, INVESTIGATION, COMMENCEMENT OF ACTION))~~ CERTIFICATION—NOTICES, INVESTIGATIONS, HEARINGS, AND ACTIONS

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-010 Certification. (1) ~~((Effective January 1, 2002, all Washington peace))~~ All peace officers, tribal police officers, and correction officers shall ~~((be required to))~~ submit a signed ~~((peace))~~ officer certification form to the commission ~~((, which shall serve as an official))~~ to officially request ~~((for))~~ certification as a ~~((peace))~~ certified officer in Washington state. The form shall be submitted to the commission by the ~~((peace officer at such time as))~~ applicant once the ~~((peace officer))~~ applicant has met ~~((the))~~ all requirements ~~((for certification contained in RCW 43.101.095, and shall certify that the peace officer has met such requirements)).~~

(a) Responsibility for the review and acceptance of an applicant's psychological background, polygraph, and other background materials lies with the hiring agency.

(i) Upon completion of the background check, the hiring agency must certify that the background check has been satisfactorily completed and no disqualifying information has been found.

(ii) At its discretion, the commission may review and audit background checks for compliance with standards established by applicable statutes and rules.

(iii) The hiring agency has the duty to evaluate information obtained in a background check and assure that the applicant meets certification standards of RCW 43.101.105 (2) and (3).

(b) The commission shall issue a certificate ~~((of peace officer certification))~~ upon verification that ~~((the peace officer))~~ an applicant is eligible for certification.

~~(2) ((A peace officer who has satisfied, or has been exempted from, the basic training requirements of RCW 43.101.200, prior to January 1, 2002, but who was not employed as a commissioned peace officer on January 1, 2002, and has not had a break of more than twenty-four consecutive months of law enforcement service, shall upon his or her return to employment submit a peace officer certification form to the commission as described in subsection (1) of this section. The commission shall issue a certificate of peace officer certification upon verification that the peace officer is eligible for certification. If the peace officer's break in law enforcement service was more than twenty-four consecutive months, the peace officer must comply with the training requirements of WAC 139-05-200. The commission shall determine under chapter 43.101 RCW and rules of the commission whether the peace officer is eligible for certification and, if so, it shall determine any requirements that the peace officer must meet as a condition of certification.~~

~~(3))~~ The commission shall allow the certified officer to retain certification provided that the certified officer:

(a) Timely meets basic training requirements or is exempted in whole or in part under RCW 43.101.200 or 43.101.220, or under policies of the commission;

(b) Has not had a break of more than 24 consecutive months of service;

(c) Is not denied certification by the commission under this chapter; and

(d) Has not had certification suspended or revoked by the commission.

(3) Following a break in service and timely meeting the basic training requirements, certified officer shall, upon return to service, submit an officer certification form to the commission as described in subsection (1) of this section.

(a) The commission shall issue a certificate of officer certification upon verification that the applicant is eligible for certification.

(b) If a certified officer's break in service is less than 24 months and the certified officer's certification remains in good standing, no additional training is required.

(c) If a certified officer's break in service was more than 24 consecutive months and less than 60 months and certification is in good standing, the lapsed certified officer must comply with commission training requirements per WAC 139-05-200 and 139-05-210.

(d) If a certified officer's break in service is over 60 months and certification is in good standing, the applicant must attend the basic law enforcement academy or the corrections officer academy. The employing agency may also request a variance per WAC 139-05-940.

(4) A certification granted based on an administrative exemption under WAC 139-05-200 shall remain in effect for the duration of the exemption. However, such certification is subject to the requirements of RCW 43.101.105.

~~((4))~~ (5) Upon determination that a certification form contains missing or (deficient) erroneous information, the commission ((staff)) shall notify the ((peace officer)) applicant and the ((peace officer's)) employing agency ((for purposes of this chapter, "peace officer's employing agency" shall mean the law enforcement agency of termination and/or current employing law enforcement agency) of such and the peace officer) and the applicant must submit the ((missing or deficient)) correct information to the commission within ((thirty)) 30 days of the date the request is issued. Failure to submit the ((missing or deficient)) correct information within the required time shall result in a recommendation ((that)) to deny the ((peace officer's)) request for certification ((be denied)).

~~((4))~~ (6) In order to determine ((a peace officer's)) an applicant's eligibility for certification, the commission ((staff)) may request records and information in addition to that provided on the ((peace)) officer certification form. The ((peace officer)) applicant or the ((peace officer's)) applicant's employing agency shall submit the requested records and information within ((thirty)) 30 days of the date the request is issued. Failure to comply with the commission's request shall result in a recommendation ((that)) to deny the ((peace officer's)) request for certification ((be denied)).

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-010, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-020 (~~Notification of termination.~~) Agency reporting requirements—Force, separation, and investigation.

~~((1) Each law enforcement agency of the state of Washington or any political subdivision thereof who employs peace officers shall notify the commission by approved personnel action report form when a peace officer terminates employment with that agency for any reason. Such notification must be made within fifteen days of the termination becoming final.~~

~~(2) The agency shall, upon request by the commission, provide any additional documentation, files or information, as the commission may deem necessary to determine whether the termination provides grounds for revocation or denial of the peace officer's certification.)~~

(1) Within 15 days the employing agency of either a certified officer or reserve officer shall use an approved form to notify the commission of the following occurrences:

(a) When a certified officer or reserve officer is separated from the agency for any reason;

(b) When the agency first learns of a use of force by a certified officer, including canine bites, that caused serious injury or death;

(c) When the agency first learns that a certified officer has been charged with a crime. An employing agency shall have written policies that require a certified officer to immediately report any pending criminal charges and any conviction, plea, or other case disposition to their agency; and

(d) When the agency makes an initial disciplinary decision for alleged misconduct by a certified officer that is noncriminal and may constitute misconduct within RCW 43.101.105.

(2) An employing agency shall provide timely updates to the commission on the status of a reported internal investigation until the investigation concludes.

(3) If the employing agency accepts a certified officer's resignation or retirement in lieu of termination, the employing agency shall report the reasons and rationale in the information provided to the commission including the findings from any internal or external investigations into alleged misconduct.

(4) If the totality of the circumstances supports a conclusion that a certified officer resigned or retired in anticipation of discipline, the agency who employed the officer at the time of the misconduct shall timely conduct and complete an internal investigation and provide all relevant information to the commission as it would if the certified officer were still employed by the agency, regardless of whether the misconduct was discovered at the time:

(a) When such discipline if carried forward would more likely than not have led to discharge; or

(b) If the certified officer was laid off when disciplinary investigation or action was imminent or pending which could have resulted in the certified officer's suspension or discharge.

(5) Within 15 days of the conclusion of its internal investigation, the agency shall provide the commission with a summary of findings.

(a) If sustained misconduct results in separation a commission separation form is also required.

(b) The commission will review the separation form and may request investigative files for review of certification misconduct.

(6) The agency shall, upon request by the commission, provide any records and information the commission deems necessary to determine whether the certified officer committed misconduct that falls within RCW 43.101.105.

(7) In addition to disciplinary action authorized in RCW 43.101.105, the commission may impose a civil penalty not to exceed \$10,000 for the failure by a certified officer or an employing agency to timely and accurately report information pursuant to this section.

(8) Pursuant to RCW 43.101.135(7) an employing agency may not enter into any agreement or contract with a certified officer or labor union that:

(a) Agrees not to report conduct, or to delay reporting, or to preclude disclosure of any relevant information to the commission, including any promise not to inform the commission that a certified officer may have committed misconduct in exchange for allowing that certified officer to resign or retire or for any other reason; or

(b) Allows the agency to destroy or remove any personnel record while the certified officer is employed and for 10 years thereafter. Such records must include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, investigatory files, and any other disciplinary appeals and litigation records.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-020, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-030 Investigative ((cooperation)) authority and duty to cooperate. ((All agencies)) (1) Except when otherwise required by RCW 43.101.105 (2) or (3), the commission has authority to undertake an investigation regardless of the status of any administrative or criminal investigations into the matter by other agencies.

(2) An agency shall cooperate in any investigation conducted by the commission regarding a ((peace)) certified officer's certification status. This includes providing records and information when requested.

(a) Upon receipt of a request an agency has 30 days to provide requested records.

(b) If the totality of the circumstances supports a conclusion that a certified officer resigned or retired in anticipation of discipline, then the employing agency shall conduct and complete an investigation and provide all relevant information to the commission as if the certified officer were still employed by the agency under RCW 43.101.135.

(3) A certified officer must authorize the release of their personnel file to the employing agency and the commission including disciplinary, termination, civil or criminal investigation, and other records and information directly related to a certification before the commission under RCW 43.101.095 and 43.101.105.

(4) Requests from the commission for records under chapter 43.101 RCW are not subject to any exemptions, redactions, waiting periods, or timelines associated with the Public Records Act, chapter 42.56 RCW.

(5) A certified officer must also consent to and facilitate a review of the certified officer's social media accounts when relevant to an investigation brought before the commission pursuant to RCW 43.101.095(4).

(a) The certified officer is not required to provide login information pursuant to RCW 49.44.200.

(b) The release of records and information may not be delayed, limited, or precluded by any agreement or contract between the certified officer or the certified officer's union and the entity responsible for the records and information.

(6) An employing agency may not enter into any agreement or contract with a certified officer or union that:

(a) Agrees not to report conduct or to delay reporting or to preclude disclosure of any relevant records and information to the commission, including any promise not to inform the commission that the certified officer may have committed misconduct in exchange for allowing a certified officer to resign or retire or for any other reason; or

(b) Allows the agency to destroy or remove any personnel record while the certified officer is employed and for 10 years thereafter. Such records must include all misconduct and equal employment opportunity complaints, progressive discipline imposed including written reprimands, supervisor coaching, suspensions, involuntary transfers, investigatory files, and other disciplinary appeals and litigation records.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-030, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-040 Investigation (~~(, probable cause~~ ~~Commencement of proceedings)~~ ~~and appeal—Procedures for misconduct.~~ (1) (~~Upon request by a peace officer's employing agency, on its own initiative, or upon the filing of a complaint, on an approved form, by a law enforcement officer or duly authorized representative of a law enforcement agency, the commission may commence an investigation to determine whether there is probable cause to believe that a peace officer's certification should be denied or revoked under RCW 43.101.105.~~

~~(2)) Commission investigations are to determine whether there is preponderance of the evidence to believe the certified officer's certification should be denied, revoked, or suspended.~~

(2) Investigations may commence on the commission's own initiative under RCW 43.101.105, or upon receiving a complaint per WAC 139-17-010.

(3) The commission may conduct its investigation before, during, or after any internal or criminal investigation by another agency, except in cases where a revocation decision requires a finding that the certified officer's conduct violated policy or law under RCW 43.101.105 (2) or (3).

(4) The commission may investigate any instance where there is a pattern of acts by a certified officer that may have not resulted in formal adjudication of wrongdoing but when considered together demon-

strate conduct that would constitute a violation of RCW 43.101.105 (2) or (3).

(5) The commission may initiate a certification hearing by preparing a statement of charges regardless of the status or posture of any internal disciplinary action by the employing agency.

(6) Upon a determination by the commission that there is a preponderance of the evidence to believe that a certified officer's certification should be denied, revoked, or suspended, the commission shall prepare a statement of charges and commence proceedings under RCW 43.101.155.

(7) Upon a determination by the commission ((staff)) that there is not ((probable cause)) preponderance of the evidence to revoke or deny ((a peace)) the certified officer's certification, a copy of the decision not to proceed, with a brief statement of the reasons for the decision, shall be furnished to the ((peace)) certified officer's employing agency((r)) and the complainant, if any. ((A peace))

(8) The certified officer's employing agency, or the complainant, if any, may request a review by the ((chair)) executive director of the commission, or ((his or her)) their designee, of a determination that there is not ((probable cause)) preponderance of the evidence to revoke or ((deny a peace)) suspend the certified officer's certification, by making such request in writing within ((fourteen)) 14 days of the ((mailing)) receipt of written notification of the decision not to proceed.

~~((3) Upon a determination by the commission that there is probable cause to believe that the peace officer's certification should be revoked or denied, the commission shall prepare a statement of charges and commence revocation proceedings under RCW 43.101.155.~~

~~(4) Any designee of the chair under this section must be a member of the commission.)~~ (9) The commission's final order is subject to the judicial review provisions of the Administrative Procedure Act, RCW 34.05.510 through 34.05.598.

(10) The commission shall maintain all records obtained during an investigation in a permanent file in accordance with the retention schedule provided in RCW 43.101.400.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-040, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-050 ((Notification Request for hearing Default.))

Statement of charges and notification for hearing. (1) The commission ((staff)) shall prepare a statement of charges((, stating)) providing the grounds for denial or revocation of the ((peace)) certified officer's certification under RCW 43.101.105.

(a) The statement of charges shall ((be accompanied by)) include a notice ((that)) informing the ((peace)) certified officer ((is)) that they are entitled to a hearing on the denial or revocation of their certification, the steps to request a hearing, and that failure to request or attend a hearing will cause their certification to be denied or revoked.

~~(b) The (notice shall include the steps the peace officer must take to request a hearing. The notice and) statement of charges shall be sent to the ((peace)) certified officer and ((a copy)) to the ((peace officer's employing)) agency that employed the certified officer at the time of the alleged misconduct. If the certified officer is employed by a different law enforcement agency at the time the statement of charges is issued, that agency shall also be sent a copy of the statement of charges.~~

(2) A request for a hearing on the ~~((denial))~~ potential suspension or revocation of certification must be made by the ~~((peace))~~ certified officer on an approved form and received by the commission within ~~((sixty))~~ 60 days from the date of ~~((the mailing of))~~ sending the statement of charges.

(a) If a hearing is requested, the officer must provide an email address that constitutes the officer's legal address for purposes of any subsequent communication from the commission.

(b) If a hearing is requested, the first prehearing conference shall be held within 14 days of receipt of the hearing request form. The hearing shall occur within 90 days of the first prehearing conference.

(c) Any date related to the hearing schedule including, but not limited to, the dates of prehearing and status conferences, due dates for pleadings, briefings, and exhibits and the date of the hearing itself may be extended upon mutual agreement of the parties or for good cause.

(3) Failure by the certified officer to request a hearing within 60 days of sending of the statement of charges, or failure by the certified officer or their counsel to appear at ((a requested hearing or at a) any prehearing or status conference, shall constitute default and the commission shall enter an order of default and ((the hearing panel shall enter a) final order under RCW 34.05.440.

(4) ((A peace)) Failure of the certified officer to appear at the scheduled hearing shall constitute default and the hearing panel shall enter an order of default and final order under RCW 34.05.440.

(5) The certified officer may waive the right to a hearing ((by so indicating on the hearing request)) on an approved form. By waiving the right to a hearing, the ((peace)) certified officer acknowledges that ((his or her)) their certification ((should be denied or revoked and the hearings panel shall enter such an order)) will be revoked or denied and that the commission shall enter an order of default and a final order under RCW 34.05.440.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-050, filed 12/20/02, effective 1/20/03.]

HEARING AND OUTCOMES

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-060 Hearing panels. (1) The commission shall ((es-
tablish)) cultivate a list of ((eligible)) qualified individuals to be
appointed as members of ((the)) hearing panels in certification ac-
tions.

(a) Names of qualified individuals interested in serving as panel
members under RCW 43.101.380 may be submitted ((for consideration from
law enforcement agencies, law enforcement organizations representing
management or labor, from institutions of higher learning, and from
eligible individuals interested in serving as panel members. Staff
shall review applications and submit a list of eligible individuals to
the commission. The commission shall have sole discretion over the se-
lection of panel members.

(2) A new panel may, but need not, be established for each hear-
ing.

(3) Each hearing panel shall select a presiding member who shall
be responsible for signing documents on behalf of the panel, and for
conducting prehearing conferences and any other hearings that may be
necessary. If a panel hears more than one hearing, a new presiding
member may, but need not, be selected for each hearing.) by any per-
son for consideration by the commission. The commission will establish
desired qualifications in policy.

(b) Commissioners will be appointed to hearing panels by the com-
mission's governing body.

(c) Other qualified and interested individuals will submit:

(i) Hearing panel member application;

(ii) Cover letter;

(iii) Resume;

(iv) The names and contact information for three references; and

(v) Letter of support from their agency supervisor or administra-
tor. Members of the public may submit a letter of recommendation in
lieu of a letter of support.

(d) Materials shall be submitted to the commission's hearing co-
ordinator at the following address: 19010 1st Avenue South, Burien,
Washington 98148. Materials may also be submitted via email, as iden-
tified on the commission website.

(2) The commission shall review applications and submit a list of
qualified individuals to the commission. The commission shall have
sole discretion over the selection of panel members.

(3) Prior to the hearings panel being selected for a hearing, the
commission will confirm with panelists that they have no conflicts of
interest as outlined in the hearing panel member handbook. Examples of
conflicts of interest include, but are not limited to, the below sit-
uations:

(a) Personal, working, and financial relationships, past or
present; and

(b) Shared affiliations in groups, organizations, and activities.

(4) If a panel member is concerned that they have a conflict of
interest, including a relationship with a party or a witness that
would prevent the panel member from judging the case fairly, they must
notify the commission as soon as possible. If the petitioner or re-
spondent has any motion for disqualification of a panel member, the
motion must be filed prior to the first prehearing conference.

(5) In all hearings requested under RCW 43.101.155, an adminis-
trative law judge (ALJ) appointed under chapter 34.12 RCW shall pre-

side. The ALJ makes necessary rulings and issues a proposed recommendation but is not entitled to vote.

(6) A five-member hearings panel shall hear the case and will make the commission's final administrative decision based on a majority of the vote.

(7) When a hearing is requested in relation to a certification action of a Washington peace officer, the commission shall appoint to the panel:

(a) One police chief or sheriff from an agency, who is not a current or past employer of the certified officer;

(b) One certified Washington officer who is at or below the level of first line supervisor and who has at least 10 years' experience as an officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former certified officer.

(8) When a hearing is requested in relation to a certification action of a Washington corrections officer, the commission shall appoint to the panel:

(a) A person who heads either a city or county corrections agency or facility or of a Washington state department of corrections facility;

(b) One corrections officer who is at or below the level of first line supervisor and who has at least 10 years' experience as a corrections officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former certified officer.

(9) When a hearing is requested in relation to a certification action of a tribal police officer, the commission shall appoint to the panel:

(a) One tribal police chief;

(b) One tribal police officer who is at or below the level of first line supervisor, and who has at least 10 years' experience as an officer;

(c) One civilian member of the commission as appointed under RCW 43.101.030 (1)(f) and (h) through (j);

(d) One member of the public who is not a prosecutor, defense attorney, judge, or officer; and

(e) One person with expertise and background in police accountability who is not a current or former certified officer.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-060, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-070 (~~(Location of hearings—Identification of panel—Disqualification.)~~) **Conference and hearings procedures.** (~~((1) Upon receipt of a request for hearing, the hearing panel shall set the date and time of the hearing, and the date and time of a prehearing conference. Hearings will be held at the commission's training facility located at: 19010 1st Avenue South, Burien, Washington, 98148, unless the panel determines otherwise.~~

~~(2) Notification of the dates of the hearing and initial prehearing conference shall also contain the names of the members of the hearing panel.~~

~~(3) Any motion for disqualification of a panel member must be filed prior to the initial prehearing conference.)~~ (1) An administrative law judge (ALJ) shall preside over all prehearing conferences, status conferences, and the hearing itself.

(2) The attorney general's office shall represent the commission in all adjudicative proceedings before the commission.

(3) Once the commission hearings coordinator receives the request for hearing, the first prehearing conference shall be held within 14 days unless that time is extended by mutual agreement of the parties or for good cause.

(a) Prior to the first prehearing conference, the parties shall receive timely notice of prehearing conference. The notice will contain the date and time for the first prehearing conference as well as sign-on information and the names of the hearing panel members for the hearing.

(b) Any motion for disqualification of a panel member must be filed prior to the first prehearing conference.

(4) The first prehearing conference is administrative. Its primary purpose is to schedule the hearing date, which must occur within 90 days of the first prehearing conference unless that time is extended on mutual agreement of the parties or for good cause.

(a) During the first prehearing conference, the administrative law judge (ALJ) may schedule due dates for the filing of any prehearing briefs, witness lists, exhibit lists and exchange of exhibits, objections to witnesses and exhibits, and prehearing motions. The ALJ will also schedule a second prehearing conference.

(b) The ALJ shall issue a prehearing conference order within one week of the conclusion of the first prehearing conference. The prehearing conference order shall describe the action taken at the conference and the agreements made by the parties.

(5) The purpose of the second prehearing conference will be to address any objections to the parties' witnesses and exhibits and ascertain the parties' readiness to proceed to hearing. During the second prehearing conference, parties shall be prepared to discuss any remaining matters including any objections to witness or exhibits, and any remaining motions.

(a) The ALJ will make any necessary rulings on motions and objections to witnesses and exhibits.

(b) An order shall be issued by the ALJ within 10 days of the conclusion of the second prehearing conference.

(c) After the second prehearing teleconference, the panel members will be provided with all materials admitted into evidence, to include

witness list and copies of the statement of charges, as well as all briefings submitted by the parties.

(6) Failure of the respondent or the respondent's attorney to attend or participate in any scheduled prehearing conference will result in a finding of default and an order will be entered under RCW 34.05.440.

(7) Hearings may be held in person or virtually.

(a) Once the hearing date has been set, a written notice will appear on the commission website with the date, time, and location of the hearing.

(b) Hearings are open to the public and accommodations will be made for public attendance of virtual meetings.

(c) The commission shall create audio or video recordings of all prehearing conferences and hearings.

(8) If an in-person hearing is scheduled, the hearings coordinator will provide an admitted exhibits binder including all admitted exhibits from both parties. The admitted exhibits binder shall be used by both parties to reference or display any admitted exhibits during the hearing. If a virtual hearing is scheduled, the parties shall maintain control of their exhibits and, if necessary, will be required to share their screens when referencing or displaying an admitted exhibit during the proceeding. Parties are forbidden from screen sharing any exhibits or any versions of exhibits not previously admitted.

(9) If an in-person hearing is scheduled, the respondent must attend the proceeding in person. Respondents who fail to comply with this attendance requirement will result in the revocation or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(a) In person hearings will be conducted at the training commission located at: 19010 1st Avenue South, Burien, Washington, 98148.

(b) If a virtual hearing is scheduled, the respondent shall remain visible on screen at all times the parties are on the record. Respondents who fail to comply with this attendance requirement will result in the revocation or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(10) Regardless of whether a hearing is scheduled in-person or virtually, witnesses may testify at the hearing in-person, by telephone, or virtually.

(11) A five-member hearings panel shall hear the case and will make the commission's final administrative decision based on a majority of the vote.

(12) The standard of proof in actions before the commission is a preponderance of the evidence. RCW 43.101.380(1).

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-070, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-080 Filing of documents for hearings. ((A)) (1) If a hearing is to be conducted in person, an original and five copies of ((all documents, pleadings and other correspondence shall be filed at the commission's training facility located at)) the opening brief,

witness list, exhibit list, and exhibits are to be submitted to the commission at: 19010 1st Avenue South, Burien, Washington, 98148 (, addressed to the attention of the certification manager, and one copy shall also be served on the opposing party or their attorney, if represented by counsel. Service shall be accomplished in accordance with the superior court civil rules.) as outlined in the prehearing order.

(a) All hearing documents received by the commission will be shared with the petitioner, respondent, and the administrative law judge (ALJ).

(b) In addition, an electronic copy of each document shall be provided to the commission, the petitioner, the ALJ, and the respondent or their representative. Service shall be accomplished in accordance with the superior court civil rules.

(2) Witness lists must include a statement of the subject matter on which the witness is expected to testify. Failure to include subject matter in such a statement may be grounds for exclusion of testimony regarding that subject matter at the hearing.

(3) The petitioner and respondent should submit a proposed findings of fact and conclusion of law within three days of the conclusion of the hearing.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-080, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-100 (~~(Attendance at hearing—Burden of proof.)~~) **Outcomes for determinations of misconduct—Suspension, probation, re-training.** (~~(1) The peace officer shall appear in person at the hearing. Failure to appear in person shall constitute default and the hearing panel shall enter an order under RCW 34.05.440.~~

~~(2) The standard of proof shall be clear, cogent, and convincing evidence.)~~

(1) When an applicant or certified officer is found to have committed misconduct listed under RCW 43.101.105(3), the commission may convene a hearing panel to review the facts and, with any finding of misconduct, determine any appropriate outcomes. Outcomes include any or multiple of the following: Denial, suspension, probation, or revocation of certification, or remedial training. In determining an appropriate outcome following a finding of misconduct, the hearings panel shall review the following evidence, if admitted:

(a) Information provided by the complainant(s), if any;

(b) The final disposition and all supporting documentation and information submitted to the commission and the basis for the final disposition following an investigation by a law enforcement or corrections agency regarding alleged misconduct;

(c) The final disposition and any documentation submitted to the commission and the basis for the final disposition of any due process hearing or disciplinary appeals hearing provided such hearing has occurred prior to the commission's action;

(d) Any information obtained by the commission through its own investigation or research;

(e) Any discipline or training ordered by the employing agency regarding the alleged misconduct; and

(f) Whether the employing agency bears any responsibility for the situation.

(2) Additional bases for determining appropriate outcomes shall be developed by the commission.

(3) The fact that the commission has suspended the certified officer's certification is not in and of itself a bar to the employing agency's maintenance of the officer's health and retirement benefits.

(4) Any suspension imposed by the commission shall run concurrently to any leave or discipline imposed by the employing agency for the same incident.

(5) An agency may not terminate the certified officer based solely on imposition of suspension by the commission.

(6) This subsection does not prohibit a law enforcement agency from terminating the certified officer based on the underlying acts or omissions for which the commission took such action.

(7) Reserve officers are subject to the same commission actions as certified officers based on alleged misconduct listed in RCW 43.101.105 (2) and (3) if the reserve officers are certified pursuant to RCW 43.101.095.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-100, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-110 Final order. (~~((1) The hearing panel shall enter its final order within ninety days of the conclusion of the hearing, unless the time period is extended for good cause, or waived. A copy of the order shall be sent to the parties, the peace officer's employing agency, and the complainant, if any.~~

~~(2) The decision of the hearing panel shall be the final decision of the commission.))~~ (1) The administrative law judge (ALJ) makes necessary rulings and issues a proposed recommendation but is not entitled to vote.

(2) The hearings panel shall enter the final order within 90 days of the conclusion of the hearing. The commission shall serve a copy of the order to the parties and the certified officer's employing agency. It will also appear on the commission website.

(3) The final order issued by the hearings panel shall be the final decision of the commission.

(4) The transcripts, admitted evidence, recordings, and written decision of the hearings panel on behalf of the commission are not confidential or exempt from public disclosure and are subject to subpoena and discovery proceedings in civil actions.

(5) The final order shall include information for respondents to petition for reconsideration or judicial review contained in RCW 34.05.510 through 34.05.598.

(6) The commission's final order is subject to the judicial review provisions of the Administrative Procedure Act, RCW 34.05.510 through 34.05.598.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-110, filed 12/20/02, effective 1/20/03.]

((REINSTATEMENT OF CERTIFICATION))

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-130 Standards for readmission to academy, certification after denial, and reinstatement of certification. ~~((1)(a) A peace officer denied certification based upon dismissal or withdrawal from basic law enforcement academy for any reason not also involving discharge for disqualifying misconduct is eligible for readmission and certification upon meeting the requirements set forth in WAC 139-05-242 (Readmission to basic law enforcement academy). The commission may impose a probationary period upon readmission.~~

~~(b) A peace officer denied certification based upon dismissal or withdrawal from basic law enforcement academy for disqualifying misconduct is eligible for readmission and certification only upon meeting the requirements of subsection (4) of this section.~~

~~(2) A peace officer whose certification is denied or revoked based upon prior administrative error of issuance is eligible for certification or reinstatement of certification upon a determination by the commission that the factors that should have prevented the peace officer from being certified have been remedied and the peace officer is otherwise eligible for certification.~~

~~(3) A peace officer whose certification is denied or revoked based upon failure to cooperate, or interference with an investigation, is eligible for certification or reinstatement of certification if the peace officer's conduct did not also involve disqualifying misconduct, or other illegal or unethical conduct, and upon a showing that the peace officer has thereafter fully cooperated and is otherwise eligible for certification. In making its determination, the commission may consider the nature and seriousness of the peace officer's conduct.~~

~~(4) A peace officer whose certification is denied or revoked based upon discharge for disqualifying misconduct, but not also based upon a felony criminal conviction, may, five years after revocation or denial, petition the commission for certification or reinstatement of certification. The commission shall hold a hearing on the petition for certification or reinstatement of certification. The commission may allow certification or reinstatement of certification upon finding that the peace officer has engaged in no further disqualifying or similar misconduct, has had no further criminal convictions, has engaged in no other illegal or unethical conduct, and is otherwise eligible for certification.~~

~~(5) A peace officer whose certification is denied or revoked based solely upon a criminal conviction may petition the commission~~

for certification or reinstatement of certification immediately upon final judicial reversal of the conviction. The commission shall hold a hearing on the petition for certification or reinstatement of certification. The commission may allow certification or reinstatement of certification upon finding that the peace officer has engaged in no further disqualifying or similar misconduct, has had no further criminal convictions, has engaged in no other illegal or unethical conduct, and is otherwise eligible for certification.

~~(6) A peace officer whose certification has been denied or revoked, or whose certification has lapsed, due to a break of more than twenty-four consecutive months of law enforcement service as a peace officer, may upon return to service as a law enforcement officer, petition the commission for certification or reinstatement of certification. Upon receipt of a petition for certification or reinstatement of certification, the commission shall determine if the peace officer is eligible for certification or reinstatement of certification. The terms of certification or reinstatement of certification may be subject to the requirement of basic law enforcement academy or the basic law enforcement equivalency academy in addition to other requirements as imposed by the commission.)~~ (1) A person denied a certification based upon dismissal or withdrawal from a basic academy under RCW 43.101.105 (3) (a) is eligible for readmission and certification upon meeting standards established in the rules of the commission.

(2) A person whose certification is denied or revoked based upon prior administrative error of issuance, failure to cooperate, or interference with an investigation is eligible for certification upon meeting standards established in commission policy per RCW 43.101.115(2).

(3) A person whose certification is mandatorily denied or revoked pursuant to RCW 43.101.105(2) is not eligible for certification at any time.

(4) A person whose certification is denied or revoked for reasons other than provided in subsections (1) through (3) of this section may, five years after the revocation or denial, petition the commission for reinstatement of certification or for eligibility for reinstatement.

(a) The commission may hold a hearing on the petition to consider reinstatement, and the commission may allow reinstatement based upon standards established in commission policy.

(b) If certification is reinstated or eligibility for certification is determined, the commission shall establish a probationary period of certification.

(5) A person whose certification is revoked based solely upon a criminal conviction may petition the commission for reinstatement immediately upon final judicial reversal of the conviction. The commission shall hold a hearing on a request to consider reinstatement. The commission may allow reinstatement based on standards established in commission policy. If the certificate is reinstated or if eligibility for certification is determined, the commission shall establish a probationary period of certification.

(6) A person whose certification has been denied or revoked may petition the commission for certification or reinstatement of certification as such time as they are eligible under RCW 43.101.115 and this section.

(7) The commission's policies and decisions regarding reinstatement shall align with its responsibilities to enhance public trust and confidence in the law enforcement profession and correctional system.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-130, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 14-01-046, filed 12/11/13, effective 1/11/14)

WAC 139-06-140 Hearing on petition for eligibility for certification or reinstatement of certification. (1) ~~((The commission may hold a hearing to determine the peace officer's eligibility for certification or reinstatement of certification.~~

~~(2) Upon receipt of a petition for eligibility for certification or reinstatement of certification, and a determination by commission staff that a hearing is necessary or required, the peace officer and the peace officer's employing agency shall be notified in writing. Where a hearing is not held, the peace officer and the peace officer's employing agency shall be notified in writing of the commission's decision to grant or deny the petition and the reasons for the decision. Where the petition is denied, the peace officer or the peace officer's employing agency may request a hearing before a hearing panel by making such request in writing within fourteen days of the mailing of notification that the petition was denied.~~

~~(3)) The commission may hold a hearing to determine the previously certified officer's eligibility for certification or reinstatement of certification per RCW 43.101.115.~~

~~(a) The commission will review the request and determine whether to hold a hearing based on criteria established in commission policy. All parties shall be notified of the decision in writing and the reasons for the decision, if denied.~~

~~(b) Where a petition is denied, all parties may appeal the denial utilizing commission appeal processes within 14 days of receipt of notification that the petition was denied.~~

~~(c) The executive director or designee will review an appeal and make a written determination within 30 days of receiving an appeal.~~

~~(2) Hearings on eligibility for certification or reinstatement of certification shall be conducted by a hearing panel.~~

~~(a) The hearing panel as defined in RCW 43.101.380 shall review the certification file and any additional records and information submitted by the parties prior to the hearing and may request any additional records and information ((in order)) to assist in its determination.~~

~~(b) The issues shall be limited to whether ((the peace officer is eligible)) eligibility for certification is met, whether certification should be reinstated, and whether ((appropriate)) probationary terms should be imposed as a condition of reinstatement pursuant to WAC 139-06-150.~~

~~((4)) (3) The hearing panel shall enter its decision on the petition by written order as soon as possible within ((ninety)) 90 days of the conclusion of the hearing, unless the time ((period)) is extended for good cause((7)) or waived. A copy of the order shall be sent to the parties and to ((the peace officer's)) their employing agency.~~

~~((5)) (4) The decision of the hearing panel shall be the final order of the commission.~~

~~((6) A peace officer) (5) The respondent whose petition for eligibility for certification or reinstatement of certification was de-~~

nied by a hearing panel for reasons other than those outlined in RCW 43.101.115 (1), (2), and (3) may file a subsequent petition after five years have ~~((elapsed))~~ lapsed since the date of the entry of the hearing panel's final written order denying the prior petition. If a second petition for reinstatement is denied, no further petitions may be filed. The commission will not consider or accept ~~((for filing))~~ a petition for reinstatement submitted after two prior petitions have been denied.

[Statutory Authority: RCW 43.101.080. WSR 14-01-046, § 139-06-140, filed 12/11/13, effective 1/11/14; WSR 03-02-010, § 139-06-140, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-150 (~~(Probationary terms on reinstatement.)~~) Terms of suspension and retraining. ~~((Upon a determination that a peace officer should be certified or reinstated, the commission may impose a term of probation which may include requirements to ensure that the peace officer has taken positive and substantial steps or actions to reconcile the causes for which the peace officer's certification was denied or revoked. When probation is imposed, the terms shall be furnished in writing to the peace officer and the peace officer's agency. Failure of the peace officer to meet the terms of probation may be grounds for a hearing to determine the status of the peace officer's certification.))~~ (1) The length and conditions of any suspension of a certification imposed under RCW 43.101.105 will be included in the final order.

(2) Consistent with any conditions included in a final order imposing a suspension of a certification under (1) of this section, the commission may require the respondent to take positive and substantial steps including retraining to reconcile the causes for which the hearing panel suspended the respondent's certification.

(3) The period of suspension of a certification may be for a specified length of time, conditioned upon the completion of retraining or other requirements specified in the final order, or both. However, the period of a suspension of a certification shall last no longer than one year.

(4) Any retraining imposed in a final order shall comply with a list of approved retraining maintained by the commission.

(5) When such conditions have been satisfactorily met and any mandatory minimum length of time has concluded, the commission shall issue a notice lifting the suspension.

(a) Prior to lifting a suspension, the commission shall ensure that any conditions of a suspension of certification as described in (1) of this section are completed; and

(b) The notice lifting the suspension will be provided to the respondent and the employing agency, if any.

(6) If after one year any conditions included in a final order imposing a suspension of a certification under (1) of this section have not been satisfactorily met, the commission shall seek to revoke the respondent's certification.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-150, filed 12/20/02, effective 1/20/03.]

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-160 Miscellaneous. ~~((These))~~ The rules ~~((are intended to supplement the procedures))~~ contained in this chapter are ~~intended to supplement the procedures contained in~~ the Administrative Procedure Act, chapter 34.05 RCW, and the model rules of procedure, chapter 10-08 WAC.

~~(1)~~ In the case of conflict between the ~~((Administrative Procedure Act, the))~~ model rules of procedure ~~((,))~~ and the ~~((procedural))~~ rules adopted in this chapter, the ~~((procedural))~~ rules adopted in this chapter shall govern.

~~((Peace))~~ (2) Certified officer certification proceedings are distinct from proceedings before the commission under chapter 139-03 WAC and this chapter is not intended to modify chapter 139-03 WAC.

(3) This chapter is not intended to affect standards relating to civil service appeals, to collective bargaining remedies, or to any similar remedies ~~((for direct review))~~ of employment actions.

[Statutory Authority: RCW 43.101.080. WSR 03-02-010, § 139-06-160, filed 12/20/02, effective 1/20/03.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 139-06-090	Prehearing conferences.
WAC 139-06-120	Petition for reinstatement of certification.

OTS-2602.7

AMENDATORY SECTION (Amending WSR 13-02-060, filed 12/27/12, effective 1/27/13)

WAC 139-07-010 ((Conditions)) Conditional offers of employment.
~~((As a condition of continuing employment for any applicant who has been offered a conditional offer of employment as a fully commissioned peace officer or a reserve officer, including any person whose certification has lapsed as a result of a break in service of twenty-four consecutive months in the officer's service as a fully commissioned peace officer or reserve officer, the applicant shall submit to a background investigation including a check of criminal history, a psychological examination, and a polygraph or other truth verification~~

~~assessment as authorized by the county, city, or state law enforcement agency in compliance with the requirements of this chapter.) (1) Any applicant who has been offered a conditional offer of employment as a certified officer must submit to a background investigation to determine suitability for employment.~~

~~(2) This includes certified officers whose certification has lapsed as a result of a break in service except those recalled to active military service.~~

~~(3) Hiring agencies may not make a nonconditional offer of employment prior to an applicant's completion of the background check.~~

~~(a) Hiring agencies shall verify in writing to the commission that they complied with all background check requirements prior to making any final offer of employment; and~~

~~(b) Responsibility for all background verification lies with the hiring agency.~~

~~(i) Upon completion of the background check, the hiring agency must certify that the background check has been satisfactorily completed and no disqualifying information has been found.~~

~~(ii) At its discretion, the commission may review and audit background checks for compliance with standards established by applicable statutes and rules.~~

~~(iii) The hiring agency has the duty to evaluate information obtained in a background check and assure that the applicant meets certification standards of RCW 43.101.105 (2) and (3).~~

~~(4) Reserve officers shall submit to the same background requirements as certified officers.~~

[Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-010, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-010, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 18-19-066, filed 9/17/18, effective 10/18/18)

WAC 139-07-020 Background information. (~~(1) Requirements for the applicant.~~

~~(a) Personal history statement. The applicant shall complete and submit to the employing agency a personal history statement on a form prescribed by the employer before the start of a background investigation. The personal history statement form shall contain questions and answers which aid in determining whether the person is suitable for employment as a certified peace officer or a reserve officer. The questions shall address whether the applicant meets the minimum requirements for employment, has engaged in conduct or a pattern of conduct which would jeopardize the public trust in the law enforcement profession, and is of good moral character.~~

~~(b) Information requirements. To assist with the background investigation, the applicant shall provide the following:~~

~~(i) Verification of immigrant or citizenship status as either a citizen of the United States of America or a lawful permanent resident. A copy of any of the following United States government or United States Citizenship Immigration Services documents are acceptable proof: A United States birth certificate, a United States passport, a permanent resident card, a certificate of naturalization, or a certificate of citizenship.~~

~~(ii) Proof of education. A certified copy of a diploma, certificate, transcript, or homeschool transcript is acceptable proof.~~

~~(iii) Record of any military discharge. A certified copy of the Military Service Record (DD Form 214, Member 4) is acceptable proof.~~

~~(iv) Personal references. The names and addresses of at least three people who can provide information as personal references.~~

~~(v) Previous employers or school attendees. The names and addresses of all employers and schools attended within the last ten years, at a minimum.~~

~~(vi) Residence history. A listing of the complete residential addresses for the last ten years.~~

~~(2) Requirements of the agency. At a minimum, the agency shall include the following in its collection and assessment of an applicant's background information, which also includes determining if the information provided by the applicant is accurate and truthful. The agency shall:~~

~~(a) Query all the law enforcement agency records in jurisdictions listed in subsection (1)(b)(v) and (vi) of this section;~~

~~(b) Query the motor vehicle division driving records from any state listed in subsection (1)(b)(v) and (vi) of this section;~~

~~(c) Complete and submit a fingerprint card inventory sheet to the Federal Bureau of Investigation and Washington state patrol records division for query;~~

~~(d) Query the National Crime Information Center/Interstate Identification Index (NCIC/III) and the Washington Criminal Information Center/Washington State Identification System (WACIC/WASIS) or the equivalent for each state listed in subsection (1)(b)(v) and (vi) of this section;~~

~~(e) Contact a minimum of three references and a reasonable number of previous employers listed in subsection (1)(b)(iv) and (v) of this section and document the answers to inquiries concerning whether the person meets the standards of this section; and~~

~~(f) At the conclusion of all of the requirements of the collection and assessment of an applicant's background information, the agency shall complete a report that attests to all the requirements, including the requirements of WAC 139-05-220.) (1) Hiring agency background checks must include the following records and information for new applicants:~~

~~(a) Criminal history;~~

~~(b) National decertification indices or data banks;~~

~~(c) Commission records including employment history and certification status;~~

~~(d) All disciplinary records by any previous law enforcement or correctional employer, including complaints or investigations of misconduct, to include the outcome of any investigation regardless of the result, and the reason for separation from employment. Previous law enforcement or corrections employers must provide this information, including the reason for separation from employment with the agency, within 30 days of receiving a written request from the agency conducting the background check;~~

~~(e) Verification from the local prosecuting authority in any jurisdiction in which the applicant has served as to whether the applicant is on any impeachment disclosure lists;~~

~~(f) Inquiry into whether the applicant has any past or present affiliations with extremist organizations, as defined in commission policy;~~

~~(g) A review of the applicant's social media accounts;~~

(h) Verification of citizenship status as either a citizen of the United States of America or a lawful permanent resident;

(i) A psychological examination and recommendation administered by a qualified professional pursuant to chapter 18.71 or 18.83 RCW, in compliance with standards established in commission policy per WAC 139-07-030;

(j) A polygraph or equivalent assessment administered by a qualified professional with appropriate training and in compliance with standards established in commission policy per WAC 139-07-040; and

(k) Any basis for disqualification listed under RCW 43.101.105 (2) or (3).

(2) An applicant may be offered employment by more than one agency. The background results may be shared with more than one agency under the following circumstances:

(a) The hiring agency which initiated the background investigation agreed to share the results of the investigation in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to have the report;

(c) The background investigation was completed within six months of the request to share records; and

(d) The job analyses of both agencies are substantially similar.

(3) Prior to a potential officer's registration into an academy, the hiring agency shall certify to the commission that the agency has completed the background check, no information has been found that would disqualify the applicant from certification, and the applicant is suitable for employment as an officer.

[Statutory Authority: RCW 43.101.080 and 2018 c 32. WSR 18-19-066, § 139-07-020, filed 9/17/18, effective 10/18/18. Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-020, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-020, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 13-02-060, filed 12/27/12, effective 1/27/13)

WAC 139-07-030 Psychological examination. (1) The psychological examination shall be administered by a ~~(())~~ qualified professional ~~((, " which means))~~ who is a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW.

~~(a) ((The qualified professional who administers the examinations should be trained and experienced in psychological testing, test interpretation, psychological assessment techniques, and the administration of psychological examinations specific to peace officer applicants of law enforcement agencies.~~

~~(b-))~~ The examiner shall be trained and experienced in psychological testing, test interpretation, psychological examination techniques, and the administration of psychological examinations specific to law enforcement or corrections agencies;

(b) Agencies should confirm with the Washington state department of health that the examiner is in good standing;

(c) If the examiner has less than one year experience in psychological examination for public safety, then they shall be supervised

by an examiner with at least two years' experience in psychological examination for public safety;

(d) The examiner shall be trained and knowledgeable in issues regarding discrimination, implicit and explicit bias, and police-community relations;

(e) The examiner shall be trained and knowledgeable in issues of posttraumatic stress and traumatic brain injury;

(f) The examination (~~should~~) shall be based upon attributes considered most important for effective performance as (~~a peace~~) an officer (~~as obtained~~); such attributes may be identified from a job analysis and data provided by the (~~law enforcement agency making the conditional offer of employment~~). The data may include interviews, surveys, or other appropriate sources where job performance information was obtained.

~~(c) Psychological examination reports older than six months shall not be considered valid for the purpose of RCW 43.101.080(19) and 43.101.095(2).~~

(d)) hiring agency. Attributes should include self and emotional regulation, decision making and judgment, conflict management, stress tolerance, dominance vs. passivity, and other interpersonal and psychological characteristics that allow for insight to an individual's potential to adequately perform the essential duties of an officer and to determine what, if any, risk factors exist in the applicant's profile based on objective examination results; and

(g) The examination report, including all (~~testing~~) examination materials and documentation used to complete the examination report, (~~should~~) shall be maintained in a manner consistent with applicable confidentiality, records retention, and public disclosure laws and rules.

~~(2) (Through the examination, the qualified professional shall determine the psychological suitability of the peace officer applicant by an assessment of whether he or she is free from job-relevant mental and emotional impairments including, but not limited to, psychopathology, personality disorders, and inappropriate behavior patterns.~~

(3)) Psychological examination reports older than six months shall be considered invalid for the purpose of RCW 43.101.080(15) and 43.101.095(2).

(3) The examiner shall determine the psychological suitability of the applicant by an examination of whether they are free from job-relevant mental and emotional impairments including, but not limited to, psychopathology, personality disorders, and inappropriate behavior patterns.

(4) The sole purpose of the psychological examination under this chapter is compliance with RCW 43.101.080(~~(19)~~) (15) and 43.101.095(2) (~~(a)~~) and shall not be used for any other purpose (~~by the law enforcement agency or any party~~).

(~~(4)~~) (5) It is the responsibility of the hiring agency to receive and review the results of the psychological exam. The commission does not routinely review these exams but may do so pursuant to RCW 43.101.400.

(6) Prior to the (~~administration of the~~) examination, the applicant must (~~sign an informed~~) consent in writing to the conditions of the evaluation. The informed consent should clearly state the (~~law enforcement~~) hiring agency is the client so that the applicant (~~is informed~~) knows that the entire examination would be shared with the agency.

(~~(5)~~) (7) The examination shall include the following:

(a) A minimum of ~~((two))~~ three written psychological tests ~~((+ (i) The tests should be))~~ that are objective, job-related, psychological instruments validated for use in evaluating law enforcement or correctional officers ~~((-))~~;

(i) For the purpose of this section, a validated test is defined as a test that has a substantial research base for interpretation with normal range populations in general and public safety applications in particular;

(ii) ~~((If mail-order, internet based, or computerized tests are employed, the examiner should verify and interpret individual results;))~~ Validated tests used must be the most current versions and be consistent with current, objective, and relevant norms; and

(iii) It is the examiner's responsibility to determine what tests can and will be used to make a valid and reliable determination of applicant suitability based on available instruments that include current, objective, and relevant norms to the position in question;

(b) ((A)) At least one comprehensive, face-to-face, clinical interview with the applicant conducted after a complete review of the psychological test results; if a complete review of the psychological test results is not completed prior to the interview, then a second interview shall be conducted;

(c) An interpretation of the psychological test results by the ~~((qualified professional))~~ examiner;

(d) An opinion on psychological suitability by the ~~((qualified professional))~~ examiner; and

(e) A list and summary of the information relied upon for the ~~((assessment))~~ examination.

~~((+6))~~ (8) Findings of the psychological examination shall be ~~((reported in writing to the law enforcement agency requesting the examination-~~

~~((7))~~ shared by the examiner with the hiring agency verbally with an opportunity to ask questions, as well as reported in writing.

(9) The examiner shall provide an opinion regarding the likelihood that an applicant can safely and effectively perform the essential functions of the position. Any risk factors should also be indicated as well. Areas of essential function to evaluate include, but are not limited to:

(a) Adaptability and flexibility;

(b) Avoidance or risk-tasking behaviors;

(c) Conscientiousness and dependability;

(d) Decision making and judgment;

(e) Emotional regulation and stress tolerance;

(f) Impulse control and attention to safety;

(g) Integrity and ethics;

(h) Social competence; and

(i) Teamwork.

(10) The written report shall include the following:

(a) The date of completion and a signature of the ~~((qualified professional who conducted the examination))~~ examiner;

(b) Name and date of birth of applicant, position applied for, and agency which made the conditional offer of employment;

(c) A list and summary of the information relied upon for the ~~((assessment))~~ examination;

(d) All the components of the examination, as defined in this chapter;

(e) Factors which could affect the reliability and validity of the ~~((assessment))~~ examination; and

(f) An ~~((assessment))~~ opinion of the psychological suitability of the applicant to be ~~((a peace officer or reserve))~~ an officer for the ~~((particular law enforcement))~~ hiring agency.

~~((8))~~ (11) An applicant may be offered employment by more than one ~~((law enforcement))~~ agency that is conditional on the results of a psychological examination.

~~((9))~~ (12) The ~~((peace officer))~~ applicant may be required to pay all or a portion of the cost of the examination under RCW 43.101.080~~((19))~~ (15) and 43.101.095(2).

~~((10))~~ (13) One psychological examination may be shared with more than one ~~((law enforcement))~~ agency under the following circumstances:

(a) The agency which initiated the psychological examination and the ~~((qualified professional conducting the examination))~~ examiner agreed to share the psychological examination report and recommendations with ~~((the other law enforcement))~~ another agency;

(b) The applicant signed a release permitting ~~((the other))~~ another agency to have the psychological examination report;

(c) The psychological examination was completed within six months of the request ~~((by the other law enforcement agency));~~ and

(d) The job analyses of ~~((the initiating and other law enforcement))~~ both agencies ~~((must be))~~ are substantially similar.

[Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-030, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-030, filed 3/10/10, effective 4/10/10.]

AMENDATORY SECTION (Amending WSR 13-02-060, filed 12/27/12, effective 1/27/13)

WAC 139-07-040 Polygraph examination or other truth verification assessment. (1) Polygraph assessments provide hiring agencies with insight into an individual's honesty and an opportunity to ask an array of additional background questions.

(2) Standards for polygraph ~~((and other truth verification))~~ assessments ~~((-))~~:

(a) ~~((Equipment used to conduct truth verification assessments as a part of the preemployment testing for certification of a peace officer or reserve law enforcement officer must meet a standard that has been proved to be valid and reliable by independent research studies other than those done by the manufacturer.~~

~~((b) The examiners, analysts, and their techniques for conducting a truth verification assessment must comply with all applicable federal and state laws including, but not limited to, the Employee Polygraph Protection Act, Equal Employment Opportunity Commission, Americans with Disabilities Act, and Washington state law against discrimination.~~

~~((c) Truth verification assessments under this chapter are intended as one of the tools for incremental validity to risk assessment and risk management efforts surrounding the evaluation and selection of peace officer and reserve officer applicants.~~

~~((d) Preemployment tests and assessments are considered screening devices and are conducted in the absence of a known incident, allegation, or particular reason to suspect someone's involvement. The truth verification assessment questions should be simple, direct, and easily~~

understood by the applicant. Test information and results should be considered confidential within the screening process to be used exclusively by the county, city, or state law enforcement agency to assist with the selection of their applicant.

~~(2) Polygraph examination.~~

~~(a) An experienced polygraph examiner who is a graduate of a polygraph school accredited by the American Polygraph Association (APA) shall conduct the polygraph test. The examiner must also show that he or she is in compliance with completion of a minimum of thirty hours of APA-approved continuing education every two calendar years.~~

~~(b) Polygraph tests administered under this chapter shall be based on data from existing research pertaining to screening and diagnostic polygraph testing, risk assessment, risk management, and field investigation principles.~~

~~(c) The polygraph examiner shall assure that the polygraph equipment is properly functioning, maintained, and calibrated in compliance with the manufacturer's recommendation.~~

~~(i) The polygraph examiner shall record a chart semiannually to demonstrate correct functioning and shall be maintained by the examiner for a period of one year.~~

~~(ii) At a minimum, a polygraph instrument shall continuously record the following components during the testing process:~~

~~(A) Two pneumograph components to document thoracic and abdominal movement patterns associated with respiration;~~

~~(B) A component to record electro dermal activity reflecting relative changes in the conductance or resistance of current by epidermal tissues;~~

~~(C) A cardiograph component to report pulse rate, pulse amplitude, and relative blood pressure changes; and~~

~~(D) A motion sensor.~~

~~(d) The county, city, or state law enforcement agency which authorized the polygraph test shall maintain all documentation of the test for a minimum of three years from the date of the test unless otherwise required by law.) Examiners must have graduated from a polygraph school accredited by the American Polygraph Association (APA) or an association with equivalent standards for membership. The examiner must also show that they are in compliance with completion of a minimum of 30 hours of APA-approved continuing education every two calendar years;~~

~~(b) Polygraph equipment used as a part of the preemployment assessment must meet a standard that has been proved to be valid and reliable by independent research studies other than those done by the manufacturer;~~

~~(c) Techniques for conducting a polygraph must meet industry standards and comply with all applicable federal and state laws including, but not limited to, the Employee Polygraph Protection Act, Equal Employment Opportunity Commission, Americans with Disabilities Act, and Washington state law against discrimination;~~

~~(d) Preemployment assessments are considered screening devices and are conducted in the absence of a known incident, allegation, or particular reason to suspect someone's involvement; and~~

~~(e) Assessment information and results should be considered confidential within the screening process to be used exclusively by the hiring agency to assist with the selection of an applicant.~~

~~(3) Polygraph assessments:~~

~~(a) Polygraph assessments administered under this chapter shall be based on data from existing research pertaining to screening and~~

diagnostic polygraph assessments, risk assessment, risk management, and field investigation principles;

(b) Polygraph examiners shall ask questions including, but not limited to, the following topics: General background, employment history, police/corrections experience, driving record, military service, arrest information, personal habits, illegal drug use or possession, credit/financial, sexual activities, domestic violence/temperament, theft, and security and personal associations. Additional questions shall apply specifically to laterals and corrections officers;

(c) Model questions shall be adopted in commission policy; and

(d) The polygraph examiner shall assure that the polygraph equipment is properly functioning, maintained, and calibrated in compliance with the manufacturer's recommendation.

(4) At a minimum, a polygraph instrument shall continuously record the following components during the assessment process:

(a) Two pneumograph components to document thoracic and abdominal movement patterns associated with respiration;

(b) A component to record electro dermal activity reflecting relative changes in the conductance or resistance of current by epidermal tissues;

(c) A cardiograph component to report pulse rate, pulse amplitude, and relative blood pressure changes; and

(d) A motion sensor.

(5) Examiners shall provide hiring agencies with a thorough report that analyzes the results of the assessment. Such report shall include any and all disclosures made by the applicant to the questions asked during the preassessment interview, as well as the results of the applicant's truthfulness to the assessment questions.

(6) The agency which authorized the polygraph assessment shall maintain all documentation of the assessment as required in the law enforcement records retention schedule provided by the Washington state secretary of state's office.

(7) It is the responsibility of the hiring agency to accept the results of the polygraph assessment. The commission does not routinely review these assessments but may do so pursuant to RCW 43.101.400.

(8) An applicant may be offered employment by more than one agency. The polygraph results may be shared with more than one law enforcement or correctional agency under the following circumstances:

(a) The agency which initiated the polygraph assessment agrees to share the results of the assessment in full with another hiring agency;

(b) The applicant signed a release permitting another hiring agency to obtain the assessment report;

(c) The polygraph assessment was completed within six months of the request; and

(d) The job analyses of both agencies are substantially similar.

(9) Other truth verification assessments must be approved by the commission with additional rules established by the commission's governing body regarding its standards of use in fulfilling RCW 43.101.095.

[Statutory Authority: RCW 43.101.080. WSR 13-02-060, § 139-07-040, filed 12/27/12, effective 1/27/13; WSR 10-07-037, § 139-07-040, filed 3/10/10, effective 4/10/10.]

OTS-3683.6

Chapter 139-17 WAC
COMPLAINTS

NEW SECTION

WAC 139-17-010 Complaint submission and investigation. (1) Any individual may submit a written complaint to the commission about a certified officer's conduct. Filing a complaint does not make a complainant a party to the commission's action.

(a) Individuals who need assistance filing a written complaint will be accommodated.

(b) The commission shall make the complaint process transparent and accessible including accepting complaints in any format, accepting anonymous and third-party complaints, making language translation available as needed to accommodate complainants, and refraining from inquiring about complainants' age, immigration status, or other information not relevant to the complaint.

(c) The commission shall review complaints thoroughly and conduct preliminary investigation to evaluate whether to investigate.

(d) Complainants shall receive information about the process for investigation and any potential adjudication and receive the name of a point of contact at the commission to answer questions as needed. Complainants shall also receive a letter providing the final disposition of their complaint, regardless of the decision to investigate or the outcome of the investigation.

(2) The commission shall refer criminal complaints to the law enforcement agency with jurisdiction.

(a) The referral will also include recommendations that the investigation be performed by a law enforcement agency who has never employed the accused officer;

(b) Referral for criminal investigation does not preclude the commission from taking appropriate action to investigate decertification related aspects of the complaint and, where appropriate, from taking action to revoke, deny, or suspend certification;

(c) The referral will include notice that public disclosure of records relating to this investigation may jeopardize the investigation and state that these records may be exempted from public disclosure as an active and ongoing investigation via RCW 42.56.240(1); and

(d) The referral will include a request that the receiving agency provide notice to the commission should the investigative records be part of a public records request.

(3) The commission has sole discretion whether to investigate a complaint, and the commission has sole discretion whether to investigate issues or concerns relating to revocation or suspension on any other basis, without restriction as to the source or the existence of a complaint. Referral of a criminal investigation does not preclude or necessarily delay a commission investigation.

(4) The commission may investigate a pattern of complaints or other conduct that individually may not have resulted in a formal adjudication of wrongdoing, but when considered together demonstrate conduct that would constitute a violation of RCW 43.101.105 (2) or

(3). The commission must consider the employing agency's policies and procedures and the certified officer's job duties and assignment in determining what constitutes a pattern.

(5) The commission shall conduct timely and expedient investigations.

(a) The commission may await the conclusion of an agency's internal administrative investigation or a criminal investigation in order to gain access to greater information or conduct a more thorough investigation.

(b) The commission shall not delay investigations in which the employing agency does not fully cooperate per WAC 139-06-030.

(6) A person who files a complaint in good faith under this section is immune from suit or any civil action related to the filing or the contents of the complaint.

(7) All complaints must be resolved with a written determination, regardless of the decision to investigate.

[]

WSR 22-13-079

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed June 10, 2022, 12:09 p.m., effective July 11, 2022]

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

Purpose: WAC 246-834-050, 246-834-060, 246-834-160, 246-834-250 and 246-834-370, midwifery. The department of health (department) is adopting amendments to existing sections of midwifery rules that modernize application requirements, remove the HIV/AIDS training requirement, update the legend drugs and devices section, and clarify language for data submission renewal requirements. The adopted amendments benefit licensed midwives and the community by: Modernizing licensing requirements by clarifying that the department may waive exam requirements through rule making, and removing the specific HIV/AIDS training requirement per change in statute; updating the legend drugs and devices section to include nasal swabs for testing, the use of limited ultrasounds, and intravenous tranexamic to increase patient safety; and clarifying data submission renewal requirements.

Citation of Rules Affected by this Order: Amending WAC 246-834-050, 246-834-060, 246-834-160, 246-834-250, and 246-834-370.

Statutory Authority for Adoption: RCW 18.50.135, 18.50.115, and 18.50.060.

Other Authority: ESHB 1551, chapter 76, Laws of 2020.

Adopted under notice filed as WSR 22-07-026 on March 10, 2022.

Changes Other than Editing from Proposed to Adopted Version: A minor addition was made to clarify the correct and full name of a drug added to the legend drug and devices section as a result of suggestions received during the public comment period as well as an internal review. Previous language said "intravenous tranexamic" and was changed to say "intravenous tranexamic acid."

A final cost-benefit analysis is available by contacting Kathy A. Weed, P.O. Box 47852, Olympia, WA 98504, phone 360-236-4883, fax 360-236-2901, TTY 711, email kathy.weed@doh.wa.gov, website doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, 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 5, Repealed 0.

Date Adopted: June 10, 2022.

Kristin Peterson, JD
Deputy Secretary
Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

OTS-3549.4

AMENDATORY SECTION (Amending WSR 17-15-024, filed 7/7/17, effective 8/7/17)

WAC 246-834-050 Examination requirements for licensure as a midwife. (1) An applicant for midwifery licensure shall successfully pass:

~~((1))~~ (a) The midwifery examination offered by the North American Registry of Midwives (NARM);

~~((2))~~ (b) The Washington state licensure examination with a minimum passing score of ~~((eighty))~~ 80; and

~~((3))~~ (c) The midwifery jurisprudence examination with a passing score of ~~((one hundred))~~ 100 percent, as offered by the department.

(2) The secretary may, by rule, revise examination requirements if necessary, for good cause.

[Statutory Authority: RCW 18.50.010, 18.50.040, 18.50.050, 18.50.135, and 2014 c 187. WSR 17-15-024, § 246-834-050, filed 7/7/17, effective 8/7/17. Statutory Authority: RCW 18.50.060. WSR 99-03-064, § 246-834-050, filed 1/18/99, effective 2/18/99.]

AMENDATORY SECTION (Amending WSR 19-15-005, filed 7/5/19, effective 8/5/19)

WAC 246-834-060 Initial application requirements for licensure as a midwife. (1) An applicant for a midwife license shall submit to the department the following:

(a) Initial application on forms provided by the department.

(b) Fees required in WAC 246-834-990.

(c) Proof of high school graduation, or its equivalent.

(d) Proof of at least three years of midwifery training, per RCW 18.50.040 (2)(a), unless the applicant qualifies for a reduced academic period.

~~(e) ((Proof of completion of seven clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8.~~

~~(f))~~ Proof of successful completion of the midwifery jurisprudence exam, as ~~((offered by the department))~~ required in WAC 246-834-050.

(2) In addition to the requirements in subsection (1) of this section, an applicant for a midwife license shall also:

(a) Have transcripts sent directly to the department from the applicant's midwifery school demonstrating that the applicant has received a certificate or diploma in midwifery. An applicant applying under WAC 246-834-065 or 246-834-066 may be exempted from this requirement.

(b) Have verification of passing the North American Registry of Midwives (NARM) examination as required in WAC 246-834-050. Results must be sent directly to the department from NARM.

(3) Once all application requirements in this section are met, and additional requirements in WAC 246-834-065 or 246-834-066 if applicable, the department will schedule the applicant for the Washing-

ton state ((specific component)) licensing exam as required in WAC 246-834-050.

[Statutory Authority: RCW 18.50.135 and 18.50.115. WSR 19-15-005, § 246-834-060, filed 7/5/19, effective 8/5/19. Statutory Authority: RCW 18.50.065, 18.50.135, and 18.50.040. WSR 15-20-049, § 246-834-060, filed 9/30/15, effective 10/31/15. Statutory Authority: RCW 18.50.060. WSR 99-03-064, § 246-834-060, filed 1/18/99, effective 2/18/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-834-060, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.50.135 and 18.50.045. WSR 92-02-018 (Order 224), § 246-834-060, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-834-060, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.50.135. WSR 82-19-079 (Order PL 406), § 308-115-060, filed 9/21/82.]

AMENDATORY SECTION (Amending WSR 17-15-024, filed 7/7/17, effective 8/7/17)

WAC 246-834-160 Student midwife permit. (1) A student midwife permit may be issued to any individual who has:

(a) Successfully completed an accredited midwifery program as specified in WAC 246-834-135, or is foreign trained as specified in WAC 246-834-065(1);

(b) Obtained a minimum period of midwifery training of at least three academic years as required by WAC 246-834-140;

(c) Met the minimum education requirements required in WAC 246-834-140 (2) (a) and (b);

(d) Documentation of undertaking the care of not less than (~~five~~) 50 women in each of the prenatal, intrapartum and early postpartum periods as required by RCW 18.50.040 (2) (c);

(e) Satisfactorily completed the NARM examination required by WAC 246-834-050; and

(f) Filed a completed application for student midwife permit under WAC 246-834-060 and accompanied by a nonrefundable fee as specified in WAC 246-834-990.

(2) The student midwife permit authorizes the individuals to practice and observe women in the intrapartum period under the supervision of a licensed midwife under 18.50 RCW, an allopathic physician under chapter 18.71 RCW, an osteopathic physician under chapter 18.57 RCW or certified nurse midwife under chapter 18.79 RCW.

(3) Once all application requirements including clinical components are completed the applicant may be eligible to sit for the Washington state licensure examination as required in WAC 246-834-050.

[Statutory Authority: RCW 18.50.010, 18.50.040, 18.50.050, 18.50.135, and 2014 c 187. WSR 17-15-024, § 246-834-160, filed 7/7/17, effective 8/7/17. Statutory Authority: RCW 18.50.135 and 18.50.045. WSR 92-02-018 (Order 224), § 246-834-160, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-834-160, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.50.135. WSR 82-19-079 (Order PL 406), § 308-115-160, filed 9/21/82.]

AMENDATORY SECTION (Amending WSR 19-15-005, filed 7/5/19, effective 8/5/19)

WAC 246-834-250 Legend drugs and devices. A licensed midwife shall have a procedure, policy or guideline for the use of each legend drug and device. A midwife may not administer a legend drug or use a legend device for which they are not qualified by education, training, and experience.

(1) A licensed ((midwives)) midwife may purchase and use legend drugs and devices as follows:

(a) Dopplers, syringes, needles, phlebotomy equipment, sutures, urinary catheters, intravenous equipment, amnihooks, airway suction devices, electronic fetal monitors, tocodynamometer monitors, oxygen and associated equipment, glucose monitoring systems and testing strips, neonatal pulse oximetry equipment, hearing screening equipment, ((and)) centrifuges, and nasopharyngeal or nasal swabs for appropriate testing;

(b) Nitrous oxide as an analgesic, self-administered inhalant in a 50 percent blend with oxygen, and associated equipment, including a scavenging system;

(c) Ultrasound machine used in the real time ultrasound of pregnant uterus for the confirmation of viability, first trimester dating, third trimester presentation, placental location, and amniotic fluid assessment; and

(d) Neonatal and adult resuscitation equipment and medication, including airway devices and epinephrine for neonates.

(2) Pharmacies may issue breast pumps, compression stockings and belts, maternity belts, diaphragms and cervical caps, glucometers and testing strips, iron supplements, prenatal vitamins, and recommended vaccines as specified in subsection (3)(e) through (j) of this section ordered by licensed midwives.

(3) In addition to prophylactic ophthalmic medication, postpartum oxytocic, vitamin K, Rho (D) immune globulin, and local anesthetic medications as listed in RCW 18.50.115, licensed midwives may obtain and administer the following medications:

(a) Intravenous fluids limited to Lactated Ringers, 5% Dextrose with Lactated Ringers, and 0.9% sodium chloride;

(b) Sterile water for intradermal injections for pain relief;

(c) Magnesium sulfate for prevention of maternal seizures pending transport;

(d) Epinephrine for use in maternal anaphylaxis and resuscitation and neonatal resuscitation, pending transport;

(e) Measles, Mumps, and Rubella (MMR) vaccine to nonimmune postpartum women;

(f) Tetanus, diphtheria, acellular pertussis (Tdap) vaccine for use in pregnancy;

(g) Hepatitis B (HBV) birth dose for any newborn administration;

(h) HBIG and HBV for any neonates born to hepatitis B+ mothers;

(i) Influenza vaccine for use in pregnancy;

(j) Any vaccines recommended by the CDC advisory committee on immunization practices for pregnant or postpartum people or infants in the first two weeks after birth, as it existed on the effective date of this section;

(k) Terbutaline to temporarily decrease contractions pending emergent intrapartum transport;

(l) Antibiotics for intrapartum prophylaxis of Group B beta hemolytic Streptococcus (GBS) per current CDC guidelines; and

(m) Antihemorrhagic drugs to control postpartum hemorrhage including, but not limited to, intravenous tranexamic acid, oxytocin, misoprostol, methylergonovine maleate (oral or intramuscular), and prostaglandin F2 alpha.

(4) The client's records must contain documentation of all medications administered.

~~((5) The midwife must have a procedure, policy or guideline for the use of each drug and device. A midwife may not administer a legend drug or use a legend device for which he or she is not qualified by education, training, and experience.))~~

[Statutory Authority: RCW 18.50.135 and 18.50.115. WSR 19-15-005, § 246-834-250, filed 7/5/19, effective 8/5/19. Statutory Authority: RCW 18.50.115. WSR 05-06-118, § 246-834-250, filed 3/2/05, effective 4/2/05. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-834-250, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.50.040(3) and 18.50.115. WSR 88-12-040 (Order PM 732), § 308-115-250, filed 5/27/88.]

AMENDATORY SECTION (Amending WSR 15-24-092, filed 11/30/15, effective 12/31/15)

WAC 246-834-370 Data submission. (1) As a condition of renewing a license, a licensed midwife shall report data on all courses of care for every mother and newborn under the midwife's care to a national or state research organization approved by the department. If the mother declines to participate in the collection of data, the midwife shall follow the protocol of the approved national or state research organization.

(2) The licensed midwife shall verify compliance by submitting an attestation to the department annually with the license renewal. For good cause, the secretary may waive reporting requirements.

(3) For auditing purposes, written confirmation of full participation in data collection from the approved state or national research organization shall suffice.

(4) The midwife must keep her/his data and participation records; data and participation records will not be submitted directly to the department.

[Statutory Authority: RCW 18.50.102 and 18.50.135. WSR 15-24-092, § 246-834-370, filed 11/30/15, effective 12/31/15.]

WSR 22-13-091
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed June 13, 2022, 4:57 p.m., effective July 14, 2022]

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

Purpose: The department of retirement systems needs to amend rules in Title 415 WAC to correct incorrect references to realphabetized WAC and RCW. The substance and meaning of these rules are not changing.

Citation of Rules Affected by this Order: Amending WAC 415-106-010, 415-106-105, 415-106-110, 415-106-205, 415-106-225, 415-106-240, 415-106-250, 415-106-255, 415-106-270, 415-106-500, 415-106-700, 415-110-010, 415-110-436, 415-110-456, 415-110-458, 415-110-467, 415-110-469, 415-110-685, and 415-110-800.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 22-08-107 on April 6, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 19, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 19, 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 10, 2022.

Tracy Guerin
Director

OTS-3679.1

AMENDATORY SECTION (Amending WSR 19-10-038, filed 4/26/19, effective 5/27/19)

WAC 415-106-010 Definitions. The definitions in RCW 41.37.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.37 RCW are defined in this chapter.

(1) **AFC** means average final compensation as defined in RCW 41.37.010(~~((+14))~~).

(2) **City corrections department** means any subsection or unit of a city employing correctional employees.

(3) **County corrections department** means any subsection or unit of a county employing correctional employees.

(4) **Employer** means the state or local government entities as defined in RCW 41.37.010(~~((+4))~~) employing members eligible for PSERS.

(5) **Full-time employee** means an employee who is regularly scheduled to provide at least ~~((one hundred sixty))~~ 160 hours of compensated service for an employer each calendar month.

(6) **LEOFF** means the law enforcement officers' and firefighters' retirement system.

(7) **Nursing care**, for purposes of membership eligibility under RCW 41.37.010(~~((+19))~~), refers to services provided on behalf of a qualifying PSERS employer in which an employee is required to hold a valid certification and/or license in the state of Washington and the primary duty is to provide direct patient nursing care. Services include the identification of, and discrimination between, the individual's physical and psychosocial needs, treatment, counseling, patient education, self-care and the administration of medication.

(8) **PERS** means the public employees' retirement system.

(9) **Primary responsibility** means the fundamental, crucial job duty performed in a position. It does not include marginal responsibilities, which are extra or incidental to the primary responsibility. The primary responsibility of a position may be considered the primary responsibility because:

(a) The position exists to perform that function; or

(b) There are a limited number of employees available who could perform that function; or

(c) The function is highly specialized, and the incumbent is hired for special expertise or ability to perform it.

(10) **PSERS** means the public safety employees' retirement system.

(11) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.37.010(~~((+6))~~).

(12) **SERS** means the school employees' retirement system.

(13) **TRS** means the teachers' retirement system.

(14) **WSPRS** means the Washington state patrol retirement system.

[Statutory Authority: RCW 41.50.050. WSR 19-10-038, § 415-106-010, filed 4/26/19, effective 5/27/19. Statutory Authority: RCW 41.50.050(5). WSR 16-17-128, § 415-106-010, filed 8/23/16, effective 9/23/16. Statutory Authority: RCW 41.50.050(5) and chapter 41.37 RCW. WSR 08-02-046, § 415-106-010, filed 12/27/07, effective 1/27/08.]

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-105 May I join PSERS if my duties qualify for PSERS membership, but my employer is not specifically listed in WAC 415-106-010(~~((+2))~~)? You do not qualify for membership unless your department or agency is specifically listed in WAC 415-106-010(~~((+2))~~), even if your employer employs one or more elected or appointed officials who are PSERS members.

[Statutory Authority: RCW 41.50.050(5) and 41.37.010(4). WSR 08-02-046, § 415-106-105, filed 12/27/07, effective 1/27/08.]

AMENDATORY SECTION (Amending WSR 19-10-038, filed 4/26/19, effective 5/27/19)

WAC 415-106-110 If I am a member of PERS, may I change my membership to PSERS? You may have the right to change your retirement system membership from PERS to PSERS according to the requirements in this section.

(1) You may change retirement system membership from PERS to PSERS if:

(a) You were a member of either PERS Plan 2 or Plan 3 before July 1, 2006; and

(b) On July 1, 2006, you meet the requirements for membership in RCW 41.37.010 (~~((19)(a), (b), (c) or (f))~~); and

(c) You submit a properly completed election form to your employer between July 1, 2006, and September 30, 2006.

(2) You may also change retirement system membership from PERS to PSERS if:

(a) You were a member of either PERS Plan 2 or Plan 3 before January 1, 2019; and

(b) On January 1, 2019, you met the requirements for membership in RCW 41.37.010 (~~((19)(d), (e) or (f))~~); and

(c) You submit a properly completed election form to your employer between January 1, 2019, and March 1, 2019.

(3) Your change in membership is prospective only.

(4) You will become a dual member of PSERS and PERS. All service credit and compensation previously reported in PERS will remain in PERS. Your retirement benefits will be governed by the dual member "portability" provisions in chapters 41.54 RCW and 415-113 WAC.

(5) If you meet the conditions in subsection (1) or (2) of this section and do not elect PSERS membership during the election window, you cannot become a member of PSERS while you continue employment with the same employer; however, if you terminate your employment with that employer after the election window begins, and subsequently become employed in a PSERS eligible position, you will be mandated into PSERS membership.

[Statutory Authority: RCW 41.50.050. WSR 19-10-038, § 415-106-110, filed 4/26/19, effective 5/27/19. Statutory Authority: RCW 41.50.050(5), chapters 41.37 and 41.45 RCW, and RCW 41.40.113. WSR 08-02-046, § 415-106-110, filed 12/27/07, effective 1/27/08.]

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-205 What is reportable compensation? Reportable compensation is subject to retirement system contributions and is used in the calculation of your retirement benefit.

(1) The department determines whether payments you receive are reportable compensation based on the nature of the payment, not the name of the payment. The department considers the reason for the payment and whether the reason brings the payment within the statutory definition of "compensation earnable" in RCW 41.37.010(~~((6))~~). It must:

(a) Be paid to you by an employer as a salary or wage for services you provided; or

(b) Qualify as reportable compensation under chapter 41.37 RCW or this chapter.

(2) Your employer must report all of your reportable compensation to the department. Your employer must report compensation for the month in which it was earned. Compensation is earned when the service is provided, rather than when payment is made.

Example: Bill is paid in July for work performed during June. The employer must report his compensation to the department as "June earnings."

[Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-205, filed 12/27/07, effective 1/27/08.]

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-225 Is standby pay reportable compensation? Standby means you are required by your employer to be prepared to report immediately for work if the need arises, although the need may not arise. According to RCW 41.37.010 (~~((6)(b)(vi))~~):

(1) The pay you receive for being on standby qualifies as reportable compensation; however

(2) The time you spend on standby is not counted toward service credit and is not reported to the department by your employer.

[Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-225, filed 12/27/07, effective 1/27/08.]

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-240 Are payments for reinstatement or payment instead of reinstatement reportable compensation? (1) Payments you receive upon reinstatement or instead of reinstatement are reportable compensation to the extent they are equivalent to the salary you would have earned by working in your position. RCW 41.37.010 (~~((6)(b)(i))~~) defines these payments as reportable compensation even though they are not payments for services you provided to your employer. The payment will be prorated over the entire period you were suspended, terminated, or otherwise absent from work.

(2) For purposes of this section, "reinstatement" means that you are entitled to return to full employment rights by action of either:

(a) The employer; or

(b) A personnel board, personnel appeals board or court of law.

[Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-240, filed 12/27/07, effective 1/27/08.]

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-250 Is severance pay reportable compensation? Severance pay, whether or not it is earned over time, is not reportable compensation. See RCW 41.37.010 (~~((6)-(a))~~).

[Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-250, filed 12/27/07, effective 1/27/08.]

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-255 Is sick leave or vacation leave, whether used or cashed out, reportable compensation? (1) **Sick and annual leave (used)**. Most PSERS members earn a certain number of sick leave and annual leave hours per month. These leave hours are earned by providing service during the month in which the leave accrues. The payment you receive when you use an earned leave day is reportable compensation.

(2) **Sick and annual leave cash outs**. Under RCW 41.37.010 (~~((6)-(a))~~), sick and annual leave cash outs are not reportable compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-255, filed 12/27/07, effective 1/27/08.]

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-270 Is compensation for periods of absence due to sickness or injury reportable compensation? Compensation you receive for periods of absence due to sickness or injury, which is not covered by earned sick leave, qualifies as reportable compensation only as authorized by RCW 41.37.010(~~((6))~~) and this section.

(1) **Assault pay** qualifies as reportable compensation to the extent authorized by RCW 27.04.100, 72.01.045, and 72.09.240.

(2) **Duty disability**. You may make contributions and receive up to (~~(twelve))~~ 12 consecutive months of service credit for periods of disability covered by Title 51 RCW or similar federal workers' compensation program as provided in RCW 41.37.060. In this case, the compensation you would have received but for the disability qualifies as reportable compensation to the extent authorized by RCW 41.37.060.

(3) **Shared leave**.

(a) If you are a state employee, as defined in RCW 41.04.655, the compensation you receive due to participation in a leave-sharing program qualifies as reportable compensation to the extent authorized by RCW 41.04.650 through 41.04.670.

(b) If you are not a state employee, shared leave payments are not specifically authorized by RCW 41.37.010(~~((6))~~) and do not qualify as reportable compensation.

[Statutory Authority: RCW 41.50.050(5), 27.04.100, 41.04.650 through 41.04.670, 41.37.010(6), 41.37.060, 72.01.045, and 72.09.240. WSR 08-02-046, § 415-106-270, filed 12/27/07, effective 1/27/08.]

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-106-500 PSERS disability benefits. This section covers disability benefits provided for in RCW 41.37.230. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on-the-job or off-the-job injuries and/or illnesses.

Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

(1) **Am I eligible for disability benefits?** You are eligible for disability benefits if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other PSERS position for which you are qualified by training or experience. Objective medical evidence is required to establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) **If eligible, what will I receive as a monthly disability allowance?**

(a) If you have at least (~~ten~~) 10 years of service credit in PSERS, you will receive a monthly allowance equal to two percent of your AFC times your service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age (~~(sixty)~~) 60. Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

(b) If you have less than (~~ten~~) 10 years of service credit, you will receive a monthly allowance¹ equal to two percent of your AFC times your service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age (~~(sixty-five)~~) 65. Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

¹You may choose to receive a lump sum payment instead of a monthly allowance if your initial monthly allowance will be less than (~~(fifty dollars)~~) \$50. See RCW 41.37.200.

See WAC 415-02-320 for early retirement factors and examples.

(3) **How do I apply?**

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(i) **Part 1:** Disability retirement application. If you are married, your spouse's consent may be required as described in WAC 415-106-600.

(ii) **Part 2:** Employer's statement and report. Your employer must complete and sign Part 2, and return it directly to the department.

(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return it directly to the department. You are responsible for all medical expenses related to your application for benefits. A copy of your job description must be provided to the physician at time of examination.

(b) When the department receives Part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.

(4) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(5) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, you should request a benefit estimate from the department, as there may be a difference in the dollar amount of your monthly allowance.

(6) **Once my application is approved, when will my monthly allowance begin?**

(a) Your disability allowance will accrue from the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire (~~ninety~~) 90 days after the approval date if you have not officially separated from PSERS employment.

(i) If you are continuing to perform the duties of your position or another PSERS position, you may reapply for disability benefits according to subsection (3) of this section if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

(7) **What are my options if my application is denied?**

(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.

(b) If you continue to work in a PSERS position, you may reapply for disability benefits at a later time if your condition worsens.

(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(8) **Are my disability benefits taxable?** You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(9) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.37.090(3) or contact the department.

(10) **Am I eligible for disability benefits if my disability is the result of my criminal conduct?** No. See RCW 41.37.100.

(11) **How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law. See chapters 41.54 RCW and 415-113 WAC. You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(12) **How long will I continue to receive a monthly disability allowance?** You may receive a monthly allowance throughout your lifetime, subject to the provisions of subsection (13) of this section.

(13) **Is it possible to lose my monthly disability allowance after I begin receiving it?**

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive a disability allowance if both of the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.37.010((4)), at a comparable compensation.

(b) If you return to employment and reenter PSERS membership, your benefits will cease.

(14) **If I take my disability benefit in a lump sum and return to work, may I restore my service credit?** Yes, you may restore your service credit if you take a lump sum benefit and return to PSERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165 and 41.37.200.

[Statutory Authority: RCW 41.50.050. WSR 20-06-040, § 415-106-500, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5), 41.37.010(4), 41.37.090(3), 41.37.100, 41.37.200, 41.37.230, 41.50.165, and chapter 41.54 RCW. WSR 08-02-046, § 415-106-500, filed 12/27/07, effective 1/27/08.]

AMENDATORY SECTION (Amending WSR 16-17-047, filed 8/11/16, effective 9/11/16)

WAC 415-106-700 What are the return to work rules for PSERS?

(1) **How soon can I return to work after I retire without impacting my**

PSERS retirement benefit? You may begin working immediately after you retire without impacting your PSERS retirement benefit if:

- (a) You go to work for a private employer;
- (b) You are an independent contractor as defined in WAC 415-02-110;
- (c) Your only employment is as an elected official and you are not a PERS member; or
- (d) You work in an ineligible position.

(2) If you return to work in a **PERS, SERS, or TRS Plan 2 or Plan 3, or LEOFF Plan 2 eligible position**, your retirement benefit will be affected as follows:

(a) If you retire and then return to work sooner than ~~((thirty))~~ 30 consecutive calendar days from your accrual date (effective retirement date), your monthly retirement benefit will be reduced in accordance with RCW 41.37.050(1) until you remain absent for at least ~~((thirty))~~ 30 consecutive calendar days.

(b) If you retire and remain absent at least ~~((thirty))~~ 30 consecutive calendar days from your accrual date, you may work up to ~~((eight hundred sixty-seven))~~ 867 hours each calendar year before your retirement benefit is suspended.

(3) If you return to work in an eligible **PSERS position**, your retirement benefit will be affected as follows:

(a) If you elect to reenter membership, your retirement benefit will be suspended. When you rerehire, your retirement benefit will be recalculated pursuant to WAC 415-106-710.

(b) If you return to an eligible PSERS position within ~~((thirty))~~ 30 consecutive days of your accrual date (effective retirement date) and do not reenter membership, your monthly retirement benefit will be reduced by five and one-half percent for every eight hours you work during that month. This reduction will be applied each month until you remain absent for ~~((thirty))~~ 30 consecutive calendar days. The reduction will accrue for a maximum of ~~((one hundred sixty))~~ 160 hours per month. Any reduction over ~~((one hundred))~~ 100 percent will be applied to the benefit you are eligible to receive in subsequent months. See RCW 41.37.050(1).

(c) If you return to an eligible PSERS position after being absent for ~~((thirty))~~ 30 consecutive calendar days from your accrual date (effective retirement date) and do not reenter membership, your retirement benefit will be suspended until you separate from PSERS employment.

(4) If you return to work after retirement from PSERS and another DRS retirement system, see WAC 415-113-300 to determine the effect of returning to work.

(5) **What hours are counted toward the limit?**

(a) **Counted toward the ~~((eight hundred sixty-seven))~~ 867 hour limit:** All compensated hours that are worked in an eligible position covered by a DRS or higher education retirement plan, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.

(b) **Not counted toward the hour limit:** Cashouts of unused sick and vacation leave.

(6) **What happens if I work more than the annual ~~((eight hundred sixty-seven))~~ 867 hour limit?**

(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement benefit for the month in which you exceed the hour limit.

(b) Your retirement benefit will be restarted beginning the next calendar year (January) or the day after you terminate all eligible employment identified in subsection (2) of this section, whichever occurs first.

(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the work limit and received a retirement benefit. See RCW 41.50.130.

(7) **Terms used.**

(a) Accrual date - RCW 41.37.240.

(b) PSERS: Public safety employees' retirement system.

(c) Eligible position - RCW 41.37.010(~~((+10))~~); WAC 415-106-100.

(d) Ineligible position - RCW 41.37.010(~~((+17))~~).

(e) Membership - RCW 41.37.020.

(f) Month - Calendar month as defined in WAC 415-02-030.

[Statutory Authority: RCW 41.50.050(5). WSR 16-17-047, § 415-106-700, filed 8/11/16, effective 9/11/16. Statutory Authority: RCW 41.50.050(5), 41.37.050, 41.50.130, chapters 41.32, 41.35, and 41.40 RCW. WSR 08-02-046, § 415-106-700, filed 12/27/07, effective 1/27/08.]

OTS-3680.1

AMENDATORY SECTION (Amending WSR 04-04-041, filed 1/29/04, effective 3/1/04)

WAC 415-110-010 Definitions. All definitions in RCW 41.35.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.35 RCW are defined in this chapter.

(1) **Annual leave** means leave provided by an employer for the purpose of taking regularly scheduled work time off with pay. Annual leave does not include leave for illness, personal business if in addition to and different than vacation leave, or other paid time off from work. However, if an employer authorizes only one type of leave to provide paid leave for vacation and illness as well as any other excused absence from work, such leave will be considered annual leave for purposes of RCW 41.50.150.

(2) **Normally** as used in the definition of eligible position under RCW 41.35.010 means a position is eligible if it is expected to require at least five months of (~~(seventy))~~ 70 or more hours of compensated service each month during each of two consecutive years. Once a position is determined to be eligible, it will continue to be eligible if it requires at least five months of (~~(seventy))~~ 70 or more hours of compensated service during at least one year in any two-year period.

(3) **Project position** means a position, established by an employer, that has a specific goal and end date.

(4) **Report** means an employer's reporting of an employee's hours of service, compensation and contributions to the department on the monthly remmittal report.

(5) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.35.010(~~((+6))~~).

(6) **System acronyms** used in this chapter are defined as follows:

(a) "PERS" means the public employees' retirement system.

(b) "SERS" means the school employees' retirement system.

(c) "TRS" means the teachers' retirement system.

(7) **Year** means any (~~twelve~~) 12 consecutive month period established and applied consistently by an employer to evaluate the eligibility of a specific position. The term may include, but is not limited to, a school year, calendar year, or fiscal year.

Example: An employer has used the (~~twelve~~) 12 consecutive month period from September 1st to August 31st to evaluate the eligibility of positions. When the employer hires a new employee to fill an existing position, the employer must continue to use the September 1st through August 31st period to define a year for the position.

Example: If the same employer in the above example hires a person to work in a project position beginning in November, the employer will use the (~~twelve-month~~) 12-month period beginning in November to evaluate the eligibility of the new position. The employer must consistently apply this (~~twelve-month~~) 12-month period to evaluate the eligibility of this position.

(8) **School year** for Plan 2 and 3 members means the (~~twelve-month~~) 12-month period from September 1st of one year to August 31st of the following year.

(9) **Substitute employee** includes any classified employee who is employed as a substitute for an absent employee or working in an ineligible position.

[Statutory Authority: RCW 41.50.050(5), 41.35.010, 41.35.030, 41.35.033. WSR 04-04-041, § 415-110-010, filed 1/29/04, effective 3/1/04. Statutory Authority: RCW 41.50.050(5) and chapter 41.35 RCW. WSR 02-18-046, § 415-110-010, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-110-010, filed 12/12/00, effective 1/12/01.]

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

WAC 415-110-436 SERS Plans 2 and 3 disability benefits. This section covers disability benefits provided for in RCW 41.35.440 and 41.35.690 for members of SERS Plans 2 and 3. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on- or off-the-job injuries and/or illnesses. Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

(1) **Am I eligible for disability benefits?** You are eligible for a disability allowance if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other position for a SERS employer for which you are qualified by training or experience. Objective medical evidence is required to

establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) If eligible, what will I receive as my monthly disability benefits under the standard option?

(a) If you are a Plan 2 member, you will receive two percent times average final compensation (AFC) times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age (~~sixty-five~~) 65. See WAC 415-02-320 for more information on early retirement.

(b) If you are a Plan 3 member, you will receive a defined benefit of one percent times average final compensation times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age (~~sixty-five~~) 65. See WAC 415-02-320 for more information on early retirement.

(c) The degree of your disability or impairment will not impact the amount of your disability benefit.

(3) May I choose a benefit option that provides a monthly allowance to my survivor beneficiary? You may choose to have your benefit paid according to any of the benefit options described in WAC 415-110-326. If you choose an option with a survivor benefit, your monthly benefit will be reduced to offset the cost of the survivor option.

(4) How do I apply?

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(i) **Part 1:** Disability retirement application. You must complete and sign the application. If you are married, your spouse's consent may be required as described in WAC 415-110-610.

(ii) **Part 2:** Employer's statement and report. Your employer must complete, sign and return directly to the department.

(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return directly to the department. You are responsible for all medical expenses related to your application for benefits.

(b) When the department receives part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.

(5) What is the time limit for filing an application for disability benefits? There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(6) If I am eligible to retire, may I still apply for disability benefits? Yes, however, there will be no difference in the dollar amount of your benefit.

(7) Once my application is approved, when will my benefit begin?

(a) You will start accruing disability benefits the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first benefit payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire (~~ninety~~) 90 days after the approval date if you have not officially separated from SERS employment.

(i) If you are continuing to perform the duties of your position or another SERS position, you may reapply for disability benefits according to subsection (4) of this section if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

(8) What are my options if my application is denied?

(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.

(b) If you continue to work in a SERS position, you may reapply for disability benefits at a later time if your condition worsens.

(c) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(9) What information must be provided to the department if I am receiving disability benefits?

(a) You and your doctor must report any improvement in your condition; and

(b) You must report the name of your employer and monthly salary if you resume employment, regardless of the number of hours you work.

(10) How long will my disability benefits last? You may receive benefits throughout your lifetime, subject to the provisions of subsection (15) of this section.

(11) Are my disability benefits taxable? You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its nontaxable determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(12) Are disability benefits subject to court or administrative orders? Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.35.100(3) or contact the department.

(13) Am I eligible for disability benefits if my disability is the result of my criminal conduct committed after April 21, 1997? No. For more information, see RCW 41.35.110.

(14) How is my disability benefit affected if I am a member of more than one retirement system? If you are a member of more than one retirement system, your benefit is governed by portability law (see chapters 41.54 RCW and 415-113 WAC). You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(15) Is it possible to lose my disability benefits after I begin receiving them?

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability

benefits. You will no longer be eligible to receive disability benefits if both of the following apply:

- (i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and
- (ii) You have been offered reemployment by an employer, as defined in RCW 41.35.010(~~(+4)~~), at a comparable compensation.

(b) If you return to employment and reenter SERS membership, your benefits will cease.

(16) If I take my disability benefit in a lump sum and return to work, may I restore my service credit? Yes, you may restore your service credit if you take a lump sum benefit and return to SERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165.

(c) The provisions for restoring service credit vary according to retirement plan.

(i) If you are a member of SERS Plan 2, see RCW 41.35.410.

(ii) If you are a member of SERS Plan 3, see RCW 41.35.670.

[Statutory Authority: RCW 41.50.050. WSR 20-06-040, § 415-110-436, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-110-436, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), 41.35.020, 41.35.440, and 41.35.690. WSR 05-19-014, § 415-110-436, filed 9/9/05, effective 10/10/05.]

AMENDATORY SECTION (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

WAC 415-110-456 Leave payments earned over time. (1) **Sick and annual leave usage.** Sick leave and annual leave is accumulated over time and paid to a person during a period of excused absence. Leave accrues at a prescribed rate, usually a certain number of hours per month. The employee earns a leave day by rendering service during the month the leave accrued. When the employee uses his or her accrued leave by taking a scheduled work day off with pay, the payment is deferred compensation for services previously rendered. The payment is a salary or wage earned for services rendered and is reportable.

(2) **Annual leave cash outs.** Annual leave cash outs are not reportable compensation for SERS Plan 2 and SERS Plan 3 members. Although annual leave cash outs, like payments for leave usage, are deferred compensation earned for services previously rendered, they are excluded from the definition of compensation earnable by statute, see RCW 41.35.010 (~~(+6)(a)~~).

(3) **Sick leave cash outs.** Sick leave cash outs are excluded from the definition of compensation earnable for SERS Plan 2 and SERS Plan 3 members by statute.

Sick leave cash outs are excluded from reportable compensation for:

(i) School district employees by RCW 28A.400.210; and
 (ii) Educational service district employees by RCW 28A.310.490.
 See RCW 41.35.010 ((+6)-(a)).

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-110-456, filed 12/12/00, effective 1/12/01.]

AMENDATORY SECTION (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

WAC 415-110-458 Severance pay earned over time. All forms of severance pay are excluded from earnable compensation and are not reportable for Plan 2 or Plan 3 by RCW 41.35.010 ((+6)-(a)).

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-110-458, filed 12/12/00, effective 1/12/01.]

AMENDATORY SECTION (Amending WSR 01-08-057, filed 4/2/01, effective 5/3/01)

WAC 415-110-467 Reinstatement or payment instead of reinstatement. (1) Payments to an employee are not earned for services rendered if an employer makes them for periods during which the employee was not employed and the payments are made either upon reinstatement or instead of reinstatement. Nonetheless, RCW 41.35.010((+6)) specifically designates these payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working. The payment will be prorated over the entire period that the employee was suspended, terminated, or otherwise absent from work.

(2) For purposes of subsection (1) of this section, "reinstatement" means that the employee is entitled to return to full employment rights by action of either:

(a) The employer; or

(b) A personnel board, personnel appeals board or court of law following a hearing.

[Statutory Authority: RCW 41.50.050(5), 41.40.020, 41.35.010(6), 41.40.010(8). WSR 01-08-057, § 415-110-467, filed 4/2/01, effective 5/3/01. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-110-467, filed 12/12/00, effective 1/12/01.]

AMENDATORY SECTION (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

WAC 415-110-469 Standby pay. Some employers pay employees for being on "standby." A member is on standby when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work if the need arises, although the need may not arise. Because the member is not actually working, the member is not rendering service. However, RCW 41.35.010((+6)) specif-

ically identifies standby pay that meets the above requirements as reportable compensation. Although included in the definition of compensation earnable, time spent on standby is excluded from the definition of "service," see RCW 41.35.010(~~(+7)~~).

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-110-469, filed 12/12/00, effective 1/12/01.]

AMENDATORY SECTION (Amending WSR 17-02-032, filed 12/28/16, effective 1/28/17)

WAC 415-110-685 Am I eligible for membership and service credit as a classified substitute employee? You may be eligible to apply for membership and receive service credit for time worked as a classified substitute employee that occurred on or after July 27, 2003.

(1) If you have never been a member of the school employees' retirement system (SERS), you may establish membership in Plan 2 or Plan 3 if you worked as a classified employee for (~~(seventy)~~) 70 or more hours per month during at least five months within a single school year period of September 1st through August 31st. Your membership will begin when your first optional bill to purchase substitute teaching service credit is paid in full.

(2) If you have already established membership in SERS Plan 3, or if you have established membership in SERS Plan 2 and have not withdrawn your contributions, you may apply to the department for service credit as described in subsection (4) of this section, for any compensated employment as a classified substitute employee that occurs after your first month of established service credit. You may apply for service credit for compensated employment as a classified substitute employee that occurred prior to your first month of established service credit if it meets the requirements for membership as described in subsection (1) of this section.

(3) If you previously established membership in SERS Plan 2 and withdrew your contributions, you may reestablish your membership by purchasing service credit if you worked as a classified substitute employee for (~~(seventy)~~) 70 or more hours per month during at least five months within a single school year period of September 1st through August 31st.

(4) To apply, you must submit a classified substitute's application for service credit.

(a) Applications must be submitted no earlier than September 1st following the end of the school year in which you worked.

(b) If you are establishing membership in SERS for the first time, you must also submit a member information form to indicate your selection of Plan 2 or Plan 3.

(c) If you are an established Plan 3 member, you must also submit a member information form to indicate your contribution rate and investment options.

(d) If you are purchasing service credit for the 2003-04 school year, you must also submit quarterly reports to DRS along with your application for service credit. Quarterly reports must show the exact hours worked and compensation earned each month, and must be signed by the employer.

(5) To receive classified substitute employee's service credit, you must pay the appropriate member contributions.

(a) Upon receipt of your application materials, the department will determine the amount of service credit you are eligible to purchase and will provide an optional bill for the amount due. Your service credit will be applied when the bill is paid in full.

(b) You have six months following the end of the school year in which you worked to pay the member contributions interest-free. Interest will begin to accrue on the first day of the seventh month following the end of the school year. The school year ends on August 31st for Plans 2 and 3.

(i) SERS Plan 2. If payment is received after the six month interest-free period, the amount due will include interest on both the member and employer contributions.

(ii) SERS Plan 3. If payment is received after the six month interest-free period, the amount due will include interest on the Plan 3 employer contributions.

(6) Defined terms used. Definitions for the following terms used in this section may be found in the sections listed.

(a) "Classified employee" - RCW 41.35.010(~~((7))~~).

(b) "Member" - RCW 41.35.010(~~((20))~~).

(c) "Service" - RCW 41.35.010(~~((32))~~).

(d) "Substitute employee" - RCW 41.35.010(~~((38))~~).

[Statutory Authority: RCW 41.50.050(5). WSR 17-02-032, § 415-110-685, filed 12/28/16, effective 1/28/17; WSR 13-08-055, § 415-110-685, filed 3/29/13, effective 5/1/13. Statutory Authority: RCW 41.50.050(5), 41.35.010, 41.35.030, 41.35.033. WSR 04-04-041, § 415-110-685, filed 1/29/04, effective 3/1/04.]

AMENDATORY SECTION (Amending WSR 02-02-060, filed 12/28/01, effective 1/1/02)

WAC 415-110-800 When does a member of the school employees' retirement system (SERS) enter retirement status? A member of the SERS enters retirement status when he or she:

(1) Has separated from service as defined in RCW 41.35.010(~~((36))~~);

(2) Has no written agreement to return to public employment prior to entering "retiree status"; and

(3) Has applied for retirement, the accrual date has been determined under RCW 41.35.450 or 41.35.640, and the benefit begins to accrue.

Example: Doug is eligible for retirement on July 1st. He submits an application on June 1st with a July 1st retirement date. His last day of employment is June 30th and he does not have an agreement to return to work.

Doug's retirement date (accrual date) is July 1st, and the benefit begins to accrue. The first retirement payment will be paid at the end of July. Doug entered "retiree status" effective July 1st.

[Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023,

41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. WSR
02-02-060, § 415-110-800, filed 12/28/01, effective 1/1/02.]

**WSR 22-13-093
PERMANENT RULES
BUILDING CODE COUNCIL**

[Filed June 14, 2022, 9:49 a.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The purpose of this permanent rule making is to adopt the 2021 International Fire Code, published by the International Code Council, with state amendments to incorporate proposed changes as adopted by the Washington state building code council on April 22, 2022. The implementation date is July 1, 2023.

Citation of Rules Affected by this Order: New 23; and amending 40.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 22-02-041 on December 30, 2021.

Changes Other than Editing from Proposed to Adopted Version:

WAC	Section	Changes	Rationale/Discussion
WAC 51-54A-0403	403.3.1	Delete the existing amendment.	The model code section 403.3.1 matches the language in the existing amendment. There is no need for the existing amendment to be readopted.
WAC 51-54A-0918	918.1 through 918.6	Delete the existing amendment.	There is no need for this existing amendment. Section 918.1 states that an approved alerting system shall be provided in buildings and structures as required in Chapter 4 and this section. However, neither Chapter 4 nor Section 918 require approved alerting system. There is no reason for adopting technical requirements without scoping.

A final cost-benefit analysis is available by contacting Stoyan Bumbalov, 1500 Jefferson Street S.E., phone 360-407-2244, email Stoyan.Bumbalov@des.wa.gov, website www.sbcc.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 Nongovernmental Entity: New 23, Amended 40, 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: April 22, 2022.

Tony Doan
Chair

OTS-3491.4

**Chapter 51-54A WAC
STATE BUILDING CODE ADOPTION AND AMENDMENT OF THE ((2018)) 2021 EDITION OF THE INTERNATIONAL FIRE CODE**

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-003 International Fire Code. The ((2018)) 2021 edition of the International Fire Code, published by the International Code Council is hereby adopted by reference with the following additions, deletions, and exceptions.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-003, filed 11/27/19, effective 7/1/20; WSR 16-05-065, § 51-54A-003, filed 2/12/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-003, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-007 Exceptions. The exceptions and amendments to the International Fire Code contained in the provisions of chapter 19.27 RCW shall apply in case of conflict with any of the provisions of these rules.

Codes referenced which are not adopted through RCW 19.27.031 or chapter 19.27A RCW shall not apply unless specifically adopted by the authority having jurisdiction. (~~The 2018 International Wildland Urban Interface Code is included in this code as Section 8200 with amendments found in Appendix Chapter N.~~)

The provisions of this code do not apply to temporary growing structures used solely for the commercial production of horticultural plants including ornamental plants, flowers, vegetables, and fruits. "Temporary growing structure" means a structure that has the sides and roof covered with polyethylene, polyvinyl, or similar flexible synthetic material and is used to provide plants with either frost protection or increased heat retention. A temporary growing structure is not considered a building for purposes of this code.

The provisions of this code do not apply to the construction, alteration, or repair of temporary worker housing except as provided by rule adopted under chapter 70.114A RCW or chapter 37, Laws of 1998 (2SSB 6168). "Temporary worker housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an employer for his or her employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy, and includes "labor camps" under RCW 70.54.110.

The manufacture, storage, handling, sale and use of fireworks shall be governed by chapter 70.77 RCW and by chapter 212-17 WAC and local ordinances consistent with chapter 212-17 WAC.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-007, filed 11/27/19, effective 7/1/20. Statutory Authority: Chapter 19.27 RCW and RCW 19.27.031. WSR 17-10-028, § 51-54A-007, filed 4/25/17, effective 5/26/17. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-05-065, § 51-54A-007, filed 2/12/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-007, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 21-11-066, filed 5/14/21, effective 6/14/21)

WAC 51-54A-008 Implementation. The *International Fire Code* adopted by chapter 51-54A WAC shall become effective in all counties and cities of this state on ~~((February 1, 2021))~~ July 1, 2023.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-11-066, § 51-54A-008, filed 5/14/21, effective 6/14/21; WSR 19-24-058, § 51-54A-008, filed 11/27/19, effective 7/1/20; WSR 16-03-055, § 51-54A-008, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-008, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-0105 Permits.

~~((SECTION 105 SCOPE AND GENERAL REQUIREMENTS))~~

~~((105.6.30))~~ **105.5.32 Mobile food preparation vehicles.** A permit is required for mobile preparation vehicles equipped with appliances that produce smoke or grease-laden vapors or utilize LP-gas systems or CNG systems.

~~((105.7.26))~~ **105.6.25 Underground supply piping for automatic sprinkler system.** A construction permit is required for the installation of the portion of the underground water supply piping, public or private, supplying a water-based fire protection system. The permit shall apply to all underground piping and appurtenances downstream of the first control valve on the lateral piping or service line from the distribution main to one foot above finished floor of the facility with the fire protection system. Maintenance performed in accordance with this code is not considered to be a modification and does not require a permit.

EXCEPTIONS: 1. When the underground piping is installed by the aboveground piping contractor.
 2. Underground piping that serves a fire protection system installed in accordance with NFPA 13D.

105.5.14.1 Lithium batteries. An operational permit is required for an accumulation of more than 15 cubic feet (0.42 m) of lithium-ion and lithium metal batteries, where required by Section 322.1.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-0105, filed 1/20/21, effective 2/20/21; WSR 19-24-058, § 51-54A-0105, filed 11/27/19, effective 7/1/20. Statutory Authority: Chapter 19.27 RCW and RCW 19.27.031. WSR 17-10-028, § 51-54A-0105, filed 4/25/17, effective 5/26/17. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-0105, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0105, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-0202 General definitions.

SECTION 202 GENERAL DEFINITIONS

ADULT FAMILY HOME. A dwelling, licensed by ((Washington)) the state of Washington department of social and health services, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services. An existing adult family home may provide services to up to eight adults upon approval from the department of social and health services under RCW 70.128.066 and in accordance with Section 903.

ALERT SIGNAL. A distinctive signal indicating the need for trained personnel and occupants to initiate a specific action, such as shelter-in-place.

ALERT SYSTEM. Approved devices, equipment and systems or combinations of systems used to transmit or broadcast an alert signal.

ASSISTED LIVING FACILITY. A home or other institution, licensed by the state of Washington, providing housing, basic services and assuming general responsibility for the safety and well-being of residents under chapters 18.20 RCW and 388-78A WAC. These facilities may provide care to residents with symptoms consistent with dementia requiring additional security measures.

CHILD CARE. For the purposes of these regulations, child care is the care of children during any period of a 24-hour day.

CHILD CARE, FAMILY HOME. A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of ((twelve)) 12 or fewer children, including children who reside at the home.

CLUSTER. Clusters are multiple *portable school classrooms* separated by less than the requirements of the building code for separate buildings.

COVERED BOAT MOORAGE. A pier or system of floating or fixed access ways to which vessels on water may be secured and any portion of which are covered by a roof.

ELECTRICAL CODE. The National Electrical Code, promulgated by the National Fire Protection Association, as adopted by rule or local ordinance under the authority of chapter 19.28 RCW.

EMERGENCY RESPONDER COMMUNICATIONS ENHANCEMENT SYSTEM (ERCES). An infrastructure solution installed within a building to enhance the communications capabilities for first responders that utilizes solutions such as a signal booster, voting receiver, base station, or other technology capable of enhancing the radio frequency (RF) to ensure effective public safety communications.

FREQUENCY. The particular waveband at which a communications system broadcasts or transmits.

FREQUENCY LICENSE HOLDER(S). The person(s) or entity(s) that are issued the license from the frequency licensing authority of United States or other country of jurisdiction for the frequencies being used by both the in-

building emergency responder communications enhancement system and the emergency services communications system that it enhances.

FREQUENCY LICENSING AUTHORITY. The government authority in a country or territory that issues frequency licenses for the use of communications frequencies by authorized entities and individuals.

GRAVITY-OPERATED DROP OUT VENTS. Automatic smoke and heat vents containing heat-sensitive glazing designed to shrink and drop out of the vent openings when exposed to fire.

HOSPICE CARE CENTER. A building or portion thereof used on a 24-hour basis for the provision of hospice services to terminally ill inpatients.

MOBILE FOOD ((~~PREPERATION~~ {~~PREPARATION~~}) PREPARATION VEHICLE. Mobile food preparation vehicles that are equipped with appliances that produce smoke or grease-laden vapors or utilize LP-gas systems or CNG systems for the purpose of preparing and serving food to the public. Vehicles intended for private recreation shall not be considered mobile food preparation vehicles.

MOTOR VEHICLE. Includes, but not limited to, a vehicle, machine, tractor, trailer or semitrailer, or any combination thereof, propelled or drawn by mechanical power and designed for use upon the highways in the transportation of passengers or property. It does not include a vehicle, locomotive or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service. The term "motor vehicle" also includes freight containers or cargo tanks used, or intended for use, in connection with motor vehicles.

NIGHTCLUB. An A-2 Occupancy use under the 2006 International Building Code in which the aggregate area of concentrated use of unfixed chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds ((~~three hundred fifty~~)) 350 square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls.

OCCUPANCY CLASSIFICATION. For the purposes of this code, certain occupancies are defined as follows:

Institutional Group I-1. Institutional Group I-1 occupancy shall include buildings, structures or portions thereof for more than 16 persons excluding staff, who reside on a 24-hour basis in a supervised environment and receive custodial care. Buildings of Group I-1 shall be classified as one of the occupancy conditions indicated below. This group shall include, but not be limited to, the following: Assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities licensed under chapter 246-337 WAC shall be classified as Group I-1, Condition 2.

Group I-2. This occupancy shall include buildings and structures used for medical care on a 24-hour basis for more than five persons who are incapable of self-preservation. This group shall include, but not be limited to, the following:

- Foster care facilities
- Detoxification facilities
- Hospice care centers
- Hospitals
- Nursing homes

Psychiatric hospitals

Five or fewer persons receiving care. A facility such as the above with five or fewer persons receiving such care shall be classified as Group R-3 or shall comply with the *International Residential Code* provided an *automatic sprinkler system* is installed in accordance with Section 903.3.1.3 or with Section P2904 of the *International Residential Code*.

Family home child care. Family home child care licensed by Washington state for the care of (~~twelve~~) 12 or fewer children shall be classified as Group R-3 or shall comply with the *International Residential Code*.

Adult care facility. A facility that provides accommodations for less than 24 hours for more than (~~five~~) 5 unrelated adults and provides supervision and personal care services shall be classified as Group I-4.

EXCEPTION: Where the occupants are capable of responding to an emergency situation without physical assistance from the staff, the facility shall be classified as Group R-3.

Child care facility. Child care facilities that provide supervision and personal care on a less than 24-hour basis for more than (~~five~~) 5 children 2 1/2 years of age or less shall be classified as Group I-4.

EXCEPTIONS: 1. A child day care facility that provides care for more than five but no more than 100 children 2 1/2 years or less of age, where the rooms in which the children are cared for are located on a level of exit discharge serving such rooms and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.
2. Family child care homes licensed by Washington state for the care of 12 or fewer children shall be classified as Group R-3.

Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the *International Residential Code*. This group shall include:

R-1 Residential occupancies containing sleeping units where the occupants are primarily transient in nature, including:

Boarding houses (transient) with more than 10 occupants

Congregate living facilities (transient) with more than 10 occupants

Hotels (transient)

Motels (transient)

R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including:

Apartment houses

Boarding houses (nontransient) with more than 16 occupants

Congregate living facilities (nontransient) with more than 16 occupants

Convents

Dormitories

Fraternities and sororities

Hotels (nontransient)

Live/work units

Monasteries

Motels (nontransient)

Vacation timeshare properties

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, or I, including:

Buildings that do not contain more than two dwelling units.

Boarding houses (nontransient) with 16 or fewer occupants.

Boarding houses (transient) with 10 or fewer occupants.

Care facilities that provide accommodations for five or fewer persons receiving care.

Congregate living facilities (nontransient) with 16 or fewer occupants.

Congregate living facilities (transient) with 10 or fewer occupants.

Care facilities within a dwelling. Care facilities for five or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the *International Residential Code* provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or with Section P2904 of the *International Residential Code*.

Adult family homes, family home child care. Adult family homes and family home child care facilities that are within a single-family home are permitted to comply with the *International Residential Code*.

Foster family care homes. Foster family care homes licensed by Washington state are permitted to comply with the *International Residential Code*, as an accessory use to a dwelling, for six or fewer children including those of the resident family.

R-4 Classification is not adopted. Any reference in this code to R-4 does not apply.

PORTABLE SCHOOL CLASSROOM. A prefabricated structure consisting of one or more rooms with direct exterior egress from the classroom(s). The structure is transportable in one or more sections, and is designed to be used as an educational space with or without a permanent foundation. The structure shall be capable of being demounted and relocated to other locations as needs arise.

POWERED MICROMOBILITY DEVICES. Motorized bicycles, motorized scooters, and other personal mobility devices powered by a rechargeable battery. The term does not include motor vehicles that are required to be registered with the department of motor vehicles for the state or jurisdiction.

RECALL SIGNAL. An electrically or mechanically operated signal used to recall occupants after an emergency drill or to terminate a shelter-in-place event that shall be distinct from any alarm or alert signal used to initiate an emergency plan, or other signals.

SHELTER-IN-PLACE. An emergency response used to minimize exposure of facility occupants to chemical or environmental hazards by taking refuge in predetermined interior rooms or areas where actions are taken to isolate the interior environment from the exterior hazard.

SPECIAL HAZARDS SUPPRESSION SYSTEMS. Wet-chemical systems (NFPA 17A), Dry-chemical systems (NFPA 17), Foam systems (NFPA 11), Carbon dioxide systems (NFPA 12), Halon systems (NFPA 12A), Clean-agent systems (NFPA 2001), Automatic water mist systems (NFPA 750), Aerosol fire-extinguishing systems (NFPA 2010), and Explosion prevention systems (NFPA 69).

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-0202, filed 1/20/21, effective 2/20/21; WSR 19-24-058, § 51-54A-0202, filed 11/27/19, effective 7/1/20; WSR 16-03-055, § 51-54A-0202, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-090, § 51-54A-0202, filed 12/1/14, effective 5/1/15. Statutory Authority: RCW 19.27A.031,

19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0202, filed 2/1/13, effective 7/1/13.]

NEW SECTION

WAC 51-54A-0301 Permits.

301.2 Permits. Permits shall be required as set forth in Section 105.5 for the activities or uses regulated by Sections 306, 307, 308, 315, 320, and 322.

[]

NEW SECTION

WAC 51-54A-0302 Definitions.

302.1 Definitions. The following terms are defined in Chapter 2:

3D PRINTER;
 ADDITIVE MANUFACTURING;
 BONFIRE;
 HI-BOY;
 HIGH-VOLTAGE TRANSMISSION LINE;
 MOBILE FOOD PREPARATION VEHICLE;
 OPEN BURNING;
 PORTABLE OUTDOOR FIREPLACE;
 POWERED INDUSTRIAL TRUCK;
 RECREATIONAL FIRE;
 SKY LANTERN.

[]

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-0308 Open flames.

~~((308.1.4 Open-flame cooking devices. This section is not adopted.))~~

308.1.7 Religious ceremonies. Participants in religious ceremonies shall not be precluded from carrying hand-held candles. See RCW 19.27.031(3).

308.1.7.1 Aisles and exits. Candles shall be prohibited in areas where occupants stand, or in an aisle or exit.

EXCEPTION: Candles used in religious ceremonies.

308.1.9 Decorative open flame tables. Gas-fired portable or fixed open flame fire tables and fireplaces are required to be provided with ~~((fire code official))~~ approved ~~((design or))~~ protection devices to prevent occupants from using flame, and from flame being exposed to combustible material. A fire extinguisher shall be located within 75 feet of travel distance or ~~((a distance))~~ as approved ~~((by the fire code official))~~. Where located indoors, the supply gas valve ~~((will))~~

shall be interlocked with building fire alarm and/or fire sprinklers, where provided.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-0308, filed 1/20/21, effective 2/20/21; WSR 16-03-055, § 51-54A-0308, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0308, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-0314 Indoor displays.

~~((314.1 General. Indoor displays constructed within any occupancy shall comply with Sections 314.2 through 314.4.~~

~~**314.2 Fixtures and displays.** Fixtures and displays of goods for sale to the public shall be arranged so as to maintain free, immediate and unobstructed access to exits as required by Chapter 10.~~

~~**314.3 Highly combustible goods.** The display of highly combustible goods including, but not limited to, fireworks, flammable or combustible liquids, liquefied flammable gases, oxidizing materials, pyroxylin plastics and agricultural goods, in main exit access aisles, corridors, covered and open malls, or within 5 feet (1524 mm) of entrances to exits and exterior exit doors is prohibited where a fire involving such goods would rapidly prevent or obstruct egress.))~~

~~**314.4 Vehicles.** Liquid- or gas-fueled vehicles, boats, aircraft or other motorcraft shall not be located indoors except as follows:~~

~~1. The engine starting system is made inoperable(~~(7)~~) or ignition batteries are disconnected except where the fire code official requires that the batteries remain connected to maintain safety features.~~

~~2. Fuel in fuel tanks does not exceed (~~one-quarter tank or 5 gallons (19 L) (whichever is least).~~) any of the following:~~

~~2.1. Class I, II, and III liquid fuel does not exceed one-quarter tank or 5 gallons (19 L), whichever is less.~~

~~2.2. LP gas does not exceed one-quarter tank or 6.6 gallons (25 L), whichever is less.~~

~~2.3. CNG does not exceed one-quarter tank or 630 cubic feet (17.8 m³), whichever is less.~~

~~2.4. Hydrogen does not exceed one-quarter tank or 2000 cubic feet (0.57 m³), whichever is less.~~

~~3. Fuel tanks and fill openings are closed and sealed to prevent tampering.~~

~~4. Vehicles, aircraft, boats or other motorcraft equipment are not fueled or defueled within the building.~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-0314, filed 1/20/21, effective 2/20/21; WSR 19-24-058, § 51-54A-0314, filed 11/27/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-0315 ((General storage-)) Reserved.

**((Table 315.7.6(1)
Separation Distance Between Pallet
Stack and Building**

Wall Construction	Opening Type	Wood Pallet Separation Distance (feet)		
		≤50 Pallets	51 to 200 Pallets	>200 Pallets
Masonry	None	2	2	2
Masonry	Fire-rated glazing with open sprinklers	2	5	20
Masonry	Fire-rated glazing	5	10	20
Masonry	Plain-glass with open sprinklers	5	10	20
Nonecombustible	None	5	10	20
Wood with open sprinklers	=====	5	10	20
Wood	None	15	30	90
Any	Plain-glass	15	30	90

For SI: 1 foot = 304.8 mm))

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-0315, filed 11/27/19, effective 7/1/20.]

NEW SECTION

WAC 51-54A-0321 Artificial combustible vegetation.

321.1 Artificial combustible vegetation on roofs and near buildings.

Artificial combustible vegetation exceeding 6 feet (1829 mm) in height and permanently installed outdoors within 5 feet (1524 mm) of a building or on the roof of a building shall comply with Section 807.4.1. The placement of artificial combustible vegetation shall also comply with Sections 806.3 and 807.4.2.

- EXCEPTIONS:
1. Artificial decorative vegetation located more than 30 feet (9144 mm) from the exterior wall of a building.
 2. Artificial decorative vegetation used at structures regulated by the International Residential Code.

[]

NEW SECTION

WAC 51-54A-0322 General.

322.1 General. The storage of lithium-ion and lithium metal batteries shall comply with Section 322.

- EXCEPTIONS:
1. New or refurbished batteries installed in the equipment, devices, or vehicles they are designed to power.
 2. New or refurbished batteries packed for use with the equipment, devices, or vehicles they are designed to power.
 3. Batteries in original retail packaging that are rated at 300 watt-hours or less for lithium-ion batteries or contain 25 grams or less of lithium metal for lithium metal batteries.

4. Temporary storage of batteries or battery components during the battery manufacturing process prior to completion of final quality control checks.
5. Temporary storage of batteries during the vehicle manufacturing or repair process.

322.2 Permits. Permits shall be required for an accumulation of more than 15 cubic feet (0.42 m) of lithium-ion and lithium metal batteries, other than batteries listed in the exceptions to Section 322.1, as set forth in Section 105.5.14.1.

322.3 Fire safety plan. A fire safety plan shall be provided in accordance with Section 403.10.6. In addition, the fire safety plan shall include emergency response actions to be taken upon detection of a fire or possible fire involving lithium-ion or lithium metal battery storage.

322.4 Storage requirements. Lithium-ion and lithium metal batteries shall be stored in accordance with Section 322.4.1, 322.4.2, or 322.4.3, as applicable.

322.4.1 Limited indoor storage in containers. Not more than 15 cubic feet (0.42 m) of lithium-ion or lithium metal batteries shall be permitted to be stored in containers in accordance with the following:

1. Containers shall be open-top and constructed of noncombustible materials or shall be approved for battery collection.
2. Individual containers and groups of containers shall not exceed a capacity of 7.5 cubic feet (0.21 m).
3. A second container or group of containers shall be separated by not less than 3 feet (914 mm) of open space, or 10 feet (3048 mm) of space that contains combustible materials.
4. Containers shall be located not less than 5 feet (1524 mm) from exits or exit access doors.

322.4.2 Indoor storage areas. Indoor storage areas for lithium-ion and lithium metal batteries, other than those complying with Section 322.4.1, shall comply with Sections 322.4.2.1 through 322.4.2.6.

322.4.2.1 Technical opinion and report. Where required by the *fire code official* a technical opinion and report complying with Section 104.8.2 shall be prepared to evaluate the fire and explosion risks associated with the indoor storage area and to make recommendations for fire and explosion protection. The report shall be submitted to the fire code official and shall require the fire code official's approval prior to issuance of a permit. In addition to the requirements of Section 104.8.2, the technical opinion and report shall specifically evaluate the following:

1. The potential for deflagration of flammable gases released during a thermal runaway event.
2. The basis of design for an automatic sprinkler system or other approved fire suppression system. Such design basis shall reference relevant full-scale fire testing or another approved method of demonstrating sufficiency of the recommended design.

322.4.2.2 Construction requirements. Where indoor storage areas for lithium-ion and lithium metal batteries are located in a building with other uses, battery storage areas shall be separated from the remainder of the building by 2-hour rated fire barriers or horizontal assemblies. Fire barriers shall be constructed in accordance with Section 707 of the International Building Code, and horizontal assemblies shall be constructed in accordance with Section 711 of the International Building Code.

EXCEPTIONS: 1. Where battery storage is contained in one or more approved prefabricated portable structures providing a complete two-hour fire resistance rated enclosure, fire barriers and horizontal assemblies are not required.
2. Where battery storage is limited to new batteries in packaging that has been demonstrated to and approved by the fire code official as sufficient to isolate a fire in packaging to the package interior, fire barriers and horizontal assemblies are not required.

322.4.2.3 Fire protection systems. Indoor storage areas for lithium-ion and lithium metal batteries shall be protected by an automatic sprinkler system complying with Section 903.3.1.1 or an approved alternative fire suppression system. The system design shall be based on recommendations in the approved technical opinion and report required by Section 322.4.2.1.

322.4.2.4 Fire alarm systems. Indoor storage areas for lithium-ion and lithium metal batteries shall be provided with an approved automatic fire detection and alarm system complying with Section 907. The fire detection system shall use air-aspirating smoke detection, radiant energy-sensing fire detection, or both.

322.4.2.5 Explosion control. Where the approved technical opinion and report required by Section 322.4.2.1 recommends explosion control, explosion control complying with Section 911 shall be provided.

322.4.2.6 Reduced requirements for storage of partially charged batteries. Indoor storage areas for lithium-ion and lithium metal batteries with a demonstrated state of charge not exceeding 30 percent shall not be required to comply with Section 322.4.2.1, 322.4.2.2, or 322.4.2.5, provided that procedures for limiting and verifying that the state of charge will not exceed 30 percent have been approved.

322.4.3 Outdoor storage. Outdoor storage of lithium-ion or lithium metal batteries shall comply with Sections 322.4.3.1 through 322.4.3.3.

322.4.3.1 Distance from storage to exposures. Outdoor storage of lithium-ion or lithium metal batteries, including storage beneath weather protection in accordance with Section 414.6.1 of the International Building Code, shall comply with one of the following:

1. Battery storage shall be located not less than 20 feet (6096 mm) from any building, lot line, public street, public alley, public way, or means of egress.

2. Battery storage shall be located not less than 3 feet (914 mm) from any building, lot line, public street, public alley, public way, or means of egress, where the battery storage is separated by a 2-hour fire-resistance rated assembly without openings or penetrations and extending 5 feet (1524 mm) above and to the sides of the battery storage area.

3. Battery storage shall be located not less than 3 feet (914 mm) from any building, lot line, public street, public alley, public way, or means of egress, where batteries are contained in approved prefabricated portable structures providing a complete 2-hour fire-resistance rated enclosure.

322.4.3.2 Storage area size limits and separation. Outdoor storage areas for lithium-ion or lithium metal batteries, including storage beneath weather-protection in accordance with Section 414.6.1 of the International Building Code, shall not exceed 900 sq. ft (83.6 m). The height of battery storage in such areas shall not exceed 10 feet (3048 mm). Multiple battery storage areas shall be separated from each other by not less than 10 feet (3048 mm) of open space.

322.4.3.3 Fire detection. Outdoor storage areas for lithium-ion or lithium metal batteries, regardless of whether such areas are open,

under weather protection or in a prefabricated portable structure, shall be provided with an approved automatic fire detection and alarm system complying with Section 907. The fire detection system shall use radiant energy-sensing fire detection.

[]

NEW SECTION

WAC 51-54A-0323 Powered micromobility devices and powered industrial trucks.

323.1 General. Lithium-ion and lithium metal battery powered micromobility devices and powered industrial trucks shall be operated and maintained in accordance with this section.

EXCEPTIONS: 1. Storage, repair and charging in residential occupancies of powered mobility devices, provided that such devices are for personal use by its *owner*.
 2. Charging of a single powered mobility device in any occupancy by its *owner*.

323.1.1 Prohibited locations. The use of a residential occupancy as a business for the charging of commercially owned powered mobility devices or powered industrial trucks as part of a rental or sales service shall not be permitted.

323.2 Battery chargers and equipment. Powered micromobility devices and powered industrial trucks shall be charged in accordance with their listing and the manufacturer's instructions using only the original equipment manufacturer-supplied charging equipment or charging equipment in accordance with the listing and manufacturer's instructions.

323.3 Listing. Powered micromobility devices shall be listed and labeled in accordance with UL 2272 or UL 2849, as applicable.

323.4 Battery charging areas. Where approved, powered micromobility devices and powered industrial trucks shall be permitted to be charged in a room or area that complies with all of the following:

1. Only listed devices utilizing listed charging equipment shall be permitted to be charged.
2. Is provided with sufficient electrical receptacles to allow the charging equipment for each device to be directly connected to a receptacle. Extension cords and relocatable power taps shall not be used.
3. Storage of combustible materials, combustible waste or hazardous materials shall not be permitted.
4. The charging operation shall not be conducted in or obstruct any required means of egress.
5. Removable storage batteries shall not be stacked or charged in an enclosed cabinet unless the cabinet is specially designed and approved for such purpose.
6. A minimum distance of 18 inches (457.2 mm) shall be maintained between each removable storage battery during charging operations unless each battery is isolated from neighboring batteries by an approved fire-resistant material.
7. A minimum of 18 inches (457.2 mm) shall be maintained between the locations of the batteries on each powered micromobility devices or powered industrial truck during charging operations.

8. The indoor room or area shall be protected by a fire alarm system utilizing air-aspirating smoke detectors or radiant energy-sensing fire detection.

323.5 Fire safety plan. A fire safety plan shall be provided in accordance with Section 403.10.6. In addition, the fire safety plan shall include emergency response actions to be taken upon detection of a fire or possible fire involving lithium-ion or lithium metal battery storage.

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AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

WAC 51-54A-0402 Definitions. The following terms are defined in Chapter 2:

ALARM SIGNAL;

ALERT SIGNAL;

ALERT SYSTEM;

EMERGENCY EVACUATION DRILL;

LOCKDOWN;

SHELTER-IN-PLACE;

RECALL SIGNAL.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-0402, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0402, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

WAC 51-54A-0403 Emergency preparedness requirements.

~~((403.3.1 Fire evacuation plan. The fire safety and evacuation plan required by Section 404 shall include a description of special staff actions. This shall include a description for stabilizing patients in a staged evacuation or full evacuation in conjunction with the entire building, if part of a multitenant facility.))~~

~~((403.5.4))~~ **403.4.3 Assembly points and fire operations.** Assembly points shall not be in areas likely to be utilized for fire service operations.

~~((403.10.2))~~ **403.9.2 Group R-2 occupancies.** Group R-2 occupancies shall comply with Sections ~~((403.10.2.1 through 403.10.2.4))~~ 403.9.2.1 through 403.9.2.4.

~~((403.10.2.4))~~ **403.9.2.4 Group R-2 assisted living and residential care facilities.** Assisted living and residential care facilities li-

censed by the state of Washington shall comply with Section ((403.8.1)) 403.7.1 as required for Group I-1 Condition 2 occupancies. ((403.10.3)) **403.9.3 Group R-4 occupancies.** This section not adopted.

403.10.6 Buildings with lithium-ion or lithium metal battery storage. An approved fire safety plan in accordance with Section 404 shall be prepared and maintained for buildings with lithium-ion or lithium metal battery storage.

((403.12.3)) **403.11.3 Crowd managers for gatherings exceeding 1,000 people.** Where facilities or events involve a gathering of more than 1,000 people, or as required by the fire code official, crowd managers shall be provided in accordance with Sections ((403.12.3.1 through 403.12.3.3)) 403.11.3.1 through 403.11.3.3.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-0403, filed 1/16/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-0406 Employee training and response procedures.

406.1 General. Employees in the occupancies listed in Section 403 shall be trained in the emergency procedures described in their emergency plans. Training shall be based on these plans and as described in Sections 406.2 ((and ~~406.3~~ through ~~406.3.4~~)) through 406.3.4.

406.2 Frequency. Employees shall receive training in the contents of the emergency plans and their duties as part of new employee orientation and at least annually thereafter. Records shall be kept and made available to the fire code official upon request.

406.3 Employee training program. Employees shall be trained in fire prevention, evacuation, sheltering-in-place, and fire safety in accordance with Sections 406.3.1 through ((406.3.3) through 406.3.4) 406.3.4.

406.3.4 Emergency lockdown training. This section is not adopted.

406.3.5 Emergency shelter-in-place training. Where a facility has a shelter-in-place plan, employees shall be trained on the alert and recall signals, communication system, location of emergency supplies, the use of the incident notification and alarm system, and their assigned duties and procedures in the event of an alarm or emergency.

((~~406.4 Emergency lockdown training. This section is not adopted.~~))

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-0406, filed 1/20/21, effective 2/20/21. Statutory Authority: RCW 19.27.035 and 19.27.074. WSR 21-02-059, § 51-54A-0406, filed 1/4/21, effective 2/4/21. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-0406, filed 12/18/19, effective 7/1/20; WSR 16-03-055, § 51-54A-0406, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0406, filed 2/1/13, effective 7/1/13.]

NEW SECTION**WAC 51-54A-0501 General.**

501.3.1 Site safety plan. The owner or owner's authorized agent shall be responsible for the development, implementation, and maintenance of an approved written site safety plan in accordance with Section 3303.

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AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-0510 Emergency responder (~~radio~~) communication coverage.

510.1 Emergency responder communication coverage in new buildings. Approved in-building, emergency responder communications enhancement system (ERCES) for emergency responders shall be provided in all new buildings. In-building ERCES within the building shall be based on the existing coverage levels of the public safety communication systems utilized by the jurisdiction, measured at the exterior of the building. The two-way emergency responder communications coverage system where required, shall be of a type determined by the fire code official and the frequency license holder(s). This section shall not require improvement of the existing public safety communication systems.

EXCEPTIONS:

1. Where approved by the building official and the fire code official, a wired communication system in accordance with Section 907.2.13.2 shall be permitted to be installed or maintained instead of an approved communication coverage system.
2. Where it is determined by the fire code official that the communication coverage system is not needed.
3. In facilities where emergency responder communication coverage is required and such systems, components or equipment required could have a negative impact on the normal operations of that facility, the fire code official shall have the authority to accept an automatically activated emergency responder communication coverage system.

510.2 Emergency responder communication enhancement system in existing buildings. Existing buildings shall be provided with approved in-building, emergency responder communications enhancement system for emergency responders as required in Chapter 11.

510.3 Permit required. A construction permit for the installation of or modification to in-building, emergency responder communication enhancement systems and related equipment is required as specified in Section 105.6.4. Maintenance performed in accordance with this code is not considered a modification and does not require a permit.

510.4 Technical requirements. Equipment required to provide in-building, emergency responder communication enhancement system shall be listed in accordance with UL 2524. Systems, components and equipment required to provide the in-building, emergency responder communication enhancement system shall comply with Sections 510.4.1 through 510.4.2.8.

510.4.1 Emergency responder communication enhancement system signal strength. The building shall be considered to have an acceptable in-building, emergency responder communication enhancement system where signal strength measurements in 95 percent of all areas and 99 percent of areas designated as critical areas by the fire code official on each floor of the building meet the signal strength requirements in Sections 510.4.1.1 through 510.4.1.3.

510.4.1.1 Minimum signal strength into building. The minimum inbound signal strength shall be sufficient to provide usable voice communications throughout the coverage area as specified by the *fire code official*. The inbound signal level shall be a minimum of -95 dBm (~~throughout the coverage area~~) in 95 percent of the coverage area and 99 percent in critical areas and sufficient to provide not less than a delivered audio quality (DAQ) of 3.0 or an equivalent signal-to-interference-plus-noise ratio (SINR) applicable to the technology for either analog or digital signals.

510.4.2 System design. The in-building, emergency responder communication enhancement system shall be designed in accordance with Sections 510.4.2.1 through 510.4.2.8 and NFPA 1221.

510.4.2.1 Amplification systems and components. Buildings and structures that cannot support the required level of in-building, emergency responder communication system shall be equipped with systems and components to enhance the radio signals and achieve the required level of in-building, emergency responder communication enhancement system specified in Sections 510.4.1 through 510.4.1.3. In-building, emergency responder communication enhancement systems utilizing radio-frequency-emitting devices and cabling shall be approved by the fire code official. Prior to installation, all RF-emitting devices shall have the certification of the radio licensing authority and be suitable for public safety use.

510.4.2.2 Technical criteria. The fire code official shall maintain a document providing the specific technical information and requirements for the in-building, emergency responder communication enhancement system. This document shall contain, but not be limited to, the various frequencies required, the location of radio sites, the effective radiated power of radio sites, the maximum propagation delay in microseconds, the applications being used and other supporting technical information necessary for system design.

510.4.2.3 Standby power. In-building, emergency responder communication enhancement systems coverage systems shall be provided with dedicated standby batteries or provided with 2-hour standby batteries and connected to the facility generator power system in accordance with Section 1203. The standby power supply shall be capable of operating the in-building, emergency responder communication enhancement system at 100 percent system capacity for a duration of not less than 12 hours.

510.4.2.4 Signal booster requirements. If used, signal boosters shall meet the following requirements:

1. All signal booster components shall be a National Electrical Manufacturer's Association (NEMA) 4, (~~IP65-type~~) IP66-type water-proof cabinet or equivalent.

EXCEPTION: Listed battery systems that are contained in integrated battery cabinets.

2. Battery systems used for the emergency power source shall be contained in a NEMA 3R or higher-rated cabinet, IP65-type waterproof cabinet or equivalent.

EXCEPTION: Listed battery systems that are contained in integrated battery cabinets.

3. Equipment shall have FCC or other radio licensing authority certification and be suitable for public safety use prior to installation.

4. Where a donor antenna exists, isolation shall be maintained between the donor antenna and all inside antennas to not less than 20 dB greater than the system gain under all operating conditions.

5. Bi-directional amplifiers ((~~BDAs~~) active RF emitting devices used in emergency responder radio coverage systems shall have oscillation prevention built in oscillation detection and control circuitry)) (BDA) used for in-building, emergency responder communication enhancement systems shall be fitted with anti-oscillation detection and control circuitry and per-channel AGC.

6. The installation of amplification systems or enhancement systems that operate on or provide the means to cause interference on any in-building, emergency responder ((radio coverage)) communication enhancement system network((s)) shall be coordinated and approved by the fire code official.

7. Only channelized signal boosters shall be permitted.

EXCEPTION: Broadband BDAs may be utilized when specifically authorized in writing by the frequency license holder.

510.4.2.5 System monitoring. The in-building, emergency responder communication enhancement system shall include automatic supervisory and trouble signals that are monitored by a supervisory service and are annunciated by the fire alarm system in accordance with NFPA 72. The following conditions shall be separately annunciated by the fire alarm system, or, if the status of each of the following conditions is individually displayed on a dedicated panel on the in-building, emergency responder communication enhancement system, a single automatic supervisory signal may be annunciated on the fire alarm system indicating deficiencies of the in-building, emergency responder communication enhancement system:

1. Loss of normal AC power supply.
2. System battery charger(s) failure.
3. Malfunition of the donor antenna(s).
4. Failure of active RF-emitting device(s).
5. Low-battery capacity at 70 percent reduction of operating capacity.
6. Active system component malfunction.
7. Malfunition of the communications link between the fire alarm system and the in-building, emergency responder communication enhancement system.
8. Oscillation of active RF-emitting device(s).

510.4.2.6 Additional frequencies and change of frequencies. The in-building, emergency responder communication coverage enhancement system shall be capable of modification or expansion in the event frequency changes are required by the FCC or other radio licensing authority, or additional frequencies are made available by the FCC or other radio licensing authority.

510.4.2.7 Design documents. The fire code official shall have the authority to require "as-built" design documents and specifications for in-building, emergency responder communication enhancement systems. The documents shall be in a format acceptable to the fire code official.

510.4.2.8 Radio communication antenna density. Systems shall be engineered to minimize the near-far effect. In-building, emergency responder communication enhancement system designs shall include sufficient antenna density to address reduced gain conditions.

EXCEPTION: Systems where all portable devices within the same band use active power control features.

510.5 Installation requirements. The installation of the in-building, emergency responder communication enhancement system shall be in accordance with NFPA 1221 and Sections 510.5.1 through 510.5.7.

510.5.1 Mounting of the donor antenna(s). To maintain proper alignment with the system designed donor site, donor antennas shall be permanently affixed on the highest possible position on the building or where approved by the fire code official. A clearly visible sign stating "MOVEMENT OR REPOSITIONING OF THIS ANTENNA IS PROHIBITED WITHOUT APPROVAL FROM THE FIRE CODE OFFICIAL." shall be posted. The antenna installation shall be in accordance with the applicable requirements in the *International Building Code* for weather protection of the building envelope.

510.5.3 Minimum qualifications of personnel. The minimum qualifications of the system designer and lead acceptance test personnel shall include both of the following:

1. A valid FCC-issued general radio telephone operators license.
2. Certification of in-building system training issued by an approved organization or approved school, or a certificate issued by the manufacturer of the equipment being installed.

((510.5.3)) 510.5.4 Acceptance test procedure. Where an in-building emergency responder (~~radio coverage~~) communication enhancement system is required, and upon completion of installation, the building owner shall have the radio system tested to verify that two-way coverage on each floor of the building is (~~not less than 95 percent~~) in accordance with Section 510.4.1. The test procedure shall be conducted as follows:

1. Each floor of the building shall be divided into a grid of 20 approximately equal test areas, with a maximum test area size of 6,400 square feet. Where the floor area exceeds 128,000 square feet, the floor shall be divided into as many approximately equal test areas as needed, such that no test area exceeds the maximum square footage allowed for a test area.

2. The test shall be conducted using a calibrated portable radio of the latest brand and model used by the agency talking through the agency's radio communications system or equipment approved by the fire code official.

3. Coverage testing of signal strength shall be conducted using a calibrated spectrum analyzer for each of the test grids. A diagram of this testing shall be created for each floor where coverage is provided, indicating the testing grid used for the test in Section 510.5.4(1), and including signal strengths and frequencies for each test area. Indicate all critical areas.

4. Functional talk-back testing shall be conducted using two calibrated portable radios of the latest brand and model used by the agency's radio communications system or other equipment approved by the fire code official. Testing shall use digital audible quality (DAQ) metrics, where a passing result is a DAQ of 3 or higher. Communications between handsets shall be tested and recorded in the grid square diagram required by Section 510.5.3(2); each grid square on each floor; between each critical area and a radio outside the building; between each critical area and the fire command center or fire alarm control panel; between each landing in each stairwell and the fire command center or fire alarm panel.

5. Failure of more than ((one)) 5 percent of the test areas on any floor shall result in failure of the test.

EXCEPTION: Critical areas shall be provided with 99 percent floor area coverage.

((4.-)) 6. In the event that two of the test areas fail the test, in order to be more statistically accurate, the floor shall be permitted to be divided into 40 equal test areas. Failure of not more than two nonadjacent test areas shall not result in failure of the test. If the system fails the 40 area test, the system shall be altered to meet the 95 percent coverage requirement.

((5.-)) 7. A test location approximately in the center of each test area shall be selected for the test, with the radio enabled to verify two-way communications to and from the outside of the building through the public agency's radio communications system. Once the test location has been selected, that location shall represent the entire test area. Failure in the selected test location shall be considered to be a failure of that test area. Additional test locations shall not be permitted.

((6.-)) 8. The gain values of all amplifiers shall be measured and the test measurement results shall be kept on file with the building owner so that the measurements can be verified during annual tests. In the event that the measurement results become lost, the building owner shall be required to rerun the acceptance test to reestablish the gain values.

((7.-)) 9. As part of the installation, a spectrum analyzer or other suitable test equipment shall be utilized to ensure spurious oscillations are not being generated by the subject signal booster. This test shall be conducted at the time of installation and at subsequent annual inspections.

~~((8. Systems incorporating Class B signal booster devices or Class B broadband fiber remote devices))~~ 10. Systems shall be tested using two portable radios simultaneously conducting subjective voice quality checks. One portable radio shall be positioned not greater than 10 feet (3048 mm) from the indoor antenna. The second portable radio shall be positioned at a distance that represents the farthest distance from any indoor antenna. With both portable radios simultaneously keyed up on different frequencies within the same band, subjective audio testing shall be conducted and comply with DAQ levels as specified in Sections 510.4.1.1 and 510.4.1.2.

11. Documentation maintained on premises. At the conclusion of the testing, and prior to issuance of the building certificate of occupancy, the building owner or owner's representative shall place a copy of the following records in the Distributed Antenna System enclosure or the building engineer's office. The records shall be available to the fire code official and maintained by the building owner for the life of the system:

a. A certification letter stating that the emergency responder enhancement coverage system has been installed and tested in accordance with this code, and that the system is complete and fully functional.

b. The grid square diagram created as part of testing in Sections 510.5.3(2) and 510.5.3(3).

c. Data sheets and/or manufacturer specifications for the emergency responder enhancement coverage system equipment; back up battery; and charging system (if utilized).

d. A diagram showing device locations and wiring schematic.

e. A copy of the electrical permit.

510.5 Installation requirements. The installation of the public safety radio coverage system shall be in accordance with NFPA 1221 and Sections 510.5.1 through ((510.5.5)) 510.5.7.

510.5.5 (~~Mounting of the donor antenna(s)~~). ~~To maintain proper alignment with the system designed donor site, donor antennas shall be permanently affixed on the highest possible position on the building or where approved by the fire code official. A clearly visible sign stating "movement or repositioning of this antenna is prohibited without approval from the fire code official." The antenna installation shall be in accordance with the applicable requirements in the International Building Code for weather protection of the building envelope.)~~ **FCC compliance.** The in-building, emergency responder communication enhancement system installation and components shall comply with all applicable federal regulations including, but not limited to, FCC 47 C.F.R. Part 90.219.

510.5.6 Wiring. The backbone, antenna distribution, radiating, or any fiber optic cables shall be rated as plenum cables. The backbone cables shall be connected to the antenna distribution, radiating, or copper cables using hybrid coupler devices of a value determined by the overall design. Backbone cables shall be routed through an enclosure that matches the building's required fire-resistance rating for shafts or interior exit stairways. The connection between the backbone cable and the antenna cables shall be made within an enclosure that matches the building's fire-resistance rating for shafts or interior exit stairways, and passage of the antenna distribution cable in and out of the enclosure shall be protected as a penetration per the International Building Code.

510.5.7 Identification signs. Emergency responder enhancement systems shall be identified by an approved sign located on or near the fire alarm control panel or other approved location stating "This building is equipped with an Emergency Responder Enhancement Coverage System. Control Equipment located in or as approved by the Fire Code Official." A sign stating "Emergency Responder Enhancement Coverage System Equipment" shall be placed on or adjacent to the door of the room containing the main system components.

510.6 Maintenance. The in-building, emergency responder communication enhancement system shall be maintained operational at all times in accordance with Sections 510.6.1 through 510.6.4.

510.6.1 Testing and proof of compliance. The owner of the building or owner's authorized agent shall have the in-building, two-way emergency responder (~~radio~~) communication coverage system inspected and tested annually or where structural changes occur including additions or remodels that could materially change the original field performance tests. Testing shall consist of the following items 1. through 7.:

1. In-building coverage test as (~~described in Section 510.5.3 or as required by the fire code official.~~) required by the fire code official as described in Section 510.5.4 or 510.6.1.1.

EXCEPTION: Group R Occupancy annual testing is not required within dwelling units.

2. Signal boosters shall be tested to verify that the (~~gain~~) gain/output level is the same as it was upon initial installation and acceptance or set to optimize the performance of the system.

3. Backup batteries and power supplies shall be tested under load of a period of 1 hour to verify that they will properly operate during an actual power outage. If within the 1-hour test period the battery exhibits symptoms of failure, the test shall be extended for additional 1-hour periods until the integrity of the battery can be determined.

4. All other active components shall be checked to verify operation within the manufacturers specification.

5. If a fire alarm system is present in the building, a test shall be conducted to verify that the fire alarm system is properly supervising the emergency responder communication coverage system as required in 510.4.2.5. The test is performed by simulating alarms to the fire alarm control panel. The certifications in 510.5.2 are sufficient for the personnel performing this testing.

6. At the conclusion of testing, a record of the inspection and maintenance along with an updated grid diagram of each floor showing tested strengths in each grid square and each critical area shall be added to the documentation maintained on the premises in accordance with Section 510.5.3.

7. At the conclusion of the testing, a report, which shall verify compliance with Section ((510.5.3)) 510.6.1, shall be submitted to the fire code official.

510.6.1.1 Alternative in-building coverage test. When the comprehensive test documentation required by Section 510.5.3 is available, or the most recent full five-year test results are available if the system is older than six years, the in-building coverage test required by the fire code official in Section 510.6.1(1), may be conducted as follows:

1. Functional talk-back testing shall be conducted using two calibrated portable radios of the latest brand and model used by the agency's radio communications system or other equipment approved by the fire code official. Testing shall use digital audible quality (DAQ) metrics, where a passing result is a DAQ of 3 or higher. Communications between handsets in the following locations shall be tested: Between the fire command center or fire alarm control panel and a location outside the building; between the fire alarm control panel and each landing in each stairwell.

2. Coverage testing of signal strength shall be conducted using a calibrated spectrum analyzer for:

a. Three grid areas per floor. The three grid areas to be tested on each floor are the three grid areas with poorest performance in the acceptance test or the most recent annual test, whichever is more recent;

b. Each of the critical areas identified in acceptance test documentation required by Section 510.5.3, or as modified by the fire code official; and

c. One grid square per serving antenna.

3. The test area boundaries shall not deviate from the areas established at the time of the acceptance test, or as modified by the fire code official. The building shall be considered to have acceptable emergency responder communication coverage when the required signal strength requirements in Sections 510.4.1.1 and 510.4.1.2 are located in 95 percent of all areas on each floor of the building and 99 percent in critical areas, and any nonfunctional serving antenna are repaired to function within normal ranges. If the documentation of the acceptance test or most recent previous annual test results are not available or acceptable to the fire code official, the radio coverage verification testing described in Section 510.5.3 shall be conducted.

510.6.2 Additional frequencies. The building owner shall modify or expand the in-building, emergency responder communication enhancement system at their expense in the event frequency changes are required by the FCC or other radio licensing authority, or additional frequencies

are made available by the FCC or other radio licensing authority. Prior approval of an in-building, emergency responder communication enhancement system on previous frequencies does not exempt this section.

510.6.3 Nonpublic safety system. Where other nonpublic safety amplification systems installed in buildings reduce the performance or cause interference with the in-building, emergency responder communication enhancement system, the nonpublic safety amplification system shall be corrected or removed.

510.6.4 Field testing. Agency personnel shall have the right to enter onto the property at any reasonable time to conduct field testing to verify the required level of radio coverage or to disable a system adversely impacting the emergency responder communication enhancement system in the region.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-0510, filed 1/20/21, effective 2/20/21; WSR 19-24-058, § 51-54A-0510, filed 11/27/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-0605 ((Reserved.)) Fuel fired appliances.

605.4.1.1 Approval. Outdoor fuel oil storage tanks shall be in accordance with UL 142, UL 142A, or UL 2085.

605.4.2.1 Approval. Indoor fuel oil storage tanks shall be in accordance with UL 80, UL 142, UL 142A, or UL 2085.

605.4.2.2 Quantity limits. One or more fuel oil storage tanks containing Class II or III combustible liquid shall be permitted in a building. The aggregate capacity of all tanks shall not exceed the following:

1. 660 gallons (2,498 L) in unsprinklered buildings, where stored in a tank complying with UL 80, UL 142, UL 142A, or UL 2085.

2. 1,320 gallons (4,996 L) in buildings equipped with an automatic sprinkler system in accordance with Section 903.3.1.1, where stored in a tank complying with UL 142 or UL 142A. The tank shall be listed as a secondary containment tank, and the secondary containment shall be monitored visually or automatically.

3. 3,000 gallons (11,356 L) in buildings equipped with an automatic sprinkler system in accordance with Section 903.3.1.1, where stored in protected above-ground tanks complying with UL 2085 and Section 5704.2.9.7. The tank shall be listed as a secondary containment tank, as required by UL 2085, and the secondary containment shall be monitored visually or automatically.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-0605, filed 12/18/19, effective 7/1/20. Statutory Authority: RCW 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 17-18-060, § 51-54A-0605, filed 9/1/17, effective 10/2/17. Statutory Authority: Chapter 19.27 RCW and RCW 19.27.031. WSR 17-10-028, § 51-54A-0605, filed 4/25/17, effective 5/26/17. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-0605, filed 1/16/16, effective 7/1/16. Statutory Authority: Chapters 19.27A and

34.05 RCW. WSR 13-24-076, § 51-54A-0605, filed 12/2/13, effective 4/1/14. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0605, filed 2/1/13, effective 7/1/13.]

NEW SECTION

WAC 51-54A-0606 Section 606—Commercial cooking equipment and systems.

606.2 Where required. A Type I hood shall be installed at or above all commercial cooking appliances and domestic cooking appliances used for commercial purposes that produce grease laden vapors.

- EXCEPTIONS:
1. Factory-built commercial exhaust hoods that are listed and labeled in accordance with UL 710, and installed in accordance with Section 304.1 of the *International Mechanical Code*, shall not be required to comply with Sections 507.1.5, 507.2.3, 507.2.5, 507.2.8, 507.3.1, 507.3.3, 507.4, and 507.5 of the *International Mechanical Code*.
 2. Factory-built commercial cooking recirculating systems that are listed and labeled in accordance with UL 710B, and installed in accordance with Section 304.1 of the *International Mechanical Code*, shall not be required to comply with Sections 507.1.5, 507.2.3, 507.2.5, 507.2.8, 507.3.1, 507.3.3, 507.4, and 507.5 of the *International Mechanical Code*. Spaces in which such systems are located shall be considered to be kitchens and shall be ventilated in accordance with Table 403.3.1.1 of the *International Mechanical Code*. For the purpose of determining the floor area required to be ventilated, each individual appliance shall be considered as occupying not less than 100 square feet (9.3 m²).
 3. Where cooking appliances are equipped with integral down-draft exhaust systems and such appliances and exhaust systems are listed and labeled for the application in accordance with NFPA 96, a hood shall not be required at or above them.
 4. A Type I hood shall not be required for an electric cooking appliance where an approved testing agency provides documentation that the appliance effluent contains 5 mg/m³ or less of grease when tested at an exhaust flow rate of 500 cfm (0.236 m³/s) in accordance with UL 710B.
 5. A Type I hood shall not be required to be installed in an R-2 occupancy with not more than 16 residents.

606.2.1 Domestic cooking appliances used for commercial purposes. Domestic cooking appliances utilized for commercial purposes shall be provided with Type I, Type II, or residential hoods as required for the type of appliances and processes in accordance with Table 606.2.1 and Sections 507.2 and 507.3 of the *International Mechanical Code*.

**Table 606.2.1
Type of Hood Required for Domestic
Cooking Appliances in the Following
Spaces^{a, b}**

Type of Space	Type of Cooking	Type of Hood
Church	1. Boiling, steaming, and warming precooked food	Residential hood ^c or Type II hood
	2. Roasting, pan frying, and deep frying	Type I hood
Community or party room in apartment and condominium	1. Boiling, steaming, and warming precooked food	Residential hood ^c or Type II hood ^d
	2. Roasting, pan frying, and deep frying	Type I hood
Day care	1. Boiling, steaming, and warming precooked food	Residential hood ^c or Type II hood ^d

Type of Space	Type of Cooking	Type of Hood
	2. Roasting, pan frying, and deep frying	Type I hood
Dormitory, assisted living facility, nursing home	1. Boiling, steaming, and warming precooked food 2. Roasting, pan frying, and deep frying	Residential hood ^c or Type II hood Type I hood
Office lunch room	1. Boiling, steaming, and warming precooked food 2. Roasting, pan frying, and deep frying	Residential hood ^c or Type II hood ^d Type I hood

- a Commercial cooking appliances shall comply with Section 507.2 of the *International Mechanical Code*.
- b Requirements in this table apply to electric or gas fuel appliances only. Solid fuel appliances or charbroilers require Type I hoods.
- c Residential hood shall ventilate to the outside.
- d Type II hood required when more than one appliance is used.

606.3 Operations, inspection, and maintenance. Commercial cooking systems shall be operated, inspected, and maintained in accordance with Sections 606.3.1 through 606.3.4 and Chapter 12 of NFPA 96.

[]

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-0607 (~~(Section 607—Commercial kitchen hoods.)~~) Re-served.

~~(**[M]607.2 Where required.** A Type I hood shall be installed at or above all commercial cooking appliances and domestic cooking appliances used for commercial purposes that produce grease laden vapors.~~

- EXCEPTIONS:
- 1. Factory-built commercial exhaust hoods that are listed and labeled in accordance with UL 710, and installed in accordance with Section 304.1 of the *International Mechanical Code*, shall not be required to comply with Sections 507.1.5, 507.2.3, 507.2.5, 507.2.8, 507.3.1, 507.3.3, 507.4 and 507.5 of the *International Mechanical Code*.
 - 2. Factory-built commercial cooking recirculating systems that are listed and labeled in accordance with UL 710B, and installed in accordance with Section 304.1 of the *International Mechanical Code*, shall not be required to comply with Sections 507.1.5, 507.2.3, 507.2.5, 507.2.8, 507.3.1, 507.3.3, 507.4 and 507.5 of the *International Mechanical Code*. Spaces in which such systems are located shall be considered to be kitchens and shall be ventilated in accordance with Table 403.3.1.1 of the *International Mechanical Code*. For the purpose of determining the floor area required to be ventilated, each individual appliance shall be considered as occupying not less than 100 square feet (9.3 m²).
 - 3. Where cooking appliances are equipped with integral down-draft exhaust systems and such appliances and exhaust systems are listed and labeled for the application in accordance with NFPA 96, a hood shall not be required at or above them.
 - 4. A Type I hood shall not be required for an electric cooking appliance where an approved testing agency provides documentation that the appliance effluent contains 5 mg/m³ or less of grease when tested at an exhaust flow rate of 500 cfm (0.236 m³/s) in accordance with UL 710B.
 - 5. A Type I hood shall not be required to be installed in an R-2 occupancy with not more than 16 residents.

~~**607.2.1 Domestic cooking appliances used for commercial purposes.** Domestic cooking appliances utilized for commercial purposes shall be~~

provided with Type I, Type II, or residential hoods as required for the type of appliances and processes in accordance with Table 607.2.1 and Sections 507.2 and 507.3 of the *International Mechanical Code*.

**Table 607.2.1
Type of Hood Required for Domestic
Cooking Appliances in the Following
Spaces^{a, b}**

Type of Space	Type of Cooking	Type of Hood
Church	1. Boiling, steaming, and warming precooked food	Residential hood ^c or Type II hood
	2. Roasting, pan frying, and deep frying	Type I hood
Community or party room in apartment and condominium	1. Boiling, steaming, and warming precooked food	Residential hood ^c or Type II hood ^d
	2. Roasting, pan frying, and deep frying	Type I hood
Day care	1. Boiling, steaming, and warming precooked food	Residential hood ^c or Type II hood ^d
	2. Roasting, pan frying, and deep frying	Type I hood
Dormitory, assisted living facility, nursing home	1. Boiling, steaming, and warming precooked food	Residential hood ^c or Type II hood
	2. Roasting, pan frying, and deep frying	Type I hood
Office lunch room	1. Boiling, steaming, and warming precooked food	Residential hood ^c or Type II hood ^d
	2. Roasting, pan frying, and deep frying	Type I hood

- a Commercial cooking appliances shall comply with Section 507.2 of the *International Mechanical Code*.
- b Requirements in this table apply to electric or gas fuel appliances only. Solid fuel appliances or charbroilers require Type I hoods.
- c Residential hood shall ventilate to the outside.
- d Type II hood required when more than one appliance is used.

607.3 Operations, inspection, and maintenance. Commercial cooking systems shall be operated, inspected, and maintained in accordance with Sections 607.3.1 through 607.3.4 and Chapter 11 of NFPA 96.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-0607, filed 1/20/21, effective 2/20/21; WSR 20-01-162, § 51-54A-0607, filed 12/18/19, effective 7/1/20.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-0701 ((General.)) Reserved.

~~((701.6 Owner's responsibility. The owner shall maintain an inventory of all required fire-resistance-rated construction, construction installed to resist the passage of smoke and the construction included in Sections 703 through 707 and Sections 602.4.1 and 602.4.2 of the *International Building Code*. Such construction shall be visually inspected by the owner annually and properly repaired, restored or replaced where damaged, altered, breached or penetrated. Records of inspections and repairs shall be maintained. Where concealed, such elements shall not be required to be visually inspected by the owner unless the concealed space is accessible by the removal or movement of a panel, access door, ceiling tile or similar movable entry to the space.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-0701, filed 12/18/19, effective 7/1/20. Statutory Authority: RCW 19.27.031, 19.27.074 and chapter 19.27 RCW. WSR 19-02-086, § 51-54A-0701, filed 1/2/19, effective 7/1/19.]

AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

WAC 51-54A-0901 General.

901.4.2 Nonrequired fire protection systems and life safety systems. A fire protection and life safety system or portion thereof not required by this code or the *International Building Code* shall be allowed to be furnished for partial or complete protection provided such installed system meets the applicable requirements of this code and the *International Building Code*. Such systems or portion of system shall be provided with signage stating "NON-REQUIRED SYSTEM." Signage shall be durable and permanent in nature, with contrasting color and background, and with lettering of not less than 1 inch in height. Location of such signage shall be approved.

901.8.2 Removal of existing occupant-use hose lines. The fire code official is authorized to permit the removal of existing occupant-use hose lines where all of the following conditions exist:

1. Installation is not required by this code, the *International Building Code*, or a previously approved alternative method.
2. The hose line would not be utilized by trained personnel or the fire department.
3. The remaining outlets are compatible with local fire department fittings.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-0901, filed 1/16/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-0903 Automatic sprinkler systems.

903.2 Where required. Approved automatic sprinkler systems in new buildings and structures shall be provided in the locations described in Sections 903.2.1 through 903.2.12.

EXCEPTIONS:

1. Spaces or areas in telecommunications buildings used exclusively for telecommunications equipment, associated electrical power distribution equipment, batteries and standby engines, provided that those spaces or areas are equipped throughout with an automatic smoke detection system in accordance with Section 907.2 and are separated from the remainder of the building by not less than 1-hour fire barriers constructed in accordance with Section 707 of the *International Building Code* or not less than 2-hour horizontal assemblies constructed in accordance with Section 711 of the *International Building Code*, or both.
2. Bottom of the elevator hoistway in an enclosed and noncombustible elevator shaft.

903.2.1.3 Group A-3. An automatic sprinkler system shall be provided throughout stories containing Group A-3 occupancies and throughout all stories from the Group A-3 occupancy to and including the levels of exit discharge serving that occupancy where one of the following conditions exists:

1. The fire area exceeds 12,000 square feet (1115 m²).
2. The fire area has an occupant load of 300 or more.
3. The fire area is located on a floor other than a level of exit discharge serving such occupancies.

EXCEPTION: For fixed guideway transit and passenger rail system stations, an automatic sprinkler system shall be provided in accordance with Section 4901.

903.2.1.6 Assembly occupancies on roofs. Where an occupied roof has an assembly occupancy with an occupant load exceeding 100 for Group A-2, and 300 for other Group A occupancies, the building shall be equipped with an *automatic sprinkler system* in accordance with Section 903.3.1.1 or 903.3.1.2.

EXCEPTION: Open parking garages of Type I or Type II construction.

903.2.1.8 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code.

903.2.3 Group E. An automatic sprinkler system shall be provided for fire areas containing Group E occupancies where the fire area has an occupant load of 51 or more, calculated in accordance with Table ~~((1004.1.2))~~ 1004.5.

EXCEPTIONS:

1. Portable school classrooms with an occupant load of 50 or less calculated in accordance with Table ~~((1004.1.2))~~ 1004.5, provided that the aggregate area of any cluster of portable classrooms does not exceed 6,000 square feet (557 m²); and clusters of portable school classrooms shall be separated as required by the building code; or
2. Portable school classrooms with an occupant load from 51 through 98, calculated in accordance with Table ~~((1004.1.2))~~ 1004.5, and provided with two means of direct independent exterior egress from each classroom in accordance with Chapter 10, and one exit from each class room shall be accessible, provided that the aggregate area of any cluster of portable classrooms does not exceed 6,000 square feet (557 m²); and clusters of portable school classrooms shall be separated as required by the building code; or
3. Fire areas containing day care and preschool facilities with a total occupant load of 100 or less located at the level of exit discharge where every room in which care is provided has not fewer than one exit discharge door.

903.2.6 Group I. An *automatic sprinkler system* shall be provided throughout buildings with a Group I *fire area*.

EXCEPTIONS:

1. An *automatic sprinkler system* installed in accordance with Section 903.3.1.2 shall be permitted in Group I-1 Condition 1 facilities.
2. Where new construction or additions house less than ~~((sixteen))~~ 16 persons receiving care, an automatic sprinkler system installed in accordance with Section 903.2.8.3 shall be permitted for Group I-1, Condition 2, assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities licensed under chapter 246-337 WAC.

903.2.6.1 Group I-4. An automatic sprinkler system shall be provided in fire areas containing Group I-4 occupancies where the fire area has an occupant load of 51 or more, calculated in accordance with Table ~~((1004.1.2))~~ 1004.5.

EXCEPTIONS:

1. An automatic sprinkler system is not required where Group I-4 day care facilities with a total occupant load of 100 or less, and located at the level of exit discharge and where every room where care is provided has not fewer than one exterior exit door.

2. In buildings where Group I-4 day care is provided on levels other than the level of exit discharge, an automatic sprinkler system in accordance with Section 903.3.1.1 shall be installed on the entire floor where care is provided, all floors between the level of care and the level of exit discharge and all floors below the level of exit discharge other than areas classified as an open parking garage.

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

- EXCEPTION: Group R-1 if all of the following conditions apply:
1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
 2. The Group R fire area is on only one story.
 3. The Group R fire area does not include a basement.
 4. The Group R fire area is no closer than 30 feet from another structure.
 5. Cooking is not allowed within the Group R fire area.
 6. The Group R fire area has an occupant load of no more than ((8)) eight.
 7. A hand-held (portable) fire extinguisher is in every Group R fire area.

~~((903.2.9 Group S-1. An automatic sprinkler system shall be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:~~

- ~~1. A Group S-1 fire area exceeds 12,000 square feet (1115 m²).~~
- ~~2. A Group S-1 fire area is located more than three stories above grade plane.~~
- ~~3. The combined area of all Group S-1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m²).~~
- ~~4. A Group S-1 fire area used for the storage of commercial motor vehicles where the fire area exceeds 5,000 square feet (464 m²).~~

~~**903.2.9.3 Group S-1 Upholstered furniture and mattresses.** An automatic sprinkler system shall be provided throughout a Group S-1 fire where the area used for the storage of upholstered furniture exceeds 2,500 square feet (232 m²).~~

EXCEPTION: Self-service storage facilities no greater than one story above grade plane where all storage spaces can be accessed directly from the exterior.)

903.2.8.5 Adult family home. An adult family home with a capacity of seven or eight that serves residents who require assistance during an evacuation must install an automatic sprinkler system that meets the requirements of NFPA 13D.

903.2.11.1.3 Basements. Where any portion of a basement is located more than 75 feet (22,860 mm) from openings required by Section 903.2.11.1, or where new walls, partitions or other similar obstructions are installed that increase the exit access travel distance to more than 75 feet, the basement shall be equipped throughout with an approved automatic sprinkler system.

903.2.11.5 Commercial cooking operations. An automatic sprinkler system shall be installed in commercial kitchen exhaust hood and duct systems where an automatic sprinkler system is used to comply with Section 904.

EXCEPTION: An automatic fire sprinkler system is not required to protect the ductwork that is in excess of 75 feet when the commercial kitchen exhaust hood is protected by a system listed per UL 300.

Table 903.2.11.6
Additional Required Fire Protection Systems

Note: Add section and subject to existing model code table.

<u>Section</u>	<u>Subject</u>
321.2	<u>Lithium-ion and lithium metal battery storage</u>

903.2.11.7 Relocatable buildings within buildings. Relocatable buildings or structures located within a building with an approved fire sprinkler system shall be provided with fire sprinkler protection within the occupiable space of the building and the space underneath the relocatable building.

EXCEPTIONS:

1. Sprinkler protection is not required underneath the building when the space is separated from the adjacent space by construction resisting the passage of smoke and heat and combustible storage will not be located there.
2. If the building or structure does not have a roof or ceiling obstructing the overhead sprinklers.
3. Construction trailers and temporary offices used during new building construction prior to occupancy.
4. Movable shopping mall kiosks with a roof or canopy dimension of less than 4 feet on the smallest side.

903.3.1.2 NFPA 13R sprinkler systems. Automatic sprinkler systems in Group R occupancies up to and including four stories in height in buildings not exceeding 60 feet (18,288 mm) in height above grade plane shall be permitted to be installed throughout in accordance with NFPA 13R. The number of stories of Group R occupancies constructed in accordance with Sections 510.2 and 510.4 of the International Building Code shall be measured from the horizontal assembly creating separate buildings.

903.3.5.3 Underground portions of fire protection system water supply piping. The portion of the installation or modification of an underground water main, public or private, dedicated to supplying a water-based fire protection system shall be in accordance with NFPA 24 and chapter 18.160 RCW. Piping and appurtenances downstream of the first control valve on the lateral or service line from the distribution main to one-foot above finished floor shall be approved by the fire code official. Such underground piping shall be installed by a fire sprinkler system contractor licensed in accordance with chapter 18.160 RCW and holding either a Level U or a Level 3 license. For underground piping supplying systems installed in accordance with Section 903.3.1.2, a Level 2, 3, or U licensed contractor is acceptable.

EXCEPTIONS:

1. Portions of underground piping supplying automatic sprinkler systems installed in accordance with ((NFPA 13D)) Section 903.3.1.3.
2. Portions of underground water mains serving sprinkler systems that are designed and installed in accordance with Section 903.3.1.2 and are less than four inches (100 mm) in nominal diameter.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-0903, filed 1/20/21, effective 2/20/21; WSR 19-24-058, § 51-54A-0903, filed 11/27/19, effective 7/1/20. Statutory Authority: Chapter 19.27 RCW and RCW 19.27.031. WSR 17-10-028, § 51-54A-0903, filed 4/25/17, effective 5/26/17. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-0903, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-090, § 51-54A-0903, filed 12/1/14, effective 5/1/15. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0903, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-0904 Alternative automatic fire-extinguishing systems.

(Effective July 1, 2024.)

904.1.1 Certification of ((service)) personnel for alternative fire-extinguishing equipment. ((Service)) Personnel performing system de-

sign, installation (~~(or conducting system)~~), maintenance, programming or testing on automatic fire-extinguishing systems, other than automatic sprinkler systems, shall possess the appropriate (~~(ICC/NAFED)~~) National Institute for Certification in Engineering Technologies (NICET) Special Hazards Suppression Systems certification.

EXCEPTION: A current ICC/NAFED certification for preengineered kitchen fire extinguishing system technician is allowed in lieu of NICET Level II or higher in *Special Hazards Suppression Systems* for the design, installation, inspection/testing or maintenance on preengineered kitchen suppression systems.

904.1.1.1 (~~Preengineered kitchen fire-extinguishing systems.~~ A current ICC/NAFED certification for preengineered kitchen fire-extinguishing systems is required when performing design, installation, inspection/testing or maintenance on kitchen suppression systems.

904.1.1.2 Engineered fire suppression systems. A current ICC/NAFED certification for engineered fire suppression systems is required when performing design, installation, inspection/testing or maintenance on kitchen suppression systems.

904.1.1.3 Preengineered industrial fire-extinguishing system. A current ICC/NAFED certification for preengineered industrial fire-extinguishing system is required when performing design, installation, inspection/testing or maintenance on kitchen suppression systems.

904.12 Commercial cooking systems. The automatic fire-extinguishing system for commercial cooking systems shall be of a type recognized for protection of commercial cooking equipment and exhaust systems of the type and arrangement protected. Preengineered automatic dry and wet chemical extinguishing systems shall be tested in accordance with UL 300 and listed and labeled for the intended application. Other types of automatic fire-extinguishing systems shall be listed and labeled for specific use as protection for commercial cooking operations. The system shall be installed in accordance with this code, its listing and the manufacturer's installation instructions. Signage shall be provided on the exhaust hood or system cabinet, indicating the type and arrangement of cooking appliances protected by the automatic fire-extinguishing system. Signage shall indicate appliances from left to right, be durable, and the size, color, and lettering shall be approved. Automatic fire-extinguishing systems of the following types shall be installed in accordance with the referenced standard indicated, as follows:

1. Carbon dioxide extinguishing systems, NFPA 12;
2. Automatic sprinkler systems, NFPA 13;
3. Foam-water sprinkler systems or foam-water spray systems, NFPA 16;
4. Dry-chemical extinguishing systems, NFPA 17;
5. Wet-chemical extinguishing systems, NFPA 17A.

EXCEPTION: Factory-built commercial cooking recirculating systems that are tested in accordance with UL 710B and listed, labeled and installed in accordance with Section 304.1 of the *International Mechanical Code*.)

Design. All construction documents shall be reviewed by a NICET Level III in special hazard suppression systems or a licensed professional engineer (PE) in the state of Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the *fire code official* indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction.

904.1.1.2 Installation. Installation not defined as "electrical construction trade" by chapter 19.28 RCW or "Fire Protection Sprinkler Fitting" by chapter 18.270 RCW, shall be completed by or directly supervised by a NICET Level II or higher in *special hazards suppression systems*. Supervision shall consist of a person being on the same job site and under the control of a NICET Level II or higher in *special hazards suppression systems*.

904.1.1.3 Testing/maintenance. Inspection, testing, commissioning, maintenance, and programming not defined as "electrical construction trade" by chapter 19.28 RCW or "Fire Protection Sprinkler Fitting" by chapter 18.270 RCW, shall be completed by a NICET Level II or higher in *special hazards suppression systems*.

904.13 Commercial cooking systems. The automatic fire-extinguishing system for commercial cooking systems shall be of a type recognized for protection of commercial cooking equipment and exhaust systems of the type and arrangement protected. Preengineered automatic dry- and wet-chemical extinguishing systems shall be tested in accordance with UL 300 and *listed and labeled* for the intended application. Other types of automatic fire-extinguishing systems shall be *listed and labeled* for specific use as protection for commercial cooking operations. The system shall be installed in accordance with this code, NFPA 96, its listing and the manufacturer's installation instructions. Additional protection is not required for ductwork beyond 75 feet when hood suppression system complies with UL 300. Signage shall be provided on the exhaust hood or system cabinet, indicating the type and arrangement of cooking appliances protected by the automatic fire-extinguishing system. Signage shall indicate appliances from left to right, be durable, and the size, color, and lettering shall be approved. Automatic fire-extinguishing systems of the following types shall be installed in accordance with the referenced standard indicated, as follows:

1. Carbon dioxide extinguishing systems, NFPA 12.
2. Automatic sprinkler systems, NFPA 13.
3. Automatic water mist systems, NFPA 750.
4. Foam-water sprinkler system or foam-water spray systems, NFPA 16.
5. Dry-chemical extinguishing systems, NFPA 17.
6. Wet-chemical extinguishing systems, NFPA 17A.

EXCEPTIONS:

1. Factory-built commercial cooking recirculating systems that are tested in accordance with UL 710B and listed, labeled and installed in accordance with Section 304.1 of the *International Mechanical Code*.
2. Protection of duct systems beyond 75 feet when the commercial kitchen exhaust hood is protected by a system listed in accordance with UL 300.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-0904, filed 11/27/19, effective 7/1/20; WSR 16-03-055, § 51-54A-0904, filed 1/16/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-0907 Fire alarm and detection systems.

907.2.3 Group E. Group E occupancies shall be provided with a manual fire alarm system that initiates the occupant notification signal utilizing one of the following:

1. An emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6; or
2. A system developed as part of a safe school plan adopted in accordance with RCW 28A.320.125 or developed as part of an emergency response system consistent with the provisions of RCW 28A.320.126. The system must achieve all of the following performance standards:
 - 2.1 The ability to broadcast voice messages or customized announcements;
 - 2.2 Includes a feature for multiple sounds, including sounds to initiate a lock down;
 - 2.3 The ability to deliver messages to the interior of a building, areas outside of a building as designated pursuant to the safe school plan, and to personnel;
 - 2.4 The ability for two-way communications;
 - 2.5 The ability for individual room calling;
 - 2.6 The ability for a manual override;
 - 2.7 Installation in accordance with NFPA 72;
 - 2.8 Provide 15 minutes of battery backup for alarm and 24 hours of battery backup for standby; and
 - 2.9 Includes a program for annual inspection and maintenance in accordance with NFPA 72.

EXCEPTIONS:

1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.
2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, such as individual portable school classroom buildings; provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.
3. Where an existing approved alarm system is in place, an emergency voice/alarm system is not required in any portion of an existing Group E building undergoing any one of the following repairs, alteration or addition:
 - 3.1 Alteration or repair to an existing building including, without limitation, alterations to rooms and systems, and/or corridor configurations, not exceeding 35 percent of the fire area of the building (or the fire area undergoing the alteration or repair if the building is comprised of two or more fire areas); or
 - 3.2 An addition to an existing building, not exceeding 35 percent of the fire area of the building (or the fire area to which the addition is made if the building is comprised of two or more fire areas).
4. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
 - 4.1 Interior corridors are protected by smoke detectors.
 - 4.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.
 - 4.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
5. Manual fire alarm boxes shall not be required in Group E occupancies where all of the following apply:
 - 5.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.
 - 5.2 The emergency voice/alarm communication system will activate on sprinkler waterflow.
 - 5.3 Manual activation is provided from a normally occupied location.

907.2.3.1 Sprinkler systems or detection. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

907.2.6.1 Group I-1. An automatic smoke detection system shall be installed in *corridors*, waiting areas open to *corridors* and *habitable spaces* other than *sleeping units* and kitchens. The system shall be activated in accordance with Section 907.4.

EXCEPTIONS:

1. For Group I-1 Condition 1 occupancies, smoke detection in *habitable spaces* is not required where the facility is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1.
2. Smoke detection is not required for exterior balconies.

907.2.6.4 Group I-4 occupancies. A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When automatic sprinkler systems or

smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

EXCEPTIONS:

1. A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.
2. Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

907.2.11.1 Group R-1. Single or multiple-station smoke alarms shall be installed in all of the following locations in Group R-1:

1. In sleeping areas.
2. In each *loft* constructed in accordance with Section 420.13 of the *International Building Code*.
3. In every room in the path of the means of egress from the sleeping area to the door leading from the sleeping unit.
4. In each story within the sleeping unit, including basements. For sleeping units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

907.2.11.2 Groups R-2, R-3, and I-1. Single- or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, and I-1 regardless of occupant load at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.
2. In each room used for sleeping purposes.
3. In each *loft* constructed in accordance with Section 420.13.
4. In each story within a *dwelling unit*, including *basements* but not including crawl spaces and uninhabitable attics. In *dwellings* or *dwelling units* with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

907.5.2.1.2 Maximum sound pressure. The maximum sound pressure level for audible alarm notification appliances shall be 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall not be required.

~~(907.10.1)~~ 907.8.4.1 Testing/maintenance: All inspection, testing, maintenance and programming not defined as "*electrical construction trade*" by chapter 19.28 RCW shall be completed by a NICET II or ESA/NTS Certified Fire Alarm Technician (CFAT) Level II Fire in fire alarms (effective July 1, 2018).

907.11 NICET: National Institute for Certification in Engineering Technologies and ESA/NTS: Electronic Security Association/National Training School.

907.11.1 Scope. This section shall apply to new and existing fire alarm systems.

907.11.2 Design review: All construction documents shall be reviewed by a NICET III, an ESA/NTS Certified Fire Alarm Designer (CFAD) Level III Fire in fire alarms, or a licensed professional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a veri-

fication method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction (effective July 1, 2018).

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-0907, filed 1/20/21, effective 2/20/21; WSR 20-01-162, § 51-54A-0907, filed 12/18/19, effective 7/1/20. Statutory Authority: RCW 19.27.031, 19.27.074 and chapter 19.27 RCW. WSR 19-02-086, § 51-54A-0907, filed 1/2/19, effective 7/1/19. Statutory Authority: RCW 19.27.074 and 19.27.550. WSR 18-01-104, § 51-54A-0907, filed 12/19/17, effective 7/1/18. Statutory Authority: Chapter 19.27 RCW and RCW 19.27.031. WSR 17-10-028, § 51-54A-0907, filed 4/25/17, effective 5/26/17. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-0907, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-091, § 51-54A-0907, filed 12/1/14, effective 5/1/15. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0907, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-0909 ((Reserved.)) Section 909—Smoke control systems.

909.21.12 Hoistway venting. Hoistway venting need not be provided for pressurized elevator shafts.

909.21.13 Machine rooms. Elevator machine rooms shall be pressurized in accordance with this section unless separated from the hoistway shaft by construction in accordance with Section 707 of the *International Building Code*.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-0909, filed 1/20/21, effective 2/20/21; WSR 20-01-162, § 51-54A-0909, filed 12/18/19, effective 7/1/20; WSR 16-03-055, § 51-54A-0909, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0909, filed 2/1/13, effective 7/1/13.]

NEW SECTION

WAC 51-54A-0913 Section 913—Fire pumps.

913.2.1 Protection of fire pump rooms and access. Fire pumps shall be located in rooms that are separated from all other areas of the building by 2-hour fire barriers constructed in accordance with Section 707 of the *International Building Code* or 2-hour horizontal assemblies constructed in accordance with Section 711 of the *International Building Code*, or both. Fire pump rooms not directly accessible from the outside shall be accessible through an enclosed passageway from an interior exit stairway or exterior exit. The enclosed passageway shall

have a *fire-resistance rating* not less than the *fire-resistance rating* of the fire pump room (see NFPA 20 Section 4.14.2.1.2).

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AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-0915 Carbon monoxide detection.

~~((915.1 General. Carbon monoxide detection shall be installed in new buildings in accordance with Sections 915.1.1 through 915.6. Carbon monoxide detection shall be installed in existing buildings in accordance with Chapter 11 of the *International Fire Code*.)~~

915.1.1 Where required. Carbon monoxide detection shall be provided in Group I and R occupancies and in classrooms in Group E occupancies in the locations specified in Section 915.2 where any of the conditions in Sections 915.1.2 through 915.1.6 exist.

EXCEPTIONS: 1. R-2 occupancies, with the exception of R-2 college dormitories, are required to install carbon monoxide detectors without exception.
2. Sleeping units or dwelling units in I and R-1 occupancies and R-2 college dormitories, hotel, DOC prisons and work releases and assisted living facilities and residential treatment facilities licensed by the state of Washington, which do not themselves contain a fuel-burning appliance, a fuel-burning fireplace, or have an attached garage, need not be provided with carbon monoxide alarms provided that they comply with the exceptions of Section 915.1.4.

915.2.1 Dwelling units. Carbon monoxide detection shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms and on each level of the dwelling. Where a fuel-burning appliance or a fuel-burning fireplace is located within a bedroom or its attached bathroom, carbon monoxide detection shall be installed within the bedroom.

~~((915.2.2 Sleeping units. Carbon monoxide detection shall be installed in sleeping units.~~

EXCEPTION: Carbon monoxide detection shall be allowed to be installed outside of each separate sleeping area in the immediate vicinity of the sleeping unit where the sleeping unit or its attached bathroom does not contain a fuel-burning appliance or fuel-burning fireplace and is not served by a forced air furnace.))

915.2.3 Group E occupancies. When required by Section 915.1 in new buildings, or by Chapter 11 of the *International Fire Code*, carbon monoxide detection shall be installed in classrooms in Group E occupancies. Carbon monoxide alarm signals shall be automatically transmitted to an on-site location that is staffed by school personnel.

EXCEPTIONS: 1. Carbon monoxide alarm signals shall not be required to be automatically transmitted to an on-site location that is staffed by school personnel in Group E occupancies with an occupant load of 50 or less.
2. Carbon monoxide alarm signals shall not be required to be automatically transmitted to an on-site location that is staffed by school personnel in Group E occupancies where an exception contained in Section 915.1 applies, or in Group E occupancies where signals are transmitted to an off-site service monitored by a third party, such as a service that monitors fire protection systems in the building.

915.5.1 General. Carbon monoxide detection systems shall comply with NFPA 72. Carbon monoxide detectors shall be listed in accordance with UL 2075.

915.5.2 Locations. Carbon monoxide detectors shall be installed in the locations specified in Section 915.2. These locations supersede the locations specified in NFPA 72.

915.6 Maintenance. Carbon monoxide alarms and carbon monoxide detection systems shall be maintained in accordance with NFPA 72. Carbon monoxide alarms and carbon monoxide detectors that become inoperable or begin producing end-of-life signals shall be replaced.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-0915, filed 12/18/19, effective 7/1/20; WSR 16-03-055, § 51-54A-0915, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0915, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-0918 ((Alerting systems.)) Reserved.

~~((**918.1 General.** An approved alerting system shall be provided in buildings and structures as required in Chapter 4 and this section, unless other requirements are provided by another section of this code.~~

EXCEPTION: Approved alerting systems in existing buildings, structures or occupancies.

~~**918.2 Power source.** Alerting systems shall be provided with power supplies in accordance with Section 4.4.1 of NFPA 72 and circuit disconnecting means identified as "EMERGENCY ALERTING SYSTEM."~~

EXCEPTION: Systems which do not require electrical power to operate.

~~**918.3 Duration of operation.** The alerting system shall be capable of operating under nonalarm condition (quiescent load) for a minimum of 24 hours and then shall be capable of operating during an emergency condition for a period of 15 minutes at maximum connected load.~~

~~**918.4 Combination system.** Alerting system components and equipment shall be allowed to be used for other purposes.~~

~~**918.4.1 System priority.** The alerting system use shall take precedence over any other use.~~

~~**918.4.2 Fire alarm system.** Fire alarm systems sharing components and equipment with alerting systems must be in accordance with Section 6.8.4 of NFPA 72.~~

~~**918.4.2.1 Signal priority.** Recorded or live alert signals generated by an alerting system that shares components with a fire alarm system shall, when actuated, take priority over fire alarm messages and signals.~~

~~**918.4.2.2 Temporary deactivation.** Should the fire alarm system be in the alarm mode when such an alerting system is actuated, it shall temporarily cause deactivation of all fire alarm-initiated audible messages or signals during the time period required to transmit the alert signal.~~

~~**918.4.2.3 Supervisory signal.** Deactivation of fire alarm audible and visual notification signals shall cause a supervisory signal for each notification zone affected in the fire alarm system.~~

~~**918.5 Audibility.** Audible characteristics of the alert signal shall be in accordance with Section 7.4.1 of NFPA 72 throughout the area served by the alerting system.~~

EXCEPTION: Areas served by approved visual or textual notification, where the visible notification appliances are not also used as a fire alarm signal, are not required to be provided with audibility complying with Section 916.6.

~~918.6 Visibility. Visible and textual notification appliances shall be permitted in addition to alert signal audibility.)~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-0918, filed 12/18/19, effective 7/1/20.]

NEW SECTION

WAC 51-54A-1003 General means of egress.

1003.7 Elevators, escalators, and moving walks. Elevators, escalators, and moving walks shall not be used as a component of a required means of egress from any other part of the building.

- EXCEPTIONS:
1. Elevators used as an accessible means of egress in accordance with Section 1009.4.
 2. Escalators used as a means of egress for fixed transit and passenger rail system accordance with Section 4901.

[]

NEW SECTION

WAC 51-54A-1004 Occupant load.

1004.5 Areas without fixed seating. The number of occupants shall be computed at the rate of one occupant per unit of area as prescribed in Table 1004.5. For areas without fixed seating, the occupant load shall be not less than that number determined by dividing the floor area under consideration by the occupant load factor assigned to the function of the space as set forth in Table 1004.5. Where an intended function is not listed in Table 1004.5, the *fire code official* shall establish a function based on a listed function that most nearly resembles the intended function.

EXCEPTION: Where approved by the fire code official, the actual number of occupants for whom each occupied space, floor, or building is designed, although less than those determined by calculation, shall be permitted to be used in the determination of the design occupant load.

1004.5.1 Increased occupant load. The occupant load permitted in any building, or portion thereof, is permitted to be increased from that number established for the occupancies in Table 1004.5, provided that all other requirements of the code are met based on such modified number and the occupant load does not exceed one occupant per 7 square feet (0.65 m²) of occupiable floor space. Where required by the *fire code official*, an approved aisle, seating or fixed equipment diagram substantiating any increase in occupant load shall be submitted. Where required by the *fire code official*, such diagram shall be posted.

**Table 1004.5
Maximum Floor Area Allowances Per Occupant**

Function of Space	Occupant Load Factor ^a
Accessory storage areas, mechanical equipment room	300 gross
Agricultural building	300 gross
Aircraft hangars	500 gross
Airport terminal	

Function of Space	Occupant Load Factor ^a
Baggage claim Baggage handling Concourse Waiting areas	20 gross 300 gross 100 gross 15 gross
Assembly Gaming floors (keno, slots, etc.) Exhibit gallery and museum Billiard table/game table area	11 gross 30 net 50 gross
Assembly with fixed seats	See Section 1004.6
Assembly without fixed seats Concentrated (chairs only - Not fixed) Standing space Unconcentrated (tables and chairs)	7 net 5 net 15 net
Bowling centers, allow 5 persons for each lane including 15 feet of runway and for additional areas	7 net
Business areas Concentrated business use areas	150 gross See Section 1004.8
Courtrooms - Other than fixed seating areas	40 net
Day care	35 net
Dormitories	50 gross
Educational Classroom area Shops and other vocational room areas	20 net 50 net
Exercise rooms	50 gross
Fixed guideway transit and passenger rail systems Platform Concourse/lobby	100 gross (See Section 4901)
Group H-5 fabrication and manufacturing areas	200 gross
Industrial areas	100 gross
Institutional areas Inpatient treatment areas Outpatient areas Sleeping areas	240 gross 100 gross 120 gross
Kitchens, commercial	200 gross
Library Reading rooms Stack area	50 net 100 gross
Locker rooms	50 gross
Mall buildings - Covered and open	See Section 402.8.2 of the IBC
Mercantile Storage, stock, shipping areas	60 gross 300 gross
Parking garages	200 gross
Residential	200 gross
Skating rinks, swimming pools Rink and pool Decks	50 gross 15 gross
Stages and platforms	15 net
Warehouses	500 gross
For SI: 1 foot = 304.8 mm, 1 square foot = 0.0929 m ²	

^a Floor area in square feet per occupant.

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NEW SECTION

WAC 51-54A-1005 Means of egress sizing.

1005.1 General. All portions of the *means of egress* system shall be sized in accordance with this section.

EXCEPTIONS: 1. Aisles and aisle access ways in rooms or spaces used for assembly purposes complying with Section 1030.
 2. The capacity in inches, of means of egress components for fixed guideway transit and passenger rail stations, shall meet the requirements of Section 4901.

[]

NEW SECTION

WAC 51-54A-1006 Number of exits and exit access doorways.

1006.2.1 Egress based on occupant load and common path of egress travel distance. Two *exits* or *exit* access doorways from any space shall be provided where the design occupant load or the common path of egress travel distance exceeds the values listed in Table 1006.2.1. The cumulative *occupant load* from adjacent rooms, areas or spaces shall be determined in accordance with Section 1004.2.

EXCEPTIONS: 1. The number of *exits* from foyers, lobbies, vestibules or similar spaces need not be based on cumulative *occupant loads* for areas discharging through such spaces, but the capacity of the *exits* from such spaces shall be based on applicable cumulative occupant loads.
 2. Care suites in Group I-2 occupancies complying with Section 407.4 of the *International Building Code*.
 3. Unoccupied mechanical rooms and penthouses are not required to comply with the common path of egress travel distance measurement.
 4. The common path of travel for fixed transit and passenger rail system stations shall be in accordance with Section 4901.

1006.2.1.1 Three or more exits or exit access doorways. Three *exits* or *exit* access doorways shall be provided from any space with an occupant load of 501 to 1,000. Four exits or exit access doorways shall be provided from any space with an occupant load greater than 1,000.

EXCEPTION: The number of required exits for fixed transit and passenger rail systems may be reduced by one at open stations.

[]

AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

WAC 51-54A-1008 ((Reserved.)) Means of egress illumination.

1008.2.3 Exit discharge. This subsection is not adopted.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-1008, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-1008, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-1009 Accessible means of egress.

1009.1 Accessible means of egress required. Accessible means of egress shall comply with this section. Accessible spaces shall be provided with not less than one accessible means of egress. Where more than one means of egress is required by Section 1006.2 or 1006.3 from any accessible space, each accessible portion of the space shall be served by not less than two accessible means of egress.

EXCEPTIONS:

1. One accessible means of egress is required from an accessible mezzanine level in accordance with Section 1009.3, 1009.4 or 1009.5.
2. In assembly areas with ramped aisles or stepped aisles one accessible means of egress is permitted where the common path of egress travel is accessible and meets the requirements in Section ~~((1029.8))~~ 1030.8.
3. In parking garages, accessible means of egress are not required to serve parking areas that do not contain accessible parking spaces.

1009.8 Two-way communication. A two-way communication system complying with Sections 1009.8.1 and 1009.8.2 shall be provided at the landing serving each elevator or bank of elevators on each accessible floor that is one or more stories above or below the level of exit discharge.

EXCEPTIONS:

1. Two-way communication systems are not required at the landing serving each elevator or bank of elevators where the two-way communication system is provided within areas of refuge in accordance with Section 1009.6.5.
2. Two-way communication systems are not required on floors provided with ramps that provide a direct path of egress travel to grade or the level of exit discharge conforming to the provisions of Section 1012.
3. Two-way communication systems are not required at the landings serving only service elevators that are not designated as part of the accessible means of egress or serve as part of the required accessible route into a facility.
4. Two-way communication systems are not required at the landings serving only freight elevators.
5. Two-way communication systems are not required at the landing serving a private residence elevator.
6. Two-way communication systems are not required in Group I-2 or I-3 facilities.

1009.8.1 System requirements. Two-way communication systems shall provide communication between each required location and the fire command center or a central control point location approved by the fire department. Where the central control point is not a constantly attended location, ((a)) the two-way communication system shall have a timed automatic telephone dial-out capability ((to a monitoring location)) that provides two-way communication with an approved supervising station. The two-way communication system shall include both audible and visible signals. The two-way communication system shall have a battery backup or an approved alternate source of power that is capable of 90 minutes use upon failure of the normal power source.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-1009, filed 12/18/19, effective 7/1/20; WSR 16-03-055, § 51-54A-1009, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-1009, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-1010 Doors, gates and turnstiles.

~~((1010.1.9.4))~~ **1010.2.4 Locks and latches.** Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint.
2. In buildings in occupancy Group A having an occupant load of 300 or less, Groups B, F, M, and S, and in places of religious worship, the main door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:

2.1. The locking device is readily distinguishable as locked;

2.2. A readily visible sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background; and

2.3. The use of the key-operated locking device is revocable by the building official for due cause.

3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no doorknob or surface-mounted hardware.

4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt, or security chain, provided such devices are openable from the inside without the use of a key or a tool.

5. Fire doors after the minimum elevated temperature has disabled the unlatching mechanism in accordance with listed fire door test procedures.

6. Doors serving roofs not intended to be occupied shall be permitted to be locked preventing entry to the building from the roof.

7. Approved, listed locks without delayed egress shall be permitted in Group I-1 condition 2 assisted living facilities licensed under chapter 388-78A WAC and Group I-1 Condition 2 residential treatment facilities licensed under chapter 246-337 WAC by the state of Washington, provided that:

~~((6.1.))~~ 7.1. The clinical needs of one or more patients require specialized security measures for their safety.

~~((6.2.))~~ 7.2. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

~~((6.3.))~~ 7.3. The doors unlock upon loss of electrical power controlling the lock or lock mechanism.

~~((6.4.))~~ 7.4. The lock shall be capable of being deactivated by a signal from a switch located in an approved location.

~~((6.5.))~~ 7.5. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

~~((6.6. Emergency lighting shall be provided at the door))~~ 8. Other than egress courts, where occupants must egress from an exterior space through the building for means of egress, exit access doors shall be permitted to be equipped with an approved locking device where installed and operated in accordance with all of the following:

8.1. The occupant load of the occupied exterior area shall not exceed 300 as determined by IBC Section 1004.

8.2. The maximum occupant load shall be posted where required by Section 1004.9. Such sign shall be permanently affixed inside the building and shall be posted in a conspicuous space near all the exit access doorways.

8.3. A weatherproof telephone or two-way communication system installed in accordance with Sections 1009.8.1 and 1009.8.2 shall be located adjacent to not less than one required exit access door on the exterior side.

8.4. The egress door locking device is readily distinguishable as locked and shall be a key-operated locking device.

8.5. A clear window or glazed door opening, not less than 5 square feet (0.46 m²) sq. ft. in area, shall be provided at each exit access door to determine if there are occupants using the outdoor area.

8.6. A readily visible durable sign shall be posted on the interior side on or adjacent to each locked required exit access door serving the exterior area stating: THIS DOOR TO REMAIN UNLOCKED WHEN THE OUTDOOR AREA IS OCCUPIED. The letters on the sign shall be not less than 1 inch high on a contrasting background.

9. Locking devices are permitted on doors to balconies, decks, or other exterior spaces serving individual dwelling or sleeping units.

10. Locking devices are permitted on doors to balconies, decks, or other exterior spaces of 250 square feet or less, serving a private office space.

~~((1010.1.9.7))~~ 1010.2.14 Controlled egress doors in Groups I-1 and I-2. Electric locking systems, including electromechanical locking systems and electromagnetic locking systems, shall be permitted to be locked in the means of egress in Group I-1 or I-2 occupancies where the clinical needs of persons receiving care require their containment. Controlled egress doors shall be permitted in such occupancies where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors are installed and operate in accordance with all of the following:

1. The doors shall unlock (~~((open))~~) on actuation of the automatic sprinkler system or automatic (~~((fire))~~) smoke detection system.

2. The door(~~((s))~~) locks shall unlock (~~((open))~~) on loss of power controlling the lock or lock mechanism.

3. The door locking system shall be installed to have the capability of being unlocked by a switch located at the fire command center, a nursing station or other approved location. The switch shall directly break power to the lock.

4. A building occupant shall not be required to pass through more than one door equipped with a controlled egress locking system before entering an exit.

5. The procedures for unlocking the doors shall be described and approved as part of the emergency planning and preparedness required by Chapter 4 of the *International Fire Code*.

6. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

7. All clinical staff shall have the keys, codes or other means necessary to operate the locking systems.

8. Emergency lighting shall be provided at the door.

9. The door locking system units shall be listed in accordance with UL 294.

EXCEPTIONS: 1. Items 1 through 4 and 6 shall not apply to doors to areas where persons, which because of clinical needs, require restraint or containment as part of the function of a psychiatric treatment area.
2. Items 1 through 4 and 6 shall not apply to doors to areas where a listed egress control system is utilized to reduce the risk of child abduction from nursery and obstetric areas of a Group I-2 hospital.

~~((1010.1.10 Panic and fire exit hardware. Swinging doors serving a Group H occupancy and swinging doors serving rooms or spaces with an occupant load of 50 or more in a Group A or E occupancy shall not be provided with a latch or lock other than panic hardware or fire exit hardware.~~

EXCEPTIONS: 1. A main exit of a Group A occupancy shall have locking devices in accordance with Section 1010.1.9.4, Item 2.
2. Doors provided with panic hardware serving a Group A or E occupancy shall be permitted to be electromagnetically locked in accordance with Section 1010.1.9.10.

~~**1010.1.10.3 Electrical rooms and working clearances.** Exit and exit access doors serving electrical rooms and working spaces shall swing in the direction of egress travel and shall be equipped with panic hardware or fire exit hardware where such rooms or working spaces contain one or more of the following:~~

- ~~1. Equipment operating at more than 600 volts, nominal.~~
- ~~2. Equipment operating at 600 volts or less, nominal and rated at 800 amperes or more, and where the equipment contains overcurrent devices, switching devices or control devices.~~

EXCEPTION: ~~Panic and fire exit hardware is not required on exit and exit access doors serving electrical equipment rooms and working spaces where such doors are not less than twenty-five feet (7.6 m) from the nearest edge of the electrical equipment.)~~

~~**1010.3.4 Security grilles.** In Groups B, F, M and S, horizontal sliding or vertical security grilles are permitted at the main exit and shall be openable from the inside without the use of a key or special knowledge or effort during periods that the space is occupied. The grilles shall remain secured in the full-open position during the period of occupancy by the general public. Where two or more exits or access to exits are required, not more than one-half of the exits or exit access doorways shall be equipped with horizontal sliding or vertical security grilles.~~

~~**1010.3.4.1 Fixed transit and passenger rail systems.** In fixed transit and passenger rail system stations horizontal and vertical security grilles are permitted at station entrances as a component in the means of egress when the station is under constant supervision by on-site security personnel and an exit door with panic hardware that swings in the direction of egress, with a minimum clear width of 32 inches, provided within 10 feet of the gate. The security grilles shall remain secured in the full-open position during the period of occupancy by the general public.~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-1010, filed 1/20/21, effective 2/20/21; WSR 19-24-058, § 51-54A-1010, filed 11/27/19, effective 7/1/20; WSR 16-03-055, § 51-54A-1010, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-1010, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

WAC 51-54A-1012 Ramps.

1012.1 Scope. The provisions of this section shall apply to ramps used as a component of a means of egress.

EXCEPTIONS: 1. Other than ramps that are part of the accessible routes providing access in accordance with Sections 1108.2 through ((1108.2.4 and 1108.2.6;)) 1108.6 of the *International Building Code* ramped aisles within assembly rooms or spaces shall conform with the provisions in Section ((1029.13)) 1030.
2. Curb ramps shall comply with ICC A117.1.
3. Vehicle ramps in parking garages for pedestrian exit access shall not be required to comply with Sections ((1010.4 through 1010.10)) 1012.3 through 1012.10 of the *International Building Code* when they are not an accessible route serving accessible parking spaces or other required accessible elements.

4. In a parking garage where one accessible means of egress serving accessible parking spaces or other accessible elements is provided, a second accessible means of egress serving that area may include a vehicle ramp that does not comply with Sections ((1010.5, 1010.6, and 1010.9)) 1012.5, 1012.6, and 1012.9 of the *International Building Code*. A landing complying with Sections ((1010.7.1 and 1010.7.4)) 1012.6.1 and 1012.6.4 of the *International Building Code* shall be provided at any change of direction in the accessible means of egress.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-1012, filed 1/16/16, effective 7/1/16.]

NEW SECTION

WAC 51-54A-1017 Exit access travel distance.

**Table 1017.2
Exit Access Travel Distance^a**

Occupancy	Without Sprinkler System (feet)	With Sprinkler System (feet)
A, E, F-1, M, R, S-1	200 ^c	250 ^b
I-1	Not Permitted	250 ^b
B	200	300 ^c
F-2, S-2, U	300	400 ^c
H-1	Not Permitted	75 ^d
H-2	Not Permitted	100 ^d
H-3	Not Permitted	150 ^d
H-4	Not Permitted	175 ^d
H-5	Not Permitted	200 ^c
I-Z, I-3	Not Permitted	200 ^c
I-4	150	200 ^c

For SI: 1 foot = 304.8 mm.

- a See the following sections for modifications to exit access travel distance requirements:
 - Section 402.8 of the *International Building Code*: For the distance limitation in malls.
 - Section 407.4 of the *International Building Code*: For the distance limitation in Group I-2.
 - Sections 408.6.1 and 408.8.1 of the *International Building Code*: For the distance limitations in Group I-3.
 - Section 411.2 of the *International Building Code*: For the distance limitation in special amusement areas.
 - Section 412.6 of the *International Building Code*: For the distance limitations in aircraft manufacturing facilities.
 - Section 1006.2.2.2: For the distance limitation in refrigeration machinery rooms.
 - Section 1006.2.2.3: For the distance limitation in refrigerated rooms and spaces.
 - Section 1006.3.4: For buildings with one exit.
 - Section 1017.2.2: For increased distance limitation in Groups F-1 and S-1.
 - Section 1030.7: For increased limitation in assembly seating.
 - Section 3103.4 of the *International Building Code*: For temporary structures.
 - Section 3104.9 of the *International Building Code*: For pedestrian walkways.
 - Section 4901: For fixed guideway and passenger rail stations.
- b Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2. See Section 903 for occupancies where automatic sprinkler systems are permitted in accordance with Section 903.3.1.2.
- c Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.
- d Group H occupancies equipped throughout with an automatic sprinkler system in accordance with Section 903.2.5.1.
- e Group R-3 buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.3. See Section 903.2.8 for occupancies where automatic sprinkler systems are permitted in accordance with Section 903.3.1.3.

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NEW SECTION

WAC 51-54A-1019 Section 1019—Exit access stairways and ramps.

1019.3 Occupancies other than Groups I-2 and I-3. In other than Groups I-2 and I-3 occupancies, floor openings containing exit access stairways or ramps shall be enclosed with a shaft enclosure constructed in accordance with Section 713 of the *International Building Code*.

EXCEPTIONS:

1. Exit access stairways and ramps that serve or atmospherically communicate between only two stories. Such interconnected stories shall not be open to other stories.
2. In Group R-1, R-2, or R-3 occupancies, exit access stairways and ramps connecting four stories or less serving and contained within an individual dwelling unit or sleeping unit or live/work unit.
3. Exit access stairways serving and contained within a Group R-3 congregate residence are not required to be enclosed.
4. Exit access stairways and ramps in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1, where the area of the vertical opening between stories does not exceed twice the horizontal projected area of the stairway or ramp and the opening is protected by a draft curtain and closely spaced sprinklers in accordance with NFPA 13. In other than Group B and M occupancies, this provision is limited to openings that do not connect more than four stories.
5. Exit access stairways and ramps within an atrium complying with the provisions of Section 404 of the *International Building Code*.
6. Exit access stairways and ramps in open parking garages that serve only the parking garage.
7. Exit access stairways and ramps serving smoke-protected or open-air assembly seating complying with the exit access travel distance requirements of Section 1030.7.
8. Exit access stairways and ramps between the balcony, gallery or press box and the main assembly floor in occupancies such as theaters, places of religious worship, auditoriums, and sports facilities.
9. Exterior exit access stairways or ramps between occupied roofs.

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AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

WAC 51-54A-1020 Corridors.

((1020-5)) 1020.6 Air movement in corridors. Corridors shall not serve as supply, return, exhaust, relief or ventilation air ducts.

EXCEPTIONS:

1. Use of a corridor as a source of makeup air for exhaust systems in rooms that open directly onto such corridors, including toilet rooms, bathrooms, dressing rooms, smoking lounges and janitor closets, shall be permitted provided that each such corridor is directly supplied with outdoor air at a rate greater than the rate of makeup air taken from the corridor.
2. Where located within a dwelling unit, the use of corridors for conveying return air shall not be prohibited.
3. Where located within tenant spaces of (~~one thousand~~) 1,000 square feet (93 m²) or less in area, utilization of corridors for conveying return air is permitted.
4. Incidental air movement from pressurized rooms within health care facilities, provided that a corridor is not the primary source of supply or return to the room.
5. Where such air is part of an engineered smoke control system.
6. Air supplied to corridors serving residential occupancies shall not be considered as providing ventilation air to the dwelling units subject to the following:
 - 6.1. The air supplied to the corridor is (~~one hundred~~) 100 percent outside air; and
 - 6.2. The units served by the corridor have conforming ventilation air independent of the air supplied to the corridor; and
 - 6.3. For other than high-rise buildings, the supply fan will automatically shut off upon activation of corridor smoke detectors which shall be spaced at no more than (~~thirty~~) 30 feet (9144 mm) on center along the corridor; or
 - 6.4. For high-rise buildings, corridor smoke detector activation will close required smoke/fire dampers at the supply inlet to the corridor at the floor receiving the alarm.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-1020, filed 1/16/16, effective 7/1/16.]

NEW SECTION

WAC 51-54A-1023 Section 1023—Interior exit stairways and ramps.

1023.12 Smokeproof enclosures. Where required by Section 403.5.4, 405.7.2 or 412.2.2.1, of the *International Building Code*, interior exit stairways and ramps shall be smokeproof enclosures in accordance with Section 909.20 of the *International Building Code*. Where interior exit stairways and ramps are pressurized in accordance with Section 909.20.5 of the *International Building Code*, the smoke control pres-

surization system shall comply with the requirements specified in Section 909.6.3 of the *International Building Code*.

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AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

WAC 51-54A-1103 Fire safety requirements for existing buildings.

1103.2 Emergency responder communication enhancement in existing buildings. Existing buildings other than Group R-3, that do not have approved in-building, emergency response communication enhancement system for emergency responders in the building based on existing coverage levels of the public safety communication systems, shall be equipped with such coverage according to one of the following:

1. Where an existing wired communication system cannot be repaired or is being replaced, or where not approved in accordance with Section 510.1, Exception 1.
2. Within a time frame established by the adopting authority.

EXCEPTION: Where it is determined by the fire code official that the in-building, emergency responder communication enhancement system is not needed.

1103.4.3 More than five stories. In other than Group I occupancies, interior vertical openings connecting more than five stories shall be protected by fire-resistant and smoke-rated construction.

EXCEPTIONS:

1. Vertical opening protection is not required for Group R-3 occupancies.
2. Vertical opening protection is not required for open parking garages and ramps.
3. Vertical opening protection for escalators shall be in accordance with Section 1103.4.8.

~~((1103.5.5))~~ 1103.5.6 Nightclub. An automatic sprinkler system shall be provided throughout A-2 nightclubs as defined in this code. No building shall be constructed for, used for, or converted to occupancy as a nightclub except in accordance with this section.

1103.9 Carbon monoxide alarms. Existing Group I or Group R occupancies shall be provided with single station carbon monoxide alarms in accordance with Section 915.4.3. An inspection will occur when alterations, repairs or additions requiring a permit occur, or when one or more sleeping rooms are added or created. The carbon monoxide alarms shall be listed as complying with UL 2034 and be installed and maintained in accordance with NFPA ((720-2015)) 72 and the manufacturer's instructions.

EXCEPTIONS:

1. For other than R-2 occupancies, if the building does not contain a fuel-burning appliance, a fuel-burning fireplace, or an attached garage.
2. Work involving the exterior surfaces of dwellings, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck, or electrical permits.
3. Installation, alteration or repairs of noncombustion plumbing or mechanical systems.
4. Sleeping units or dwelling units in I and R-1 occupancies and R-2 college dormitories, hotel, DOC prisons and work releases and assisted living facilities and residential treatment facilities licensed by the state of Washington which do not themselves contain a fuel-burning appliance, a fuel-burning fireplace, or have an attached garage, need not be provided with carbon monoxide alarms provided that:
 - 4.1. The sleeping units or dwelling unit is not adjacent to any room which contains a fuel-burning appliance, a fuel-burning fireplace, or an attached garage; and
 - 4.2. The sleeping units or dwelling unit is not connected by duct work or ventilation shafts with a supply or return register in the same room to any room containing a fuel-burning appliance, a fuel-burning fireplace, or to an attached garage; and
 - 4.3. The building is provided with a common area carbon monoxide detection system.
5. An open parking garage, as defined in the International Building Code, or enclosed parking garage ventilated in accordance with Section 404 of the International Mechanical Code shall not be considered an attached garage.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-1103, filed 1/16/16, effective 7/1/16. Statutory Authority:

Chapters 19.27, 19.27A, and 34.05 RCW. WSR 13-24-017, § 51-54A-1103, filed 11/21/13, effective 4/1/14. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-1103, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-05-065, filed 2/12/16, effective 7/1/16)

WAC 51-54A-1104 Means of egress for existing buildings.

1104.1 General. Means of egress in existing buildings shall comply with Section ((1030)) 1031 and 1104.2 through 1104.25.

EXCEPTION: Means of egress conforming to the requirements of the building code under which they were constructed and Section ((1030)) 1031 shall not be required to comply with 1104.2 through 1104.22 and 1104.25.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-05-065, § 51-54A-1104, filed 2/12/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-1104, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-1204 ((Section 1204—Solar photovoltaic power systems.)) Reserved.

~~((1204.1 General. Installation, modification, or alteration of solar photovoltaic power systems shall comply with this section. Due to the emerging technologies in the solar photovoltaic industry, it is understood fire code officials may need to amend prescriptive requirements of this section to meet the requirements for firefighter access and product installations. Section 104.9 Alternative materials and methods of this code shall be considered when approving the installation of solar photovoltaic power systems. Solar photovoltaic power systems shall be installed in accordance with Sections 605.11.1 through 605.11.2, the *International Building Code* and chapter 19.28 RCW.~~

~~**1204.2.1 Solar photovoltaic systems for Group R-3 residential and buildings built under the *International Residential Code*.** Solar photovoltaic systems for Group R-3 residential and buildings built under the *International Residential Code* shall comply with Sections 1204.2.1.1 through 1204.2.1.3.~~

EXCEPTIONS:

1. Residential dwellings with an approved automatic fire sprinkler system installed.
2. Residential dwellings with approved mechanical or passive ventilation systems.
3. Where the fire code official determines that the slope of the roof is too steep for emergency access.
4. Where the fire code official determines that vertical ventilation tactics will not be utilized.
5. These requirements shall not apply to roofs where the total combined area of the solar array does not exceed thirty-three percent as measured in plan view of the total roof area of the structure, where the solar array will measure 1,000 sq. ft. or less in area, and where a minimum eighteen inches unobstructed pathway shall be maintained along each side of any horizontal ridge.

~~**1204.6 Size of solar photovoltaic array.**~~

~~1. Each photovoltaic array shall be limited to 150 feet (45,720 mm) by 150 feet (45,720 mm). Multiple arrays shall be separated by a 3-foot wide (914 mm) clear access pathway.~~

~~2. Panels/modules shall be located up to the roof ridge where an alternative ventilation method approved by the fire code official has determined vertical ventilation techniques will not be employed.)~~)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-1204, filed 1/20/21, effective 2/20/21; WSR 20-01-162, § 51-54A-1204, filed 12/18/19, effective 7/1/20.]

NEW SECTION

WAC 51-54A-1205 Section 1205—Solar photovoltaic power systems.

1205.1 General. Installation, modification, or alteration of solar photovoltaic power systems shall comply with this section. Due to the emerging technologies in the solar photovoltaic industry, it is understood fire code officials may need to amend prescriptive requirements of this section to meet the requirements for firefighter access and product installations. Section 104.10 Alternative materials and methods of this code shall be considered when approving the installation of solar photovoltaic power systems. Solar photovoltaic power systems shall be installed in accordance with Sections 1205.2.1 through 1205.6, the *International Building Code*, and chapter 19.28 RCW.

1205.2.1 Solar photovoltaic systems for Group R-3 residential and buildings built under the *International Residential Code*. Solar photovoltaic systems for Group R-3 residential and buildings built under the *International Residential Code* shall comply with Sections 1205.2.1.1 through 1205.2.1.3.

EXCEPTIONS:

1. Residential dwellings with an approved automatic fire sprinkler system installed.
2. Residential dwellings with approved mechanical or passive ventilation systems.
3. Where the fire code official determines that the slope of the roof is too steep for emergency access.
4. Where the fire code official determines that vertical ventilation tactics will not be utilized.
5. These requirements shall not apply to roofs where the total combined area of the solar array does not exceed 33 percent as measured in plan view of the total roof area of the structure, where the solar array will measure 1,000 sq. ft. or less in area, and where a minimum 18 inches unobstructed pathway shall be maintained along each side of any horizontal ridge.

1205.6 Size of solar photovoltaic array.

1. Each photovoltaic array shall be limited to 150 feet (45,720 mm) by 150 feet (45,720 mm). Multiple arrays shall be separated by a 3-foot wide (914 mm) clear access pathway.

2. Panels/modules shall be located up to the roof ridge where an alternative ventilation method approved by the fire code official has determined vertical ventilation techniques will not be employed.

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NEW SECTION

WAC 51-54A-1207 Electrical energy storage systems.

1207.1.4 Hazard mitigation analysis. Failure modes and effects analysis (FMEA) or other approved hazard mitigation analysis shall be provided in accordance with Section 104.8.2 under any of the following conditions:

1. Where ESS technologies not specifically identified in Table 1207.1.1 are provided.

2. More than one ESS technology is provided in a room or enclosed area where there is a potential for adverse interaction between technologies.

3. Where allowed as a basis for increasing maximum allowable quantities. See Section 1207.5.2.

4. Where flammable gases can be produced under abnormal conditions.

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NEW SECTION

WAC 51-54A-2404 Spray finishing.

2404.2.1 Prohibited enclosures for spray application operations. Inflatable or portable enclosures shall not be used for spray application of flammable finishes.

EXCEPTION: Enclosures for the spray application of flammable finishes in marinas, dry docking areas, or construction areas shall comply with Section 2404.3.5.

2404.3.5 Membrane enclosures. The design, construction, protection, operation and maintenance of membrane enclosures shall be in accordance with NFPA 33.

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NEW SECTION

WAC 51-54A-3303 Administrative safety controls.

3303.1.1 Components of site safety plans. Site safety plans shall include the following as applicable:

1. Name and contact information of site safety director.
2. Documentation of the training of the site safety director and fire watch personnel.
3. Procedures for reporting emergencies.
4. Fire department vehicle access routes.
5. Location of fire protection equipment, including portable fire extinguishers, standpipes, fire department connections, and fire hydrants.
6. Smoking and cooking policies, designated areas to be used where approved, and signage locations in accordance with Section 3305.7.
7. Location and safety considerations for temporary heating equipment.
8. Hot work permit plan.
9. Plans for control of combustibile waste material.
10. Locations and methods for storage and use of flammable and combustibile liquids and other hazardous materials.
11. Provisions for site security.
12. Changes that affect this plan.
13. Other site-specific information required by the fire code official.

3303.2.1 Training. Training of fire watch and other responsible personnel in the use of fire protection equipment shall be the responsibility of the site safety director. Records of training shall be kept and made a part of the written plan for the site safety plan.

3303.3 Daily fire safety inspection. The site safety director shall be responsible for completion of a daily fire safety inspection at the project site. Each day, all building and outdoor areas shall be inspected to ensure compliance with the inspection list in this section. The results of each inspection shall be documented and maintained on-site until a certificate of occupancy has been issued. Documentation shall be immediately available on-site for presentation to the fire code official upon request.

1. Any contractors entering the site to perform hot work each day have been instructed in the hot work safety requirements in Chapter 35, and hot work is performed only in areas approved by the site safety director.

2. Temporary heating equipment is maintained away from combustible materials in accordance with the equipment manufacturer's instructions.

3. Combustible debris, rubbish and waste material is removed from the building in areas where work is not being performed.

4. Temporary wiring does not have exposed conductors.

5. Flammable liquids and other hazardous materials are stored in locations that have been approved by the site safety director when not involved in work that is being performed.

6. Fire apparatus access roads required by Section 3307 are maintained clear of obstructions that reduce the width of the usable roadway to less than 20 feet (6096 mm).

7. Fire hydrants are clearly visible from access roads and are not obstructed.

8. The location of fire department connections to standpipe and in-service sprinkler systems are clearly identifiable from the access road and such connections are not obstructed.

9. Standpipe systems are in service and continuous to the highest work floor, as specified in Section 3307.5.

10. Portable fire extinguishers are available in locations required by Sections 3306.6 and 3305.10.2.

3303.5 Fire watch. Where required by the *fire code official* or the site safety plan established in accordance with Section 3303.1, a fire watch shall be provided for building demolition and for building construction.

EXCEPTION: New construction that is built under the IRC.

3303.5.1 Fire watch during construction. A fire watch shall be provided during nonworking hours for new construction that exceeds 40 feet (12,192 mm) in height above the lowest adjacent grade at any point along the building perimeter, for new multistory construction with an aggregate area exceeding 50,000 square feet (4645 m) per story or as required by the fire code official.

3303.5.2 Fire watch personnel. Fire watch personnel shall be provided in accordance with this section.

3303.5.2.1 Duties. The primary duty of fire watch personnel shall be to perform constant patrols and watch for the occurrence of fire. The

combination of fire watch duties and site security duties is acceptable.

3303.5.2.2 Training. Personnel shall be trained to serve as an on-site fire watch. Training shall include the use of portable fire extinguishers. Fire extinguishers and fire reporting shall be in accordance with Sections 3303.6 and 3306.6.

3303.5.2.3 Means of notification. Fire watch personnel shall be provided with not fewer than one approved means for notifying the fire department.

3303.5.3 Fire watch location and records. The fire watch shall include areas specified by the site safety plan established in accordance with Section 3303.

3303.5.4 Fire watch records. Fire watch personnel shall keep a record of all time periods of duty, including the log entry for each time the site was patrolled and each time a structure was entered and inspected. Records shall be made available for review by the fire code official upon request.

3303.6 Emergency telephone. Emergency telephone facilities with ready access shall be provided in an approved location at the construction site, or an approved equivalent means of communication shall be provided. The street address of the construction site and the emergency telephone number of the fire department shall be posted adjacent to the telephone. Alternatively, where an equivalent means of communication has been approved, the site address and fire department emergency telephone number shall be posted at the main entrance to the site, in guard shacks, and in the construction site office.

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AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-3304 Precautions against fire.

~~((3304.5.1 Fire watch during construction. Where required by the fire code official, a fire watch shall be provided during nonworking hours for new construction that exceeds 40 feet (12,192 mm) in height above the lowest adjacent grade.~~

EXCEPTIONS: 1. New construction that is built under the IRC.
2. New construction less than 5 stories and 50,000 square feet per story.)

3304.1 Combustible debris, rubbish, and waste. Combustible debris, rubbish, and waste material shall comply with the requirements of Sections 3304.1.1 through 3304.2.

3304.1.1 Combustible waste material accumulation. Combustible debris, rubbish, and waste material shall not be accumulated within buildings.

3304.1.2 Combustible waste material removal. Combustible debris, rubbish, and waste material shall be removed from buildings at the end of each shift of work.

3304.1.3 Rubbish containers. Where rubbish containers with a capacity exceeding 5.33 cubic feet (40 gallons) (0.15 m) are used for temporary storage of combustible debris, rubbish, and waste material, they shall

have tight-fitting or self-closing lids. Such rubbish containers shall be constructed entirely of materials that comply with either of the following:

1. Noncombustible materials.

2. Materials that meet a peak rate of heat release not exceeding 300 kW/m when tested in accordance with ASTM E1354 at an incident heat flux of 50 kW/m in the horizontal orientation.

3304.2 Spontaneous ignition. Materials susceptible to spontaneous ignition, such as oily rags, shall be stored in a listed disposal container.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-3304, filed 11/27/19, effective 7/1/20.]

NEW SECTION

WAC 51-54A-3305 Ignition source controls.

3305.1 Listed. Temporary heating devices shall be listed and labeled. The installation, maintenance and use of temporary heating devices shall be in accordance with the listing and the manufacturer's instructions.

3305.1.1 Oil-fired heaters. Oil-fired heaters shall comply with Section 605.

3305.1.2 LP-gas heaters. Fuel supplies for liquefied-petroleum gas-fired heaters shall comply with Chapter 61 and the International Fuel Gas Code.

3305.1.3 Refueling. Refueling operations for liquid-fueled equipment or appliances shall be conducted in accordance with Section 5705. The equipment or appliance shall be allowed to cool prior to refueling.

3305.1.4 Installation. Clearance to combustibles from temporary heating devices shall be maintained in accordance with the labeled equipment. When in operation, temporary heating devices shall be fixed in place and protected from damage, dislodgement or overturning in accordance with the manufacturer's instructions.

3305.1.5 Supervision. The use of temporary heating devices shall be supervised and maintained only by competent personnel.

3305.2 Smoking. Smoking shall be prohibited except in approved areas. Signs shall be posted in accordance with Section 310. In approved areas where smoking is permitted, approved ashtrays shall be provided in accordance with Section 310.

3305.5 Cutting and welding. Welding, cutting, open torches and other hot work operations and equipment shall comply with Chapter 35.

3305.6 Electrical. Temporary wiring for electrical power and lighting installations used in connection with the construction, alteration or demolition of buildings, structures, equipment or similar activities shall comply with NFPA 70.

3305.7 Cooking. Cooking shall be prohibited except in approved designated cooking areas separated from combustible materials by a minimum of 10 feet (3048 mm). Signs with a minimum letter height of 3 inches

(76 mm) and a minimum brush stroke of one-half inch (13 mm) shall be posted in conspicuous locations in designated cooking areas and state:
Designated cooking area;
Cooking outside of a designated area;
Cooking area is prohibited.

3305.8 General. Portable generators used at construction and demolition sites shall comply with Section 1204.

3305.9 Hot work operations. The site safety director shall ensure hot work operations and permit procedures are in accordance with Chapter 35.

3305.10 Safeguarding roof operations general. Roofing operations utilizing heat-producing systems or other ignition sources shall be conducted in accordance with Sections 3305.10.1 and 3305.10.2 and Chapter 35.

3305.10.1 Asphalt and tar kettles. Asphalt and tar kettles shall be operated in accordance with Section 303.

3305.10.2 Fire extinguishers for roofing operations. Fire extinguishers shall comply with Section 906. There shall be not less than one multiple-purpose portable fire extinguisher with a minimum 3-A 40-B:C rating on the roof being covered or repaired.

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NEW SECTION

WAC 51-54A-3306 Fire protection systems and devices.

3306.1 Fire protection devices. The site safety director shall ensure that all fire protection equipment is maintained and serviced in accordance with this code. Fire protection equipment shall be inspected in accordance with the fire protection program.

3306.2 Impairment of fire protection systems. The site safety director shall ensure impairments to any fire protection system are in accordance with Section 901.

3306.3 Smoke detectors and smoke alarms. Smoke detectors and smoke alarms located in an area where airborne construction dust is expected shall be covered to prevent exposure to dust or shall be temporarily removed. Smoke detectors and alarms that were removed shall be replaced upon conclusion of dust-producing work. Smoke detectors and smoke alarms that were covered shall be inspected and cleaned, as necessary, upon conclusion of dust-producing work.

3306.4 Temporary covering of fire protection devices. Coverings placed on or over fire protection devices to protect them from damage during construction processes shall be immediately removed upon the completion of the construction processes in the room or area in which the devices are installed.

3306.5 Automatic sprinkler system. In buildings where an automatic sprinkler system is required by this code or the International Building Code, it shall be unlawful to occupy any portion of a building or structure until the automatic sprinkler system installation has been tested and approved, except as provided in Section 105.3.4.

3306.5.1 Operation of valves. Operation of sprinkler control valves shall be allowed only by properly authorized personnel and shall be accompanied by notification of duly designated parties. Where the sprinkler protection is being regularly turned off and on to facilitate connection of newly completed segments, the sprinkler control valves shall be checked at the end of each work period to ascertain that protection is in service.

3306.6 Portable fire extinguishers. Structures under construction, alteration or demolition shall be provided with not less than one approved portable fire extinguisher in accordance with Section 906 and sized for not less than ordinary hazard as follows:

1. At each stairway on all floor levels where combustible materials have accumulated.
2. In every storage and construction shed.
3. Additional portable fire extinguishers shall be provided where special hazards exist including, but not limited to, the storage and use of flammable and combustible liquids.

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NEW SECTION

WAC 51-54A-3307 Fire department site and water supply.

3307.1 Required access. Approved vehicle access for fire fighting shall be provided to all construction or demolition sites. Vehicle access shall be provided to within 100 feet (30,480 mm) of temporary or permanent fire department connections. Vehicle access shall be provided by either temporary or permanent roads, capable of supporting vehicle loading under all weather conditions. Vehicle access shall be maintained until permanent fire apparatus access roads are available.

3307.1.2 Key boxes. Key boxes shall be provided as required by Chapter 5.

3307.1.3 Stairways required. Where building construction exceeds 40 feet (12,192 mm) in height above the lowest level of fire department vehicle access, a temporary or permanent stairway shall be provided. As construction progresses, such stairway shall be extended to within one floor of the highest point of construction having secured decking or flooring.

3307.1.4 Maintenance. Required means of egress and required accessible means of egress shall be maintained during construction and demolition, remodeling or alterations and additions to any building.

EXEMPTION: Approved temporary means of egress and accessible means of egress systems and facilities.

3307.2 Water supply for fire protection. An approved water supply for fire protection, either temporary or permanent, shall be made available as soon as combustible building materials arrive on the site, on commencement of vertical combustible construction and on installation of a standpipe system in buildings under construction, in accordance with Sections 3307.2.1 through 3307.4.

EXCEPTION: The fire code official is authorized to reduce the fire-flow requirements for isolated buildings or a group of buildings in rural areas or small communities where the development of full fire-flow requirements is impractical.

3307.2.1 Combustible building materials. When combustible building materials of the building under construction are delivered to a site, a minimum fire flow of 500 gallons per minute (1893 L/m) shall be provided. The fire hydrant used to provide this fire-flow supply shall be within 500 feet (152 m) of the combustible building materials, as measured along an approved fire apparatus access lane. Where the site configuration is such that one fire hydrant cannot be located within 500 feet (152 m) of all combustible building materials, additional fire hydrants shall be required to provide coverage in accordance with this section.

3307.2.2 Vertical construction of Types III, IV, and V construction. Prior to commencement of vertical construction of Type III, IV, or V buildings that utilize any combustible building materials, the fire flow required by Sections 3307.2.2.1 through 3307.2.2.3 shall be provided, accompanied by fire hydrants in sufficient quantity to deliver the required fire flow and proper coverage.

3307.2.2.1 Fire separation up to 30 feet. Where a building of Type III, IV, or V construction has a fire separation distance of less than 30 feet (9144 mm) from property lot lines, and an adjacent property has an existing structure or otherwise can be built on, the water supply shall provide either a minimum of 500 gallons per minute (1893 L/m) or the entire fire flow required for the building when constructed, whichever is greater.

3307.2.2.2 Fire separation of 30 feet up to 60 feet. Where a building of Type III, IV, or V construction has a fire separation distance of 30 feet (9144 mm) up to 60 feet (18,288 mm) from property lot lines, and an adjacent property has an existing structure or otherwise can be built on, the water supply shall provide a minimum of 500 gallons per minute (1893 L/m) or 50 percent of the fire flow required for the building when constructed, whichever is greater.

3307.2.2.3 Fire separation of 60 feet or greater. Where a building of Type III, IV, or V construction has a fire separation of 60 feet (18,288 mm) or greater from a property lot line, a water supply of 500 gallons per minute (1893 L/m) shall be provided.

3307.3 Vertical construction, Type I and II construction. If combustible building materials are delivered to the construction site, water supply in accordance with Section 3307.2.1 shall be provided. Additional water supply for fire flow is not required prior to commencing vertical construction of Type I and II buildings.

3307.4 Standpipe supply. Regardless of the presence of combustible building materials, the construction type or the fire separation distance, where a standpipe is required in accordance with Section 3307, a water supply providing a minimum flow of 500 gallons per minute (1893 L/m) shall be provided. The fire hydrant used for this water supply shall be located within 100 feet (30,480 mm) of the fire department connection supplying the standpipe.

3307.5 Standpipes. In buildings required to have standpipes by Section 905.3.1, not less than one standpipe shall be provided for use during construction. Such standpipes shall be installed prior to construction exceeding 40 feet (12,192 mm) in height above the lowest level of fire department vehicle access. Such standpipes shall be provided with fire department hose connections at locations adjacent to stairways complying with Section 3307.1.3. As construction progresses, such standpipes

shall be extended to within one floor of the highest point of construction having secured decking or flooring.

3307.5.1 Buildings being demolished. Where a building is being demolished and a standpipe is existing within such a building, such standpipe shall be maintained in an operable condition so as to be available for use by the fire department. Such standpipe shall be demolished with the building but shall not be demolished more than one floor below the floor being demolished.

3307.5.2 Detailed requirements. Standpipes shall be installed in accordance with the provisions of Section 905.

EXCEPTION: Standpipes shall be either temporary or permanent in nature, and with or without a water supply, provided that such standpipes comply with the requirements of Section 905 as to capacity, outlets, and materials.

[]

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-3308 ((Owner's responsibility for fire protection.))
Motorized construction equipment.

~~((3308.9 Fire safety requirements for buildings of Types IV-A, IV-B, and IV-C construction. Buildings of Types IV-A, IV-B, and IV-C construction designed to be greater than six stories above grade plane shall meet the following requirements during construction unless otherwise approved by the fire code official.~~

~~1. Standpipes shall be provided in accordance with Section 3313.~~

~~2. A water supply for fire department operations, as approved by the fire code official and the fire chief.~~

~~3. Where building construction exceeds six stories above grade plane, at least one layer of noncombustible protection where required by Section 602.4 of the *International Building Code* shall be installed on all building elements more than four floor levels, including mezzanines, below active mass timber construction before erecting additional floor levels.~~

EXCEPTION: Shafts and vertical exit enclosures shall not be considered a part of the active mass timber construction.

~~4. Where building construction exceeds six stories above grade plane required exterior wall coverings shall be installed on all floor levels more than four floor levels, including mezzanines, below active mass timber construction before erecting additional floor level.~~

EXCEPTION: Shafts and vertical exit enclosures shall not be considered a part of the active mass timber construction.))

3308.1 Conditions of use. Internal-combustion-powered construction equipment shall be used in accordance with all of the following conditions:

1. Equipment shall be located so that exhausts do not discharge against combustible material.

2. Exhausts shall be piped to the outside of the building.

3. Equipment shall not be refueled while in operation.

4. Fuel for equipment shall be stored in an approved area outside of the building.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-3308, filed 12/18/19, effective 7/1/20. Statutory Authority:

RCW 19.27.031, 19.27.074 and chapter 19.27 RCW. WSR 19-02-086, § 51-54A-3308, filed 1/2/19, effective 7/1/19.]

NEW SECTION

WAC 51-54A-3309 Hazardous materials.

3309.1 Storage of flammable and combustible liquids. Storage of flammable and combustible liquids shall be in accordance with Section 5704.

3309.1.1 Class I and Class II liquids. The storage, use and handling of flammable and combustible liquids at construction sites shall be in accordance with Section 5706.2. Ventilation shall be provided for operations involving the application of materials containing flammable solvents.

3309.1.2 Housekeeping. Flammable and combustible liquid storage areas shall be maintained clear of combustible vegetation and waste materials. Such storage areas shall not be used for the storage of combustible materials.

3309.1.3 Precautions against fire. Sources of ignition and smoking shall be prohibited in flammable and combustible liquid storage areas. Signs shall be posted in accordance with Section 310.

3309.1.4 Handling at point of final use. Class I and II liquids shall be kept in approved safety containers.

3309.1.5 Leakage and spills. Leaking vessels shall be immediately repaired or taken out of service and spills shall be cleaned up and disposed of properly.

3309.2 Storage and handling of flammable gas. The storage, use, and handling of flammable gases shall comply with Chapter 58.

3309.2.1 Cleaning with flammable gas. Flammable gases shall not be used to clean or remove debris from piping open to the atmosphere.

3309.2.2 Pipe cleaning and purging. The cleaning and purging of flammable gas piping systems, including cleaning new or existing piping systems, purging piping systems into service and purging piping systems out of service, shall comply with NFPA 56.

EXCEPTIONS: 1. Compressed gas piping systems other than fuel gas piping systems where in accordance with Chapter 53.
 2. Piping systems regulated by the International Fuel Gas Code.
 3. Liquefied petroleum gas systems in accordance with Chapter 61.

3309.3 Storage and handling. Explosive materials shall be stored, used and handled in accordance with Chapter 56.

3309.3.1 Supervision. Blasting operations shall be conducted in accordance with Chapter 56.

3309.3.2 Demolition using explosives. Approved fire hoses for use by demolition personnel shall be maintained at the demolition site wherever explosives are used for demolition. Such fire hoses shall be connected to an approved water supply and shall be capable of being brought to bear on post-detonation fires anywhere on the site of the demolition operation.

[]

NEW SECTION**WAC 51-54A-3310 Additional safeguards for occupied buildings.**

3310.1 Storage. Combustible materials associated with construction, demolition, remodeling or alterations to an occupied structure shall not be stored in exits, enclosures for stairways and ramps, or exit access corridors serving an occupant load of 30 or more.

EXCEPTIONS: 1. Where the only occupants are construction workers.
 2. Combustible materials that are temporarily accumulated to support work being performed when workers are present.

[]

NEW SECTION**WAC 51-54A-3311 Additional safeguards for Type I and II construction.**

3311.1 Separations between construction areas. Separations used in Type I and Type II construction to separate construction areas from occupied portions of the building shall be constructed of materials that comply with one of the following:

1. Noncombustible materials.
2. Materials that exhibit a flame spread index not exceeding 25 when tested in accordance with ASTM E84 or UL 723.
3. Materials exhibiting a peak heat release rate not exceeding 300 kW/m when tested in accordance with ASTM E1354 at an incident heat flux of 50 kW/m in the horizontal orientation on specimens at the thickness intended for use.

[]

NEW SECTION**WAC 51-54A-3312 Additional safeguards for Type IV-A, IV-B, and IV-C construction.**

3312.1 Fire safety requirements for buildings of Types IV-A, IV-B, and IV-C construction. Buildings of Types IV-A, IV-B, and IV-C construction designed to be greater than six stories above grade plane shall comply with the following requirements during construction unless otherwise approved by the *fire code official*:

1. Standpipes shall be provided in accordance with Section 3307.
2. A water supply for fire department operations, as approved by the *fire code official* and the fire chief.
3. Where building construction exceeds six stories above grade plane and noncombustible protection is required by Section 602.4 of the *International Building Code*, at least one layer of noncombustible protection shall be installed on all building elements on floor levels, including mezzanines, more than four levels below active mass timber construction before additional floor levels can be erected.

EXCEPTIONS: 1. Shafts and vertical exit enclosures shall not be considered part of the active mass timber construction.
 2. Noncombustible protection on the top surface of mass timber floor assemblies shall not be required before erecting additional floor levels.

4. Where building construction exceeds six stories above grade plane, required exterior wall coverings shall be installed on floor levels, including mezzanines, more than four levels below active mass timber construction before additional floor levels can be erected.

EXCEPTION: Shafts and vertical exit enclosures shall not be considered part of the active mass timber construction.

[]

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-3601 Marinas—Scope.

3601.3 Permits. For permits to operate marine motor fuel-dispensing stations, application of flammable or combustible finishes, and hot works, see Section (~~(105.6)~~) 105.5.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-3601, filed 12/18/19, effective 7/1/20. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-3601, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

WAC 51-54A-3604 Fire protection equipment.

3604.2 Standpipes. Marinas and boatyards shall be equipped throughout with Class I manual, dry standpipe systems in accordance with NFPA 303. Systems shall be provided with (~~(outlets)~~) hose connections located such that no point on the marina pier or float system exceeds 150 feet from a standpipe outlet.

3604.3 Access and water supply. Piers and wharves shall be provided with fire apparatus access roads and water-supply systems with on-site fire hydrants when required and *approved by the fire code official*. At least one fire hydrant capable of providing the required fire flow shall be provided within an *approved* distance of standpipe supply connections.

3604.4 Portable fire extinguishers. One 4A40BC rated fire extinguisher shall be provided at each standpipe (~~(outlet)~~) hose connection. Additional portable fire extinguishers, suitable for the hazards involved, shall be provided and maintained in accordance with Section 906.

3604.7 Smoke and heat vents. Approved automatic smoke and heat vents shall be provided in covered boat moorage areas exceeding 2,500 sq. ft. (232 m²) in area, excluding roof overhangs.

EXCEPTION: Smoke and heat vents are not required in areas protected by automatic sprinklers.

3604.7.1 Design and installation. Where smoke and heat vents are required they shall be installed near the roof peak, evenly distributed and arranged so that at least one vent is over each covered berth. The effective vent area shall be calculated using a ratio of one square foot of vent to every fifteen square feet of covered berth area

(1:15). Each vent shall provide a minimum opening size of 4 ft. x 4 ft.

3604.7.1.1 Smoke and heat vents. Smoke and heat vents shall operate automatically by actuation of a heat-responsive device rated at 100°F (56°C) above ambient.

EXCEPTION: Gravity-operated drop out vents.

3604.7.1.2 Gravity-operated drop out vents. Gravity-operated drop out vents shall fully open within 5 minutes after the vent cavity is exposed to a simulated fire represented by a time-temperature gradient that reaches an air temperature of 500°F (260°C) within 5 minutes.

3604.8 Draft curtains. Draft curtains shall be provided in covered boat moorage areas exceeding 2,500 sq. ft. (232 m²) in area, excluding roof overhangs.

EXCEPTION: Draft curtains are not required in areas protected by automatic sprinklers.

3604.8.1 Draft curtain construction. Draft curtains shall be constructed of sheet metal, gypsum board or other approved materials that provide equivalent performance to resist the passage of smoke. Joints and connections shall be smoke tight.

3604.8.2 Draft curtain location and depth. The maximum area protected by draft curtains shall not exceed 2,000 sq. ft. (186 m²) or two slips or berths, whichever is smaller. Draft curtains shall not extend past the piling line. Draft curtains shall have a minimum depth of 4 feet and shall not extend closer than 8 feet (2438 mm) to the walking surface of the pier.

[Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-3604, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-3900 ((~~Marijuana processing or extraction facilities~~)) Reserved.

((~~SECTION 3901—ADMINISTRATION~~))

~~**3901.1 Scope.** Facilities used for marijuana processing or extraction that utilize chemicals or equipment as regulated by the International Fire Code shall comply with this chapter and the International Building Code. The extraction process includes the act of extraction of the oils and fats by use of a solvent, desolventizing of the raw material and production of the miscella, distillation of the solvent from the miscella and solvent recovery. The use, storage, transfilling, and handling of hazardous materials in these facilities shall comply with this chapter and the International Building Code.~~

~~**3901.2 Application.** The requirements set forth in this chapter are requirements specific only to marijuana processing and extraction facilities and shall be applied as exceptions or additions to applicable requirements set forth elsewhere in this code.~~

~~**3901.2.1** For the purposes of this chapter, marijuana processing and extraction shall be limited to those processes and extraction methods~~

that utilize chemicals defined as hazardous by the International Fire Code and are regulated as such. Such processes and extraction methods shall meet the requirements of this chapter and other applicable requirements elsewhere in this code and its referenced standards.

EXCEPTION: Provisions of WAC 314-55-104 do not apply to this chapter.

3901.2.2 The use of equipment regulated by the International Fire Code for either marijuana processing or marijuana extraction shall meet the requirements of this chapter and other applicable requirements elsewhere in this code.

3901.3 Multiple hazards. Where a material, its use or the process it is associated with poses multiple hazards, all hazards shall be addressed in accordance with Section 5001.1 and other material specific chapters.

3901.4 Existing buildings or facilities. Existing buildings or facilities used for the processing of marijuana shall comply with this chapter.

3901.5 Permits. Permits shall be required as set forth in Section 105.6 and 105.7.

SECTION 3902—DEFINITIONS

Desolventizing. The act of removing a solvent from a material.

Finding. The results of an inspection, examination, analysis or review.

Marijuana processing. Processing that uses chemicals or equipment as regulated by the International Fire Code; this does not include the harvesting, trimming, or packaging of the plant.

Miscella. A mixture, in any proportion, of the extracted oil or fat and the extracting solvent.

Observation. A practice or condition not technically noncompliant with other regulations or requirements, but could lead to noncompliance if left unaddressed.

Transfilling. The process of taking a gas source, either compressed or in liquid form (usually in bulk containers), and transferring it into a different container (usually a smaller compressed cylinder).

SECTION 3903—PROCESSING OR EXTRACTION OF MARIJUANA

3903.1 Location. Marijuana processing shall be located in a building complying with the International Building Code and this code. Requirements applied to the building shall be based upon the specific needs for mitigation of the specific hazards identified.

3903.2 Systems, equipment, and processes. Systems, equipment, and processes shall be in accordance with Sections 3903.2.1 through 3903.2.7. In addition to the requirements of this chapter, electrical equipment shall be listed or evaluated for electrical fire and shock hazard in accordance with RCW 19.28.010(1).

3903.2.1 Application. Systems, equipment, and processes shall include, but are not limited to, vessels, chambers, containers, cylinders, tanks, piping, tubing, valves, fittings, and pumps.

3903.2.2 General requirements. In addition to the requirements in Section 3903, systems, equipment, and processes shall also comply with Section 5003.2, other applicable provisions of this code, the Interna-

tional Building Code, and the International Mechanical Code. The use of ovens in post-process purification or winterization shall comply with Section 3903.2.7.

3903.2.3 Systems and equipment. ~~Systems or equipment used for the extraction of oils from plant material shall be listed and approved for the specific use. If the system used for extraction of oils and products from plant material is not listed, then a technical report prepared by a Washington licensed engineer shall be provided to the code official for review and approval.~~

3903.2.4 Change of extraction medium. ~~Where the medium of extraction or solvent is changed from the material indicated in the technical report, or as required by the manufacturer, the technical report shall be revised at the cost of the facility owner, and submitted for review and approval by the fire code official prior to the use of the equipment with the new medium or solvent.~~

3903.2.5 Required technical report. ~~The technical report documenting the equipment design shall be submitted for review and approval by the fire code official prior to the equipment being installed at the facility.~~

3903.2.5.1 Content of technical report and engineering analysis. ~~All, but not limited to, the items listed below shall be included in the technical report.~~

- ~~1. Manufacturer information.~~
- ~~2. Engineer of record information.~~
- ~~3. Date of review and report revision history.~~
- ~~4. Signature page shall include:~~
 - ~~4.1 Author of the report;~~
 - ~~4.2 Date of report; and~~
 - ~~4.3 Seal, date and signature of engineer of record performing the design.~~
- ~~5. Model number of the item evaluated. If the equipment is provided with a serial number, the serial number shall be included for verification at the time of site inspection.~~
- ~~6. Methodology of the design review process used to determine minimum safety requirements. Methodology shall consider the basis of design, and shall include a code analysis and code path to demonstrate the reason why specific codes or standards are applicable or not.~~
- ~~7. Equipment description. A list of all components and subassemblies of the system or equipment, indicating the material, solvent compatibility, maximum temperature and pressure limits.~~
- ~~8. A general flow schematic or general process flow diagram (PFD) of the process, including maximum temperatures, pressures and solvent state of matter shall be identified in each step or component. It shall provide maximum operating temperature and pressure in the system.~~
- ~~9. Analysis of the vessel(s) if pressurized beyond standard atmospheric pressure. Analysis shall include purchased and fabricated components.~~
- ~~10. Structural analysis for the frame system supporting the equipment.~~
- ~~11. Process safety analysis of the extraction system, from the introduction of raw product to the end of the extraction process.~~
- ~~12. Comprehensive process hazard analysis considering failure modes and points of failure throughout the process. This portion of the review should include review of emergency procedure information~~

provided by the manufacturer of the equipment or process and not that of the facility, building or room.

13. Review of the assembly instructions, operational and maintenance manuals provided by the manufacturer.

14. Report shall include findings and observations of the analysis.

15. List of references used in the analysis.

3903.2.6 Building analysis. The technical report, provided by the engineer of record, shall include a review of the construction documents for location, room, space or building and include recommendations to the fire code official.

3903.2.6.1 Site inspection. The engineer of record of the equipment shall inspect the installation of the extraction equipment for conformance with the technical report and provide documentation to the fire code official that the equipment was installed in conformance with the approved design.

3903.2.7 Post-process purification and winterization. Post-processing and winterization involving the heating or pressurizing of the miscella shall be approved and performed in an appliance listed for such use. Domestic or commercial cooking appliances shall not be used. The use of industrial ovens shall comply with Chapter 30.

EXCEPTION: An automatic fire extinguishing system shall not be required for batch-type Class A ovens having less than 3.0 cubic feet of work space.

3903.3 Construction requirements.

3903.3.1 Location. Marijuana extraction shall not be located in any building containing a Group A, E, I or R occupancy.

3903.3.1.1 Extraction room. The extraction equipment and processes utilizing hydrocarbon solvents shall be located in a room or area dedicated to extraction.

3903.3.2 Egress. Doors installed on rooms or areas dedicated to extraction shall be equipped with panic hardware or fire exit hardware.

3903.3.2.1 Facility egress. Egress requirements shall be in compliance with Chapter 10 of the International Building Code.

3903.3.3 Ventilation. Ventilation shall be provided in compliance with Chapter 4 of the International Mechanical Code.

3903.3.4 Control area. Control areas shall comply with Section 5003.8.3.

3903.3.5 Ignition source control. Extraction equipment and processes using flammable or combustible gas or liquid solvents shall be provided with ventilation rates for the room to maintain the concentration of flammable constituents in air below 25 percent of the lower flammability limit of the respective solvent. If not provided with the required ventilation rate, Class I Division II electrical requirements shall apply to the entire room.

3903.3.6 Interlocks. When a hazardous exhaust system is provided, all electrical components within the extraction room or area shall be interlocked with the hazardous exhaust system, and when provided, the gas detection system. When the hazardous exhaust system is not operational, then light switches and electrical outlets shall be disabled. Activation of the gas detection system shall disable all light switches and electrical outlets.

3903.3.7 Emergency power.

~~**3903.3.7.1 Emergency power for extraction process.** Where power is required for the operation of the extraction process, an automatic emergency power source in accordance with Section 5004.7 and 604 shall be provided. The emergency power source shall have sufficient capacity to allow safe shutdown of the extraction process plus an additional 2 hours of capacity beyond the shutdown process.~~

~~**3903.3.7.2 Emergency power for other than extraction process.** An automatic emergency power system in accordance with Section 604 shall be provided when any of the following items are installed:~~

- ~~1. Extraction room lighting;~~
- ~~2. Extraction room ventilation system;~~
- ~~3. Solvent gas detection system;~~
- ~~4. Emergency alarm systems;~~
- ~~5. Automatic fire extinguishing systems.~~

~~**3903.3.8 Continuous gas detection system.** For extraction processes utilizing gaseous hydrocarbon-based solvents, a continuous gas detection system shall be provided. The gas detection threshold shall not exceed 25 percent of the LEL/LFL limit of the materials.~~

~~**3903.4 Carbon dioxide enrichment or extraction.** Extraction processes using carbon dioxide shall comply with this section.~~

~~**3903.4.1 Scope.** Carbon dioxide systems with more than 100 pounds of carbon dioxide shall comply with Sections 3903.4 through 3903.4.3. This section is applicable to carbon dioxide systems utilizing compressed gas systems, liquefied gas systems, dry ice, or on-site carbon dioxide generation.~~

~~**3903.4.2 Permits.** Permits shall be required as set forth in Sections 105.6 and 105.7.~~

~~**3903.4.3 Signage.** At the entrance to each area using or storing carbon dioxide, signage shall be posted indicating the hazard. Signs shall be durable and permanent in nature and not less than 7 inches wide by 10 inches tall. Signs shall bear the warning "DANGER! POTENTIAL OXYGEN DEFICIENT ATMOSPHERE." NFPA 704 signage shall be provided at the building main entry and the rooms where the carbon dioxide is used and stored.~~

~~**3903.5 Flammable or combustible liquid.** The use of a flammable or combustible liquid for the extraction of oils and fats from marijuana shall comply with this section.~~

~~**3903.5.1 Scope.** The use of flammable and combustible liquids for liquid extraction processes where the liquid is boiled, distilled, or evaporated shall comply with this section and NFPA 30.~~

~~**3903.5.2 Location.** The process using a flammable or combustible liquid shall be located within a hazardous exhaust fume hood, rated for exhausting flammable vapors. Electrical equipment used within the hazardous exhaust fume hood shall be listed or approved for use in flammable atmospheres. Heating of flammable or combustible liquids over an open flame is prohibited.)~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-3900, filed 1/20/21, effective 2/20/21. Statutory Authority: RCW 19.27.031, 19.27.074 and chapter 19.27 RCW. WSR 19-02-086, § 51-54A-3900, filed 1/2/19, effective 7/1/19.]

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-3904 ((Systems and equipment.)) Reserved.

((Reserved.))

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-3904, filed 1/20/21, effective 2/20/21; WSR 19-24-058, § 51-54A-3904, filed 11/27/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 21-04-003, filed 1/20/21, effective 2/20/21)

WAC 51-54A-4000 ((Fixed guideway transit and passenger rail systems.)) Reserved.

((**4001.1 Scope.** Fixed guideway transit and passenger rail systems shall be in accordance with NFPA 130.))

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-04-003, § 51-54A-4000, filed 1/20/21, effective 2/20/21.]

NEW SECTION

WAC 51-54A-4900 Fixed guideway transit and passenger rail systems.

4901.1 Scope NFPA 130. General. Fixed guideway transit and passenger rail systems shall be in accordance with NFPA 13, as modified below.

4901.2 NFPA 130 Section 3.3.44.2. Add new definition as follows:

3.3.44.2 Traction power sub station (TPSS): A TPSS is an electrical substation consisting of switchgear transformers/rectifiers, emergency trip equipment, and other systems that converts AC electric power provided by the electrical power industry for public utility service to DC voltage to supply light rail vehicles with traction current.

4901.3 NFPA 130 Section 5.4.4 Modify NFPA 130 Sections 5.4.4.1 and 5.4.4.1.1 to read as follows:

5.4.4.1 An automatic sprinkler system shall be provided throughout enclosed stations.

EXCEPTIONS:

1. Traction power substation (TPSS) when located in a transformer vault designed in accordance with the NFPA 70.
2. Other high voltage equipment located in a transformer vault designed in accordance with the NFPA 70 when approved by the fire code official.
3. Fire command centers, communication room(s), and signal rooms when protected with clean agent fire suppression and separated from other spaces with two-hour fire rated construction.
4. Other operational critical rooms when protected with clean agent fire suppression and separated from other spaces with two-hour fire rated construction, when approved by the fire code official.

5.4.4.1.1 An automatic sprinkler system shall be provided in areas of open stations used for concessions, markets, storage areas and similar areas with combustible loadings, and in trash rooms, electrical rooms, mechanical rooms, machinery rooms, communication rooms, and other enclosed rooms.

EXCEPTIONS:

1. Stations at grade with less than 1,500 sq. ft. of ancillary area/ancillary space.

- 2. Fire command centers, communication room(s), and signal rooms when protected with clean agent fire suppression and separated from other spaces with two-hour fire rated construction.
- 3. Other operational critical rooms when protected with clean agent fire suppression and separated from other spaces with two-hour fire rated construction, when approved by the fire code official.

5.4.4.2 Sprinkler protection shall be permitted to be omitted in areas of open stations separated from the station by a distance of 20 feet.

4901.4 NFPA 130 Section 5.4.5. Modify NFPA 130 Sections 5.4.5.1 as follows:

5.4.5.1 Class I standpipes shall be installed in enclosed stations in accordance with International Fire Code Section 905 except as modified herein.

4901.5 NFPA 130 Section 5.4.6. Modify NFPA 130 Sections 5.4.6 as follows:

5.4.6 Portable fire extinguishers in such number, size, type, and location in accordance with the International Fire Code Section 906.

5.4.6.1 Portable fire extinguishers are not required in public areas of at-grade stations.

4901.6 NFPA 130 Section 5.4.7. Modify NFPA 130 Section 5.4.7 as follows:

5.4.7 Emergency ventilation shall be provided in enclosed stations in accordance with Chapter 7 and the International Building Code Section 909.

4901.6 NFPA 130 Section 5.2.2. Modify NFPA 130 Section 5.2.2.2 as follows:

5.2.2.2 Construction types shall conform to the requirements in the International Building Code, Chapter 6, unless otherwise exempted in this section.

Table 5.2.2.1

**Minimum Construction Requirements
for New Station Structures**

Station Configuration	Construction Type†
Stations erected entirely above grade and in a separate building:	
Open stations	Type IIB
Enclosed stations	Type IIA
Stations erected entirely or partially below grade:	
Open above grade portions of below grade structures*	Type IIA
Below grade portions of structures	Type IB
Below grade structures with occupant loads exceeding 1000	Type IA

* Roofs not supporting an occupancy above are not required to have a fire resistance rating.

† Construction types are in accordance with the International Building Code.

4901.7 NFPA 130 Section 5.2.2. Modify NFPA 130 Section 5.2.4.3 as follows:

5.2.4.3 Ancillary spaces. Fire resistance ratings of separations between ancillary occupancies shall be established as required for accessory occupancies and incidental uses by the International Building Code and in accordance with ASTM E119 and ANSI/UL 263.

4901.8 NFPA 130 Section 5.2.5. Modify NFPA 130 Section 5.2.5.4 as follows:

5.2.5.4 Materials used as interior finish in open stations shall comply with the requirements of the International Building Code, Chapter 8.

4901.9 NFPA 130 Section 5.3.1. Modify NFPA 130 Section 5.3.1.1 as follows:

5.3.1.1 The provisions for means of egress for a station shall comply with the International Building Code, Chapter 10, except as herein modified.

4901.10 NFPA 130 Section 5.3.2. Add a New Section to NFPA 130 Section 5.3.2.2.1 as follows:

5.3.2.2.1 Where station occupancy is anticipated to be greater than design capacity during a major event the operating agency shall initiate approved measures to restrict access to the station, when required by the fire code official, to ensure existing means of egress are adequate as an alternate to account for peak ridership associated with major events.

4901.11 NFPA 130 Section 5.3.4. Modify NFPA 130 Section 5.3.2.4(1) as follows:

(1) The occupant load for that area shall be determined in accordance with the provisions of the International Building Code as appropriate for the use.

4901.12 NFPA 130 Section 5.3.3. Modify NFPA 130 Section 5.3.3.4 as follows:

5.3.3.4 Travel distance. For open stations the maximum travel distance on the platform to a point at which a means of egress route leaves the platform shall not exceed 100 m (325 ft.). For enclosed stations the travel distance to an exit shall not exceed 76 m (250 ft.).

4901.13 NFPA 130 Section 5.3.5. Modify NFPA 130 Section 5.3.5.3(2) as follows:

(2)* Travel speed - 14.6 m/min (48 ft./min) (indicates vertical component of travel speed).

5.3.5.4 Escalators shall not account for more than one-half of the egress capacity at any one level.

4901.14 NFPA 130 Section 5.3.5. Delete NFPA 130 Section 5.3.5.5.

4901.15 NFPA 130 Section 5.3.7. Modify NFPA 130 Section 5.3.7 as follows:

5.3.7* Doors, gates, security grilles and exit hatches.

5.3.7.2.1 Security grilles are allowed when designed and operated in accordance with the International Building Code.

4901.16 NFPA 130 Section 5.3.9. Modify NFPA 130 Section 5.3.9 as follows:

5.3.9* Horizontal exits. Horizontal exits shall comply with the International Building Code Section 1026.

4901.17 NFPA 130 Section 5.3.11. Modify NFPA 130 Section 5.3.11 as follows:

5.3.11.1 Illumination of the means of egress in stations, including escalators that are considered a means of egress, shall be in accordance with the International Building Code Section 1008.

5.3.11.2 Means of egress, including escalators considered as means of egress, shall be provided with a system of emergency lighting in accordance with the International Building Code Section 1008.

[]

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-5003 ((General requirements-)) Reserved.

~~((Table 5003.11.1
Maximum Allowable Quantities Per Indoor and Outdoor Control Area in Group M and S Occupancies -- Nonflammable Solids, Nonflammable and Combustible Liquids d,e,f~~

Conditions		Maximum Allowable Quantities Per Control Area	
Materials	Class	Solids (pounds)	Liquids (gallons)
A. Health-Hazard Materials Nonflammable and Noncombustible Solids and Liquids			
1. Corrosive ^{b,c}	Not Applicable	9,750	975
2. Highly Toxic	Not Applicable	20 ^{b,c}	2 ^{b,c}
3. Toxics ^{b,c}	Not Applicable	1,000	100
B. Physical-Hazard Materials Nonflammable and Noncombustible Solids and Liquids			
1. Oxidizer ^{b,c}	4	Not Allowed	Not Allowed
	3	1,350 ^g	135
	2	2,250 ^h	225
	1	18,000 ^{ij}	1,800 ^{ij}
2. Unstable (Reactives) ^{b,c}	4	Not Allowed	Not Allowed
	3	550	55
	2	1,150	115
	1	Not Limited	Not Limited

Conditions		Maximum Allowable Quantities Per Control Area	
Materials	Class	Solids (pounds)	Liquids (gallons)
3. Water Reactives	3.b.c	550	55
	2.b.c	1,150	115
	1	Not Limited	Not Limited

- For SI: 1 pound = 0.454 kg, 1 gallon = 3.785 L, 1 cubic foot = 0.02832 m³.
- a. Hazard categories are as specified in Section 5001.2.2.
 - b. Maximum allowable quantities shall be increased 100 percent in buildings equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1. Where note c applies, the increase for both notes shall be applied accumulatively.
 - e. Maximum allowable quantities shall be increased 100 percent where stored in approved storage cabinets in accordance with Section 5003.8. Where note b applies, the increase for both notes shall be applied accumulatively.
 - d. See Table 5003.8.3.2 for design and number of control areas.
 - e. Maximum allowable quantities for other hazardous material categories shall be in accordance with Section 5003.1.
 - f. Maximum allowable quantities shall be increased 100 percent in outdoor control areas:
 - g. Maximum allowable quantities shall be increased to 2,250 pounds where individual packages are in the original sealed containers from the manufacturer or packager and do not exceed 10 pounds each.
 - h. Maximum allowable quantities shall be increased to 4,500 pounds where individual packages are in the original sealed containers from the manufacturer or packager and do not exceed 10 pounds each.
 - i. Quantities are unlimited where protected by an automatic sprinkler system.
 - j. Quantities are unlimited in an outdoor control area.
 - k. Maximum allowable quantity of consumer products shall be increased to 10,000 pounds where individual packages are in original sealed containers from the manufacturer and the toxic classification is exclusively based on the LC₅₀.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-5003, filed 11/27/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 19-02-086, filed 1/2/19, effective 7/1/19)

WAC 51-54A-8000 Referenced standards.

- NFPA 13-19: Standard for the Installation of Sprinkler Systems (except 9.3.6.3(5)) 903.3.1.1, 903.3.2, 903.3.8.2, 903.3.8.5, 904.13, 905.3.4, 907.6.4, 914.3.2, 1019.3, 1103.4.8, 3201.1, 3204.2, 3205.5, Table 3206.2, 3206.4.1, 3206.10, 3207.2, 3207.2.1, 3208.2.2, 3208.2.2.1, 3208.4, 3210.1, 3401.1, 5104.1, 5104.1.1, 5106.5.7, 5704.3.3.9, Table 5704.3.6.3(7), 5704.3.7.5.1, 5704.3.8.4
- NFPA 33 Membrane Enclosures 2404.3.5
- NFPA ((96-07)) 96-21 Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations ((609.3)) 606.2, 606.3, 904.13
- ((NFPA 720-15 Standard for the Installation of Carbon Monoxide (CO) Warning Equipment in Dwelling Units 1103.9))
- NFPA ((130-17)) 130-20 Standard for Fixed Guideway Transit and Passenger Rail Systems ((3901.1)) 4901.1

UL 142A-2018: Special Purpose Above ground Tanks for Specific Flammable or Combustible Liquids 605.4

UL 2272-2016: Electrical Systems for Personal E-Mobility Devices

UL 2849-2020: Electrical Systems for eBikes

[Statutory Authority: RCW 19.27.031, 19.27.074 and chapter 19.27 RCW. WSR 19-02-086, § 51-54A-8000, filed 1/2/19, effective 7/1/19. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-8000, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-8000, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

**WAC 51-54A-8200 ((International Wildland-Urban Interface Code.))
Reserved.**

~~((101.5 Additions or alterations. Additions or alterations may be made to any building or structure without requiring the existing building or structure to comply with all of the requirements of this code, provided the addition or alteration conforms to that required for a new building or structure.~~

EXCEPTION: Provisions of this code that specifically apply to existing conditions are retroactive. See Sections 402.3, 601.1 and Appendix A.

~~Additions or alterations shall not cause the existing building or structure to become unsafe. An unsafe condition shall be deemed to have been created if an addition or alteration will cause the existing building or structure to become structurally unsafe or overloaded; will not provide adequate access in compliance with the provisions of this code or will obstruct existing exits or access; will create a fire hazard; will reduce required fire resistance or will otherwise create conditions dangerous to human life.~~

~~**108.3 Site plan.** In addition to the requirements for plans in the *International Building Code*, the code official may require site plans which include topography, width and percent of grade of access roads, landscape and vegetation details, locations of structures or building envelopes, existing or proposed overhead utilities, occupancy classification of buildings, types of ignition resistant construction of buildings, structures and their appendages, roof classification of buildings, and site water supply systems. The code official is authorized to waive or modify the requirement for a site plan.~~

~~**108.4 Vegetation management plans.** When required by the code official or when utilized by the permit applicant pursuant to Section 502, vegetation management plans shall be prepared and shall be submitted to the code official for review and approval as part of the plans required for a permit. See Appendix B.~~

~~**108.7 Vicinity plan.** When required by the code official, the requirements for site plans shall include details regarding the vicinity within 300 feet (91,440 mm) of property lines, including other structures, slope, vegetation, fuel breaks, water supply systems and access roads.~~

~~**402.1.1 Access.** New subdivisions, as determined by this jurisdiction, shall be provided with fire apparatus access roads in accordance with the *International Fire Code*.~~

~~**402.1.2 Water supply.** New subdivisions, as determined by this jurisdiction, shall be provided with water supply in accordance with the *International Fire Code*.~~

~~**402.2 Individual structures.** Individual structures shall comply with Sections 402.2.1 and 402.2.2.~~

~~**402.2.1 Access.** Individual structures hereafter constructed or relocated into or within wildland-urban interface areas shall be provided with fire apparatus access in accordance with the *International Fire Code*.~~

~~**402.2.2 Water supply.** Individual structures hereafter constructed or relocated into or within wildland-urban interface areas shall be provided with a conforming water supply in accordance with the *International Fire Code*.~~

EXCEPTIONS:
 1. Structures constructed to meet the requirements for the class of ignition-resistant construction specified in Table N503.1 for a nonconforming water supply.
 2. Buildings containing only private garages, carports, sheds and agricultural buildings with a floor area of not more than 600 square feet (56 m²).

~~**402.3 Existing conditions.** Existing address markers, roads and fire protection equipment shall be in accordance with the *International Fire Code*.~~

**Table 503.1
 Ignition-Resistant Construction^a**

	Fire Hazard Severity					
	Moderate Hazard		High Hazard		Extreme Hazard	
	Water Supply ^b		Water Supply ^b		Water Supply ^b	
Defensible Space ^c	Conforming	Nonconforming	Conforming	Nonconforming	Conforming	Nonconforming
Noneonforming	IR-2	IR-1	IR-1	IR-1 N.C.	IR-1 N.C.	Not Permitted
Conforming	IR-3	IR-2	IR-2	IR-1	IR-1	IR-1 N.C.
1.5 x Conforming	Not Required	IR-3	IR-3	IR-2	IR-2	IR-1

^a Access shall be in accordance with Section 402.

^b Water supply shall be in accordance with Section 402.1.

IR-1 = Ignition-resistant construction in accordance with Section 504.

IR-2 = Ignition-resistant construction in accordance with Section 505.

IR-3 = Ignition-resistant construction in accordance with Section 506.

N.C. = Exterior walls shall have a fire-resistance rating of not less than 1 hour and the exterior surfaces of such walls shall be noncombustible. Usage of log wall construction is allowed.

^c Conformance based on Section 603.

~~**403 Access.** This section not adopted.~~

~~**404 Water supply.** This section not adopted.~~

~~APPENDIX B VEGETATION MANAGEMENT PLAN — THIS APPENDIX IS ADOPTED.~~

~~APPENDIX D FIRE DANGER RATING SYSTEM — THIS APPENDIX IS ADOPTED.)~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-8200, filed 12/18/19, effective 7/1/20. Statutory Authority: Chapter 19.27 RCW and RCW 19.27.031. WSR 17-10-028, § 51-54A-8200, filed 4/25/17, effective 5/26/17. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-8200, filed 1/16/16, effective 7/1/16.]

WSR 22-13-094
PERMANENT RULES
BUILDING CODE COUNCIL

[Filed June 14, 2022, 10:14 a.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Purpose: The purpose of this permanent rule making is to adopt the 2021 International Building Code (nonstructural provisions), published by the International Code Council, with state amendments to incorporate proposed changes as adopted by the Washington state building code council on April 22, 2022. The implementation date is July 1, 2023.

Citation of Rules Affected by this Order: New 12; and amending 84.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 22-02-040 on December 30, 2021.

Changes Other than Editing from Proposed to Adopted Version:

WAC	Section	Change	Rationale/Discussion
WAC 51-50-0429	429.4	Adds a sentence in the first paragraph to clarify that no fewer than one for each type of EV charging system shall be accessible.	Provides consistency with Section 1107.2.1.
WAC 51-50-0429	429.4	Changes the reference to Section 429.3 with a reference to Section 429.2.	Corrects an oversight.
WAC 51-50-0504	Table 504.4	Corrects the allowable number of stories above grade plane for S1 and S2 occupancy groups (sprinklered).	Corrects an oversight. The council voted to continue adoption of the existing amendment in footnote "i" and to modify the table to align with changes in the model code. The model code changes were not incorporated in the initial submittal.
WAC 51-50-1005	1005.1	Exception 1: Changes the reference to Section 1029 with a reference to Section 1030. Exception 2: Changes the reference to Section 3114 with a reference to Section 3116.	Incorporates section renumbering in the model code.
WAC 51-50-1014	1014	Changes the title from "Location" to "Handrails."	Consistency with the model code.
WAC 51-50-1014	1014.2	Changes the title from "Location" to "Height and Location."	Provides clarity and consistency; no change in regulatory effect.
WAC 51-50-1014	1014.3	Deletes Section 1014.3.	The newly proposed Sections 1014.2.2 and 1014.3 are the same. There is no need for the same language to be repeated in two different sections.
WAC 51-50-10170	Table 1017.2	Modifies footnote "a" as follows: Section 411.2: Replaces "buildings" with "areas" at the end of the sentence. Section 3114: Renumbering (Section 3114 is changed to 3116).	Corrects an oversight; incorporates changes in the model code.
WAC 51-50-1110	1110.2	Exception 2: The reference to Section 1107 is replaced with a reference to Section 1108. Exception 3: Modifies Exception 3 to clarify that the language applies to single-user all-gender toilets. Changes the initially proposed amendment by deleting the last sentence.	The modification in Exception 2 corrects an oversight. The modification in Exception 3 aligns the language with the interpretations on national level and the application throughout the state.

WAC	Section	Change	Rationale/Discussion
WAC 51-50-2902	2902.1.1	Deletes Section 2902.1.1.	The state amendment matches the model code language; there is no need for the state amendment to be maintained.
WAC 51-50-2902	2902.1.1.2	Deletes the last sentence, currently requiring at least one urinal for men's facilities serving 26 or more persons.	Aligns the existing state amendment with the charging language of Chapter 29 in the 2021 IBC.
WAC 51-50-2902	2902.1.1.3	Replaces the term "gender-neutral" with "all-gender." Modifies the title to read "Urinals for all-gender facilities." Deletes the last sentence, currently requiring at least one urinal for men's facilities serving 26 or more persons.	Incorporates the nationally recognized term. Aligns the title with the intent in the body of the section. Aligns the existing state amendment with the charging language of Chapter 29 in the 2021 IBC.
WAC 51-50-2902	2902.2	Exception 6: Replaces the term "gender-neutral" with "all-gender." Exception 7: Replaces the reference to Section 405.3.4 of the International Plumbing Code with a reference to IBC Section 1210.3.1.	Incorporates the nationally recognized term. The International Plumbing Code is not adopted in Washington state; the privacy for water closets is addressed in IBC Section 1210.3.1.
WAC 51-50-2902	2902.2.2	Replaces the term "gender-neutral" with "all-gender."	Incorporates the nationally recognized term.

A final cost-benefit analysis is available by contacting Stoyan Bumbalov, 1500 Jefferson Street S.E., phone 360-407-2244, email Stoyan.Bumbalov@des.wa.gov, website www.sbcc.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 Nongovernmental Entity: New 12, Amended 84, 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: April 22, 2022.

Tony Doan
Chair

OTS-3404.5

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-003 International Building Code. The ((2018)) 2021 edition of the *International Building Code*, including Appendix E, published by the International Code Council is hereby adopted by reference with the exceptions noted in this chapter of the Washington Administrative Code.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-003, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-003, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-003, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-003, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-003, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 05-01-014, § 51-50-003, filed 12/2/04, effective 7/1/05. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 04-18-033, § 51-50-003, filed 8/25/04, effective 9/25/04. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-003, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-005 International Building Code requirements for barrier-free accessibility. Chapter 11 and other International Building Code requirements for barrier-free access, including ICC (~~(A117.1-2009)~~) A117.1-2017 and Appendix E, are adopted pursuant to chapters 70.92 and 19.27 RCW.

Pursuant to RCW 19.27.040, Chapter 11 and requirements affecting barrier-free access shall not be amended by local governments.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-005, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-005, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 05-01-014, § 51-50-005, filed 12/2/04, effective 7/1/05. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 04-18-033, § 51-50-005, filed 8/25/04, effective 9/25/04. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-005, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-007 Exceptions. The exceptions and amendments to the *International Building Code* contained in the provisions of chapter 19.27 RCW shall apply in case of conflict with any of the provisions of these rules.

The provisions of this code do not apply to temporary growing structures used solely for the commercial production of horticultural plants including ornamental plants, flowers, vegetables, and fruits. "Temporary growing structure" means a structure that has the sides and roof covered with polyethylene, polyvinyl, or similar flexible synthetic material and is used to provide plants with either frost pro-

tection or increased heat retention. A temporary growing structure is not considered a building for purposes of this code.

The provisions of this code do not apply to the construction, alteration, or repair of temporary worker housing except as provided by rule adopted under chapter 70.114A RCW or chapter 37, Laws of 1998 (SB 6168). "Temporary worker housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an employer for his or her employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy, and includes "labor camps" under RCW 70.54.110.

Codes referenced which are not adopted through RCW 19.27.031 or chapter 19.27A RCW shall not apply unless specifically adopted by the authority having jurisdiction. The ((2015)) 2021 International Existing Building Code is included in the adoption of this code in Section 101.4.7 and amended in WAC 51-50-480000.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-007, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-007, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-007, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-007, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-007, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 21-11-066, filed 5/14/21, effective 6/14/21)

WAC 51-50-008 Implementation. The *International Building Code* adopted under chapter 51-50 WAC shall become effective in all counties and cities of this state on ((February 1, 2021)) July 1, 2023.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-11-066, § 51-50-008, filed 5/14/21, effective 6/14/21; WSR 20-01-090, § 51-50-008, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-008, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-008, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-008, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-008, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-008, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-009 (~~((Recyclable materials, compost, and solid waste storage.))~~) **Reserved.** (~~(For the purposes of this section, the following definitions shall apply:~~

~~COMPOST~~ means biodegradable solid wastes that are separated for composting such as food waste, food soiled paper and yard waste.

~~RECYCLED MATERIALS~~ means those solid wastes that are separated for recycling or reuse, such as papers, metals and glass.

All local jurisdictions shall require that space be provided for the storage of recycled materials, compost, and solid waste for all new buildings.

EXCEPTION: Group R-3 and Group U Occupancies.

The storage area shall be designed to meet the needs of the occupancy, efficiency of pickup, and shall be available to occupants and haulers.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-009, filed 1/19/16, effective 7/1/16; WSR 04-01-108, § 51-50-009, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-0110 (~~((Section inspections.))~~) **Reserved.**

~~((110.3.5 Type IV-A, IV-B, and IV-C connection protection inspection. In buildings of Type IV-A, IV-B, and IV-C construction, where connection fire-resistance ratings are provided by wood cover calculated to meet the requirements of Section 2304.10.1, inspection of the wood cover shall be made after the cover is installed, but before any other coverings or finishes are installed.~~

~~110.3.6 Lath, gypsum board and gypsum panel product inspection. Lath, gypsum board and gypsum panel product inspections shall be made after lathing, gypsum board and gypsum panel products, interior and exterior, are in place, but before any plastering is applied or gypsum board and gypsum panel product joints and fasteners are taped and finished.~~

EXCEPTION: Gypsum board and gypsum panel products that are not part of a fire-resistance-rated assembly or a shear assembly.

~~110.3.7 Weather-exposed balcony and walking surface waterproofing. Where balconies or other elevated walking surfaces are exposed to water from direct or blowing rain, snow or irrigation, and the structural framing is protected by an impervious moisture barrier, all elements of the impervious moisture barrier system shall not be concealed until inspected and approved.~~

EXCEPTION: Where special inspections are provided in accordance with Section 1705.1.1, Item 3.

~~110.3.8 Fire and smoke-resistant penetrations. Protection of joints and penetrations in fire-resistance-rated assemblies, smoke barriers and smoke partitions shall not be concealed from view until inspected and approved.~~

110.3.9 Energy efficiency inspections. ~~Inspections shall be made to determine compliance with Chapter 13 and shall include, but not be limited to, inspections for: Envelope insulation R and U values, fenestration U value, duct system R-value, and HVAC and water-heating equipment efficiency.~~

110.3.10 Other inspections. ~~In addition to the inspections specified in Sections 110.3.1 through 110.3.8, the *building official* is authorized to make or require other inspections of any construction work to ascertain compliance with the provisions of this code and other laws that are enforced by the department of building safety.~~

110.3.11 Special inspections. ~~For *special inspections*, see Chapter 17.~~

110.3.12 Final inspection. ~~The final inspection shall be made after all work required by the building permit is completed.~~

110.3.12.1 Flood hazard documentation. ~~If located in a *flood hazard area*, documentation of the elevation of the lowest floor as required in Section 1612.4 shall be submitted to the *building official* prior to the final inspection.)~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-0110, filed 10/9/20, effective 11/9/20.]

AMENDATORY SECTION (Amending WSR 21-12-103, filed 6/2/21, effective 7/3/21)

WAC 51-50-0200 Chapter 2—Definitions.

SECTION 202—DEFINITIONS.

ADULT FAMILY HOME. A dwelling, licensed by the state of Washington department of social and health services, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services. An existing adult family home may provide services to up to eight adults upon approval from the department of social and health services in accordance with RCW 70.128.066.

ASSISTED LIVING FACILITY. A home or other institution, licensed by the state of Washington, providing housing, basic services and assuming general responsibility for the safety and well-being of residents under chapters 18.20 RCW and 388-78A WAC. These facilities may provide care to residents with symptoms consistent with dementia requiring additional security measures.

AUTOMATIC LOAD MANAGEMENT SYSTEM (ALMS). A system designed to manage electrical load across one or more EV Ready parking spaces.

BOTTLE FILLING STATION. A plumbing fixture connected to the potable water distribution system and sanitary drainage system that is designed and intended for filling personal use drinking water bottles or containers not less than 10 inches (254 mm) in height. Such fixtures can be separate from or integral to a drinking fountain and can incorporate a water filter and a cooling system for chilling the drinking water.

CHILD CARE. The care of children during any period of a 24-hour day.

CHILD CARE, FAMILY HOME. A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of ~~((twelve))~~ 12 or fewer children, including children who reside at the home.

CLIMATE ZONE. A geographical region that has been assigned climatic criteria as specified in the Washington State Energy Code.

CLUSTER. Clusters are multiple *portable school classrooms* separated by less than the requirements of the building code for separate buildings.

COMPOST. Biodegradable solid wastes that are separated for composting such as food waste, food soiled paper, and yard waste.

EFFICIENCY DWELLING UNIT. A dwelling unit where all permanent provisions for living, sleeping, eating and cooking are contained in a single room.

ELECTRIC VEHICLE (EV) CAPABLE PARKING SPACE. A parking space provided with a conduit, electrical panel and load capacity to support future installation of EV charging equipment.

ELECTRIC VEHICLE (EV) CHARGER. Off-board charging equipment used to charge electric vehicles.

ELECTRIC VEHICLE (EV) CHARGING STATION. EV Ready parking space with installed EV charger.

ELECTRIC VEHICLE (EV) READY PARKING SPACE. A parking space provided with a receptacle outlet allowing charging of electric vehicles.

ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE). The conductors, including the ungrounded, grounded, and equipment grounding conductors, and the electric vehicle connectors, attachment plugs, personnel protection system, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises wiring and the electric vehicle.

HIGH-RISE BUILDING. A building with an occupied floor, located more than 75 feet (22,860 mm) above the lowest level of fire department vehicle access. For the purposes of this definition, an occupied roof with an occupant load of 50 or more is considered to be an occupied floor.

HOSPICE CARE CENTER. A building or portion thereof used on a 24-hour basis for the provision of hospice services to terminally ill inpatients.

~~((**MASS TIMBER.** Structural elements of Type IV construction primarily of solid, built-up, panelized or engineered wood products that meet minimum cross section dimensions of Type IV construction.))~~

LOFT. A space on an intermediate level or levels between the floor and ceiling of a Group R occupancy dwelling or sleeping unit, open on one or more sides to the room in which the loft is located, and in accordance with Section 420.13.

NIGHTCLUB. An A-2 Occupancy ~~((use under the 2006 International Building Code))~~ in which the aggregate area of concentrated use of unfixed chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds ~~((three hundred fifty))~~ 350 square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls.

~~((NONCOMBUSTIBLE PROTECTION (FOR MASS TIMBER). Noncombustible material, in accordance with Section 703.5, designed to increase the fire-resistance rating and delay the combustion of mass timber.))~~

PORTABLE SCHOOL CLASSROOM. A prefabricated structure consisting of one or more rooms with direct exterior egress from the classroom(s). The structure is transportable in one or more sections and is designed to be used as an educational space with or without a permanent foundation. The structure shall be capable of being demounted and relocated to other locations as needs arise.

RECYCLED MATERIALS. Those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass.

RESIDENTIAL SLEEPING SUITES. A unit that provides multiple rooms or spaces for up to five residents, includes provisions for sleeping and can include provisions for living, eating, sanitation, and kitchen facilities.

SMALL BUSINESS. Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has (~~(fifty)~~) 50 or fewer employees.

STAGED EVACUATION. A method of emergency response, that engages building components and trained staff to provide occupant safety during an emergency. Emergency response involves moving or holding certain occupants at temporary locations for a brief period of time before evacuating the building. This response is used by ambulatory surgery facility and assisted living facilities to protect the health and safety of fragile occupants and residents.

~~((WALL, LOAD-BEARING. Any wall meeting either of the following classifications:~~

~~1. Any metal or wood stud wall that supports more than 100 pounds per linear foot (1459 N/m) of vertical load in addition to its own weight.~~

~~2. Any masonry or concrete, or mass timber wall that supports more than 200 pounds per linear foot (2919 N/m) of vertical load in addition to its own weight.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-12-103, § 51-50-0200, filed 6/2/21, effective 7/3/21; WSR 20-01-090, § 51-50-0200, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-0200, filed 12/26/18, effective 7/1/19; WSR 16-03-064, § 51-50-0200, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-089, § 51-50-0200, filed 12/1/14, effective 5/1/15. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0200, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0200, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 08-01-110, § 51-50-0200, filed 12/18/07, effective 4/1/08. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-0200, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074, and chapters 19.27 and 34.05 RCW. WSR 05-24-070, § 51-50-0200, filed 12/5/05, effective 7/1/06. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-0200, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-0306 Section 306—Factory Group F.

306.2 Moderate-hazard factory industrial, Group F-1. Factory industrial uses that are not classified as factory industrial F-2 low hazard shall be classified as F-1 moderate hazard and shall include, but not be limited to, the following:

- Aircraft (manufacturing, not to include repair)
- Appliances
- Athletic equipment
- Automobiles and other motor vehicles
- Bakeries
- Beverages: Over 16 percent alcohol content
- Bicycles
- Boats
- Brooms or brushes
- Business machines
- Cameras and photo equipment
- Canvas or similar fabric
- Carpets and rugs (includes cleaning)
- Clothing
- Construction and agricultural machinery
- Disinfectants
- Dry cleaning and dyeing
- Electric generation plants
- Electronics
- Energy storage systems (ESS) in dedicated use buildings
- Engines (including rebuilding)
- Food processing establishments and commercial kitchens not associated with restaurants, cafeterias and similar dining facilities more than 2,500 square feet (232m²) in area
- Furniture
- Hemp products
- Jute products
- Laundries
- Leather products
- Machinery
- Marijuana processing
- Metals
- Millwork (sash and door)
- Motion pictures and television filming (without spectators)
- Musical instruments
- Optical goods
- Paper mills or products
- Photographic film
- Plastic products
- Printing or publishing
- Recreational vehicles
- Refuse incineration
- Shoes
- Soaps and detergents
- Textiles
- Tobacco
- Trailers
- Upholstering

Water/sewer treatment facilities

Wood; distillation

Woodworking (cabinet)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-0306, filed 1/19/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-0308 Section 308—Institutional Group I.

~~((308.1.1 Definitions. The following terms are defined in Chapter 2:~~

~~24-HOUR CARE.~~

~~Custodial Care.~~

~~Detoxification Facilities.~~

~~Foster Care Facilities.~~

~~HOSPICE CARE CENTER.~~

~~Hospitals and psychiatric hospitals.~~

~~Incapable of self-preservation.~~

~~Medical care.~~

~~Nursing homes.)~~)

308.2 Institutional Group I-1. Institutional Group I-1 occupancy shall include buildings, structures or portions thereof for more than (~~six-teen~~) 16 persons, excluding staff, who reside on a (~~twenty-four-hour~~) 24-hour basis in a supervised environment and receive custodial care. Buildings of Group I-1 shall be classified as one of the occupancy conditions specified in Section 308.2.1 or 308.2.2 and shall comply with Section 420. This group shall include, but not be limited to, the following:

Alcohol and drug centers;

Assisted living facilities as licensed by Washington state under chapter 388-78A WAC;

Congregate care facilities;

Group homes;

Halfway houses;

Residential board and care facilities;

Social rehabilitation facilities;

Residential treatment facilities as licensed by Washington state under chapter 246-337 WAC.

308.2.5 Adult family homes. Adult family homes licensed by Washington state shall be classified as Group R-3 or shall comply with the *International Residential Code*.

308.2.6 Licensed care facilities. Assisted living facilities as licensed by Washington state under chapter 388-78A WAC shall be classified as Group I-1, Condition 2.

Residential treatment facilities licensed by Washington state under chapter 246-337 WAC shall be classified as one or more occupancy types in accordance with chapter 246-337 WAC.

308.3 Institutional Group I-2. Institutional Group I-2 occupancy shall include buildings and structures used for *medical care* on a 24-hour

basis for more than five persons who are *incapable of self-preservation*. This group shall include, but not be limited to, the following:

- Foster care facilities.
- Detoxification facilities.
- Hospice care centers.
- Hospitals.
- Nursing homes.
- Psychiatric hospitals.

308.5.5 Family home child care. Family home child care licensed by Washington state for the care of (~~twelve~~) 12 or fewer children shall be classified as Group R-3 or shall comply with the *International Residential Code*.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-0308, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-0308, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-0308, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0308, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0308, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-0308, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-0308, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-0309 Section 309—Mercantile Group M.

309.1 Mercantile Group M. Mercantile Group M occupancy includes, among others, the use of a building or structure or a portion thereof for the display and sale of merchandise, and involves stocks of goods, wares or merchandise incidental to such purposes and (~~accessible to~~) where the public has access. Mercantile occupancies shall include, but not be limited to, the following:

- Art galleries 3,000 square feet or less;
- Department stores;
- Drug stores;
- Markets;
- Greenhouses for display and sale of plants that provide public access;
- Motor fuel-dispensing facilities;
- Retail or wholesale stores;
- Sales rooms.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-0309, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 21-06-035, filed 2/23/21, effective 3/26/21)

WAC 51-50-0310 Section 310—Residential Group R.

310.3 Residential Group R-2. Residential occupancies containing *sleeping units* or more than two *dwelling units* where the occupants are primarily permanent in nature, including:

Apartment houses

~~((Boarding houses (nontransient) with more than 16 occupants))~~

Congregate living facilities (nontransient) with more than 16 occupants

Boarding houses (nontransient)

Convents

Dormitories

Fraternities and sororities

Monasteries

Hotels (nontransient)

Live/work units

~~((Monasteries))~~

Motels (nontransient)

Vacation timeshare properties

310.4.3 Adult family homes, family home child care. Adult family homes and family home child care facilities that are within a single-family home are permitted to comply with the *International Residential Code*.

310.4.4 Foster family care homes. Foster family care homes licensed by Washington state are permitted to comply with the *International Residential Code*, as an accessory use to a dwelling, for six or fewer children including those of the resident family.

310.5 Residential Group R-4. R-4 classification is not adopted. Any reference in this code to R-4 does not apply.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-06-035, § 51-50-0310, filed 2/23/21, effective 3/26/21; WSR 16-03-064, § 51-50-0310, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0310, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0310, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 08-01-110, § 51-50-0310, filed 12/18/07, effective 4/1/08. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-0310, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-0310, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-0403 Section 403—High-rise buildings.

~~((403.3.2 Water supply to required fire pumps. In all buildings that are more than 420 feet (128 m) in building height, and buildings of Type IV-A and IV-B that are more than 120 feet in building height, re-~~

~~quired fire pumps shall be supplied by connections to not fewer than two water mains located in different streets. Separate supply piping shall be provided between each connection to the water main and the pumps. Each connection and the supply piping between the connection and the pumps shall be sized to supply the flow and pressure required for the pumps to operate.~~

EXCEPTION: ~~Two connections to the same main shall be permitted provided that the main is valved such that an interruption can be isolated so that the water supply will continue without interruption through not fewer than one of the connections.)~~

403.5.4 Smokeproof enclosures. Every required *interior exit stairway* serving floors more than 75 feet (22,860 mm) above the lowest level of fire department vehicle access shall be a *smokeproof enclosure* in accordance with Sections 909.20 and ~~((1023.11))~~ 1023.12. Where interior exit stairways and ramps are pressurized in accordance with Section 909.20.5, the smoke control pressurization system shall comply with the requirements specified in Section 909.6.3.

403.4.8.3 Standby power loads. The following are classified as standby power loads:

1. Ventilation and automatic fire detection equipment for smokeproof enclosures.
2. Elevators.
3. Where elevators are provided in a high-rise building for accessible means of egress, fire service access or occupant self-evacuation, the standby power system shall also comply with Sections 1009.4, 3007 or 3008, as applicable.
4. Sump pumps required by ASME A17.1 serving pit drains at the bottom of elevator hoistways of fire service access or occupant evacuation elevators.

~~((405.7.2 Smokeproof enclosure. Every required stairway serving floor levels more than 30 feet (9144 mm) below the finished floor of its level of exit discharge shall comply with the requirements for a smokeproof enclosure as provided in Sections 909.20 and 1023.11. Where interior exit stairways and ramps are pressurized in accordance with Section 909.20.5, the smoke control pressurization system shall comply with the requirements specified in Section 909.6.3.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-0403, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-0403, filed 12/26/18, effective 7/1/19; WSR 16-03-064, § 51-50-0403, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0403, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0403, filed 1/20/10, effective 7/1/10.]

NEW SECTION

WAC 51-50-0405 Section 405—Underground buildings.

405.7.2 Smokeproof enclosure. Every required stairway serving floor levels more than 30 feet (9144 mm) below the finished floor of its level of exit discharge shall comply with the requirements for a smokeproof enclosure as provided in Sections 909.20 and 1023.12. Where interior exit stairways and ramps are pressurized in accordance with

Section 909.20.5, the smoke control pressurization system shall comply with the requirements specified in Section 909.6.3.

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AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-0407 ((Section 407 Group I-2.)) Reserved.

~~((407.4.4.3 Access to corridor. Movement from habitable rooms shall not require passage through more than three doors and 100 feet (30,480 mm) distance of travel within the suite.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-0407, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-0407, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0407, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0407, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-0407, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 05-01-014, § 51-50-0407, filed 12/2/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 21-06-035, filed 2/23/21, effective 3/26/21)

WAC 51-50-0412 Section 412—Aircraft-related occupancies.

412.2.2.1 Stairways. Stairways in airport traffic control towers shall be in accordance with Section 1011. Exit stairways shall be smokeproof enclosures complying with one of the alternatives provided in Section 909.20. Where interior exit stairways and ramps are pressurized in accordance with Section 909.20.5, the smoke control pressurization system shall comply with the requirements specified in Section 909.6.3.

[F] 412.7.3 Means of egress. The means of egress from heliports, helipads and helistops shall comply with the provisions of Chapter 10. Landing areas located on buildings or structures shall have two or more (~~means of egress~~) exits or access to exits. For landing areas less than 60 feet in length or less than 2,000 square feet (186 m²) in area, the second means of egress is permitted to be a fire escape, alternating tread device or ladder leading to the floor below. On Group I-2 roofs with heliports or helipads and helistops, rooftop structures enclosing exit stair enclosures or elevator shafts shall be enclosed with fire barriers and opening protectives that match the rating of their respective shaft enclosures below.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-06-035, § 51-50-0412, filed 2/23/21, effective 3/26/21; WSR 20-01-090, § 51-50-0412, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-0412, filed 1/19/16, effective 7/1/16.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-0420 Section 420—Groups I-1, R-1, R-2, R-3.

420.2 Separation walls. Walls separating dwelling units in the same building, walls separating sleeping units in the same building and walls separating dwelling or sleeping units from other occupancies contiguous to them in the same building shall be constructed as fire partitions in accordance with Section 708. Buildings containing multiple sleeping units with common use or central kitchens shall not be classified as a single dwelling.

EXCEPTIONS:

1. Where sleeping units include private bathrooms, walls between bedrooms and the associated private bathrooms are not required to be constructed as fire partitions.
2. Where sleeping units are constructed as suites, walls between bedrooms within the sleeping unit and the walls between the bedrooms and associated living spaces are not required to be constructed as fire partitions.
3. In Groups R-3 facilities, walls within the dwelling units or sleeping units are not required to be constructed as fire partitions.
4. Groups R-2 and I-1 arranged into residential sleeping suites containing a maximum of five sleeping residents. Separation between bedrooms, living areas and toilet rooms within these residential sleeping suites shall not be required.
5. Group I-1 sleeping areas arranged so that a dedicated staff member has direct observation over a multiple resident sleeping room, without intervening full height walls, shall not be required to provide fire partitions within the resident sleeping area.

~~((420.11))~~ **420.12 Adult family homes.** This section shall apply to all newly constructed adult family homes and all existing single-family homes being converted to adult family homes. This section shall not apply to those adult family homes licensed by the state of Washington department of social and health services prior to July 1, 2001.

~~((420.11.1))~~ **420.12.1 Sleeping room classification.** Each sleeping room in an adult family home shall be classified as one of the following:

1. Type S - Where the means of egress contains stairs, elevators or platform lifts.
2. Type NS1 - Where one means of egress is at grade level or a ramp constructed in accordance with Section ~~((420.7.8))~~ 1012 is provided.
3. Type NS2 - Where two means of egress are at grade level or ramps constructed in accordance with Section ~~((420.7.8))~~ 1012 are provided.

~~((420.11.2))~~ **420.12.2 Types of locking devices and door activation.**

All bedrooms and bathroom doors shall be openable from the outside when locked.

Every closet door shall be readily openable from the inside.

Operable parts of door handles, pulls, latches, locks and other devices installed in adult family homes shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. Pocket doors shall have graspable hardware available when in the closed or open position.

The force required to activate operable parts shall be 5.0 pounds (22.2 N) maximum. Required exit door(s) shall have no additional locking devices. Required exit door hardware shall unlock inside and outside mechanisms when exiting the building allowing reentry into the adult family home without the use of a key, tool or special knowledge.

~~((420.11.3))~~ **420.12.3 Smoke and carbon monoxide alarm requirements.**

Alarms shall be installed in such a manner so that the detection de-

vice warning is audible from all areas of the dwelling upon activation of a single alarm.

~~((420.11.4))~~ **420.12.4 Escape windows and doors.** Every sleeping room shall be provided with emergency escape and rescue windows as required by Section 1030. No alternatives to the sill height such as steps, raised platforms or other devices placed by the openings will be approved as meeting this requirement.

~~((420.11.5))~~ **420.12.5 Grab bar general requirements.** Where facilities are designated for use by adult family home clients, grab bars for water closets, bathtubs and shower stalls shall be installed according to ICC A117.1.

~~((420.11.6))~~ **420.12.6 Shower stalls.** Where provided to meet the requirements for bathing facilities, the minimum size of shower stalls for an adult family home shall be 30 inches deep by 48 inches long.

~~((420.12))~~ **420.13 Licensed care cooking facilities.** In Group I-1, Condition 2 assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities licensed under chapter 246-337 WAC, rooms or spaces that contain a cooking facility with domestic cooking appliances shall be permitted to be open to the corridor where all of the following criteria are met:

1. The number of care recipients housed in the smoke compartment is not greater than 30.
2. The number of care recipients served by the cooking facility is not greater than 30.
3. Only one cooking facility area is permitted in a smoke compartment.
4. The types of domestic cooking appliances permitted are limited to ovens, cooktops, ranges, warmers and microwaves.
5. The corridor is a clearly identified space delineated by construction or floor pattern, material or color.
6. The space containing the domestic cooking facility shall be arranged so as not to obstruct access to the required exit.
7. A domestic cooking hood installed and constructed in accordance with Section 505 of the *International Mechanical Code* is provided over the cooktop or range.
8. The domestic cooking hood provided over the cooktop or range shall be equipped with an automatic fire-extinguishing system of a type recognized for protection of domestic cooking equipment. Preengineered automatic extinguishing systems shall be tested in accordance with UL 300A and *listed* and *labeled* for the intended application. The system shall be installed in accordance with this code, its listing and the manufacturer's instructions.
9. A manual actuation device for the hood suppression system shall be installed in accordance with Sections ~~((904.12.1 and 904.12.2))~~ 904.13.1 and 904.13.2.
10. An interlock device shall be provided such that upon activation of the hood suppression system, the power or fuel supply to the cooktop or range will be turned off.
11. A shut-off for the fuel and electrical power supply to the cooking equipment shall be provided in a location that is accessible only to staff.
12. A timer shall be provided that automatically deactivates the cooking appliances within a period of not more than 120 minutes.
13. A portable fire extinguisher shall be installed in accordance with Section 906 of the *International Fire Code*.

420.14 Lofts. Where provided in Group R occupancies, *lofts* shall comply with this code as modified by Sections 420.14.1 through 420.14.5. *Lofts* constructed in compliance with this section shall be considered a portion of the story below. Such *lofts* shall not contribute to either the building area or number of stories as regulated by Section 503.1. The loft floor area shall be included in determining the *fire area*.

EXCEPTION: *Lofts* need not comply with Section 420.13 where they meet any of the following conditions:

1. The *loft* has a maximum depth of less than 3 feet (914 mm).
2. The *loft* has a floor area of less than 35 square feet (3.3 m²).
3. The *loft* is not provided with a permanent means of egress.

420.14.1 Loft limitations. *Lofts* shall comply with the following conditions:

1. The *loft* floor area shall be less than 70 square feet (6.5 m²).
2. The *loft* ceiling height shall not exceed 7 feet (2134 mm) for more than one-half of the *loft* floor area.

The provisions of Sections 420.14.2 through 420.14.5 shall not apply to *lofts* that do not comply with Items 1 and 2.

420.14.2 Loft ceiling height. The ceiling height below a *loft* shall not be less than 7 feet (2134 mm). The ceiling height above the finished floor of the *loft* shall not be less than 3 feet (914 mm). Portions of the *loft* with a sloped ceiling measuring less than 3 feet (914 mm) from the finished floor to the finished ceiling shall not contribute to the *loft* floor area.

420.14.3 Loft area. The aggregate area of all *lofts* and *mezzanines* within a room shall comply with Section 505.2.1.

EXCEPTION: The area of a single *loft* shall not be greater than two-thirds of the area of the room in which it is located, provided that no other *lofts* or *mezzanines* are open to the room in which the *loft* is located.

420.14.4 Permanent egress for lofts. Where a permanent means of egress is provided for *lofts*, the means of egress shall comply with Chapter 10 as modified by Section 420.14.4.1.

420.14.4.1 Ceiling height at loft means of egress. A minimum ceiling height of 3 feet shall be provided for the entire width of the means of egress from the *loft*.

420.14.5 Smoke alarms. Single- or multiple-station smoke alarms shall be installed in all *lofts* in accordance with Section 907.2.11.1 or 907.2.11.2.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-0420, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-0420, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0420, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0420, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 21-16-063, filed 7/29/21, effective 8/29/21)

WAC 51-50-0429 Section 429—Electric vehicle charging infrastructure.

~~((429.1 Scope. The provisions of this section shall apply to the construction of new buildings.~~

EXCEPTIONS: 1. Occupancies classified as Group R-3 or Group U.
2. Group A, Group E, or Group M occupancies, except where employee parking spaces are designated. The provisions of Section 429 shall apply only to those designated employee parking spaces.

~~429.2 Required electric vehicle charging infrastructure. Where parking is provided, ten percent of parking spaces shall be provided with electric vehicle charging infrastructure in compliance with Sections 429.3, 429.4 and 429.5. When the calculation of percent served results in a fractional parking space, the applicant shall round up to the next whole number.~~

~~429.3 Electrical room(s). Electrical room(s) serving buildings with on-site parking spaces must be sized to accommodate the potential for electrical equipment and distribution required to serve a minimum of 20 percent of the total parking spaces with 208/240 V 40-amp, circuit or equivalent electric vehicle charging infrastructure.~~

~~429.4 Electric vehicle charging infrastructure. Electric vehicle charging infrastructure shall meet the following requirements:~~

~~1. A minimum number of 208/240 V 40-amp, circuit or equivalent electric vehicle charging stations required to serve the parking spaces specified in Section 429.2. The electric vehicle charging stations shall be located to serve spaces designated for parking and charging electric vehicles.~~

~~2. Additional service capacity, space for future meters, panel capacity or space for additional panels, and raceways for future installation of electric vehicle charging stations. The service capacity and raceway size shall be designed to accommodate the future installation of the number of 208/240 V 40-amp, circuit or equivalent electric vehicle charging stations specified in Section 429.2. The raceway shall terminate at spaces designated for parking and charging electric vehicles in the future.~~

~~Where designated electric vehicle charging locations serve exterior on-grade parking spaces that are located more than 4 feet from a building, raceways shall be extended below grade to a pull box in the vicinity of the designated future electric vehicle charging locations or stub above grade in the vicinity of the designated future electric vehicle charging locations, protected from vehicles by a curb or other device.~~

EXCEPTION: In lieu of surface-mounted raceway between the electrical panel and the designated electric vehicle charging locations, it is permitted to provide permanent markings indicating the pathway for future raceway, and one-inch diameter capped sleeves through each wall and floor assembly that are penetrated along that route. This pathway and the locations of capped sleeves shall also be indicated on the electrical plans. Raceway shall be installed for any portion of the pathway located below slabs, below grade, or within floor, wall or roof assemblies.

~~Load management infrastructure may be used to adjust the size and capacity of the required building electric service equipment and circuits on the customer facilities, as well as electric utility owned infrastructure, as allowed by applicable local and national electric codes.~~

~~429.5 Electric vehicle charging infrastructure for accessible parking spaces. When electric vehicle charging infrastructure is required, ten~~

percent of accessible parking space, rounded to the next whole number, shall be provided with electric vehicle charging infrastructure. The electric vehicle charging infrastructure may also serve adjacent parking spaces not designated as accessible parking. A maximum of ten percent rounded to the next whole number, of the accessible parking spaces are allowed to be included in the total number of electric vehicle parking spaces required under Section 429.2.)

429.1 General. The provisions of this section shall apply to the construction of new buildings and accessory structures, including parking lots and parking garages.

Electric vehicle supply equipment (EVSE) shall be installed in accordance with applicable requirements of chapter 19.28 RCW and the National Electrical Code, Article 625.

EXCEPTION: Electric vehicle charging infrastructure is not required if any of the following conditions are met:
 1. There is no public utility or commercial power supply.
 2. Dwelling units without garages or other on-site parking.

429.2 Electric vehicle (EV) charging infrastructure. Buildings and accessory structures shall be provided with EV charging stations, EV-Ready parking spaces, and EV-capable parking spaces in accordance with Table 429.2. Calculations shall be rounded up to the nearest whole number. Where a building contains more than one occupancy, the electric vehicle charging infrastructure percentages of Table 429.2 shall be applied to the number of spaces required for each occupancy.

EXCEPTIONS:
 1. Except for Group A, Group E, and Group M occupancies, on-site parking with less than 10 parking spaces shall not be required to comply with Section 429.2.
 2. Group A, Group E, and Group M occupancies shall comply with one of the following, whichever is greater:
 2.1. The provisions of Section 429.2 shall apply only to designated employee parking spaces.
 2.2. One of each 200 parking spaces or fraction thereof shall be EV Ready. One of each 200 parking spaces or fraction thereof shall be an EV Charging Station.

**Table 429.2
 Electric Vehicle Charging Infrastructure**

<u>Occupancy</u>	<u>Number of EV Charging Stations</u>	<u>Number of EV-Ready Parking Spaces</u>	<u>Number of EV-Capable Parking Spaces</u>
<u>Group A, B, E, F, H, I, M, and S occupancies</u>	<u>10% of total parking spaces</u>	<u>10% of total parking spaces</u>	<u>10% of total parking spaces</u>
<u>Group R occupancies</u>			
<u>Buildings that do not contain more than two dwelling units</u>	<u>Not required</u>	<u>One for each dwelling unit</u>	<u>Not required</u>
<u>Dwelling units with private garages</u>	<u>Not required</u>	<u>One for each dwelling unit</u>	<u>Not required</u>
<u>All other Group R occupancies</u>	<u>10% of total parking spaces</u>	<u>25% of total parking spaces</u>	<u>10% of total parking spaces</u>

429.2.1 EV charging stations and EV-Ready parking spaces. A minimum of 40-ampere dedicated 208/240-volt branch circuit shall be installed for each EV Ready parking space and each EV Charging Station. The branch circuits shall terminate at a receptacle outlet or EV charger in close proximity to the proposed location of the EV Ready parking space or the EV Charging Station.

429.2.2 EV-Capable parking spaces. A listed raceway capable of accommodating a minimum of 40-ampere dedicated 208/240-volt branch circuit shall be installed for each EV-Capable parking space. The raceway shall terminate into a cabinet, box or other enclosure in close proximity to the proposed location of the EV-Capable parking space. Raceways and related components that are planned to be installed under-

ground, and in enclosed, inaccessible or concealed areas and spaces, shall be installed at the time of original construction.

429.3 Electrical room(s) and equipment. Electrical room(s) and/or dedicated electrical equipment shall be sized to accommodate the requirements of Section 429.

The electrical service and the electrical system, including any on-site distribution transformer(s), shall have sufficient capacity to simultaneously charge all EVs at all required EV Charging Stations, EV Ready parking spaces, and EV-Capable parking spaces at a minimum of 40-amperes each.

EXCEPTION: Automatic Load Management System (ALMS) may be used to adjust the maximum electrical capacity required for the EV-Ready and EV-Capable parking spaces. The ALMS must be designed to allocate charging capacity among multiple future EV Charging Stations at a minimum of 16 amperes per EV charger.

429.4 Electric vehicle charging infrastructure for accessible parking spaces. Ten percent of the accessible parking spaces, rounded to the next whole number, shall be EV Charging Stations. Additional 10 percent of the accessible parking spaces, rounded to the next whole number, shall be EV Ready. Not fewer than one for each type of EV charging system shall be accessible.

The electric vehicle charging infrastructure may also serve adjacent parking spaces not designated as accessible parking. A maximum of 10 percent of the accessible parking spaces, rounded to the next whole number, are allowed to be included in the total number of electric vehicle parking spaces required under Section 429.2.

[Statutory Authority: RCW 19.27.077, 19.27.031 and 19.27.074. WSR 21-16-063, § 51-50-0429, filed 7/29/21, effective 8/29/21.]

NEW SECTION

WAC 51-50-0430 Section 430—Recycled materials.

430 Recyclable materials, compost, and solid waste storage. Space shall be provided for the storage of recycled materials, compost, and solid waste for all new buildings.

EXCEPTION: Group R-3 and Group U Occupancies.

The storage area shall be designed to meet the needs of the occupancy, efficiency of pickup, and be available to occupants and haulers.

[]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-0503 Section 503—General building height and area limitations.

~~((503.1.4 Occupied roofs. A roof level or portion thereof shall be permitted to be used as an occupied roof provided the occupancy of the roof is an occupancy that is permitted by Table 504.4 for the story~~

immediately below the roof. The area of the occupied roofs shall not be included in the building area as regulated by Section 506.

- EXCEPTIONS:
1. The occupancy located on an occupied roof shall not be limited to the occupancies allowed on the story immediately below the roof where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and occupant notification in accordance with Sections 907.5.2.1 and 907.5.2.3 is provided in the area of the occupied roof. Emergency voice/alarm communication system notification in accordance with Section 907.5.2.2 shall also be provided in the area of the occupied roof where such system is required elsewhere in the building.
 2. Assembly occupancies shall be permitted on roofs of open parking spaces of Type I or Type II construction, in accordance with the exception to Section 903.2.1.6.))

503.1.4.1 Enclosure of occupied roof areas. Elements or structures enclosing the occupied roof areas shall not extend more than 48 inches (1220 mm) above the surface of the occupied roof.

- EXCEPTIONS:
1. Penthouses constructed in accordance with Section 1511.2 and towers, domes, spires, and cupolas constructed in accordance with Section 1511.5.
 2. High rise buildings.

503.1.4.2 Guards. Occupied roofs shall have guards in accordance with Section 1015.2.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-0503, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-0503, filed 1/19/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 21-06-035, filed 2/23/21, effective 3/26/21)

WAC 51-50-0504 Section 504—Building height and number of stories.

Table 504.3
Allowable Building Height in Feet Above Grade Plane^a

Occupancy Classification	Type of Construction												
	See Footnotes	Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
A, B, E, F, M, S, U	NS ^b	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	270	180	85	85	70	60
H-1, H-2, H-3, H-5	NS ^{c,d}	UL	160	65	55	65	55	120	90	65	65	50	40
	S												
H-4	NS ^{c,d}	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	140	100	85	85	70	60
I-1 Condition 1, I-3	NS ^{d,e}	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	180	120	85	85	70	60
I-1 Condition 2, I-2	NS ^{d,e,f}	UL	160	65	55	65	55	65	65	65	65	50	40
	S ⁱ	UL	180	85									
I-4	NS ^{d,g}	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	180	120	85	85	70	60
R ^h	NS ^d	UL	160	65	55	65	55	65	65	65	65	50	40
	S13D	60	60	60	60	60	60	60	60	60	60	50	40
	S13R	60	60	60	60	60	60	60	60	60	60	60	60
	S	UL	180	85	75	85	75	270	180	85	85	70	60

For SI: 1 foot = 304.8 mm.

UL = Unlimited; NS = Buildings not equipped throughout with an automatic sprinkler system; S = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1; S13R = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.2.

- a See Chapters 4 and 5 for specific exceptions to the allowable height in this chapter.
- b See Section 903.2 for the minimum thresholds for protection by an automatic sprinkler system for specific occupancies.
- c New Group H occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.5.
- d The NS value is only for use in evaluation of existing building height in accordance with the International Existing Building Code.
- e New Group I-1 and I-3 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6. For new Group I-1 occupancies Condition 1, see Exception 1 of Section 903.2.6.
- f New and existing Group I-2 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6 and Section 1103.5 of the *International Fire Code*.
- g For new Group I-4 occupancies, see Exceptions 2 and 3 of Section 903.2.6.
- h New Group R occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.8.
- i I-1, Condition 2 Assisted living facilities licensed in accordance with chapter 388-78A WAC and residential treatment facilities as licensed by Washington state under chapter 246-337 WAC shall be permitted to use the allowable height above grade plane for Group R-2 occupancies.

Table 504.4

Allowable Number of Stories Above Grade Plane^{a,b}

Occupancy Classification	Type of Construction												
	See Footnotes	Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
A-1	NS	UL	5	3	2	3	2	3	3	3	3	2	1
	S	UL	6	4	3	4	3	9	6	4	4	3	2
A-2	NS	UL	11	3	2	3	2	3	3	3	3	2	1
	S	UL	12	4	3	4	3	18	12	6	4	3	2
A-3	NS	UL	11	3	2	3	2	3	3	3	3	2	1
	S	UL	12	4	3	4	3	18	12	6	4	3	2
A-4	NS	UL	11	3	2	3	2	3	3	3	3	2	1
	S	UL	12	4	3	4	3	18	12	6	4	3	2
A-5	NS	UL	UL	UL	UL	UL	UL	1	1	1	UL	UL	UL
	S	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL
B	NS	UL	11	5	3	5	3	5	5	5	5	3	2
	S	UL	12	6	4	6	4	18	12	9	6	4	3
E	NS	UL	5	3	2	3	2	3	3	3	3	1	1
	S	UL	6	4	3	4	3	9	6	4	4	2	2
F-1	NS	UL	11	4	2	3	2	3	3	3	4	2	1
	S	UL	12	5	3	4	3	10	7	5	5	3	2
F-2	NS	UL	11	5	3	4	3	5	5	5	5	3	2
	S	UL	12	6	4	5	4	12	8	6	6	4	3
H-1	NS ^{c,d}	1	1	1	1	1	1	NP	NP	NP	1	1	NP
	S							1	1	1			
H-2	NS ^{c,d}	UL	3	2	1	2	1	1	1	1	2	1	1
	S							2	2	2			
H-3	NS ^{c,d}	UL	6	4	2	4	2	3	3	3	4	2	1
	S							4	4	4			
H-4	NS ^{c,d}	UL	7	5	3	5	3	5	5	5	5	3	2
	S	UL	8	6	4	6	4	8	7	6	6	4	3
H-5	NS ^{c,d}	4	4	3	3	3	3	2	2	2	3	3	2
	S							3	3	3			
I-1 Condition 1	NS ^{d,e}	UL	9	4	3	4	3	4	4	4	4	3	2
	S	UL	10	5	4	5	4	10	7	5	5	4	3

Occupancy Classification	Type of Construction												
	See Footnotes	Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
I-1 Condition 2	NS ^{d,e}	UL	9	4	3	4	3	3	3	3	4	3	2
	S ⁱ	UL	10	5				10	6	4			
I-2	NS ^{d,f}	UL	4	2	1	1	NP	NP	NP	NP	1	1	NP
	S	UL	5	3				7	5	1			
I-3	NS ^{d,e}	UL	4	2	1	2	1	2	2	2	2	2	1
	S	UL	5	3	2	3	2	7	5	3	3	3	2
I-4	NS ^{d,g}	UL	5	3	2	3	2	3	3	3	3	1	1
	S	UL	6	4	3	4	3	9	6	4	4	2	2
M	NS	UL	11	4	2	4	2	4	4	4	4	3	1
	S	UL	12	5	3	5	3	12	8	6	5	4	2
R-1h	NS ^d	UL	11	4	4	4	4	4	4	4	4	3	2
	S13R	4	4									4	3
	S	UL	12	5	5	5	5	18	12	8	5	4	3
R-2h	NS ^d	UL	11	4	4	4	4	4	4	4	4	3	2
	S13R	4	4	4								4	3
	S	UL	12	5	5	5	5	18	12	8	5	4	3
R-3h	NS ^d	UL	11	4	4	4	4	4	4	4	4	3	3
	S13D	4	4									3	3
	S13R	4	4									4	4
	S	UL	12	5	5	5	5	18	12	5	5	4	4
R-4h	NS ^d	UL	11	4	4	4	4	4	4	4	4	3	2
	S13D	4	4									3	2
	S13R	4	4									4	3
	S	UL	12	5	5	5	5	18	12	5	5	4	3
S-1	NS	UL	11	4	2	3	2	4	4	4	4	3	1
	S	UL	12	5	$\left(\begin{smallmatrix} (3) \\ 4 \end{smallmatrix}\right)$	4	$\left(\begin{smallmatrix} (3) \\ 4 \end{smallmatrix}\right)$	10	7	5	5	4	2
S-2	NS	UL	11	5	3	4	3	4	4	4	$\left(\begin{smallmatrix} (4) \\ 5 \end{smallmatrix}\right)$	4	2
	S	UL	12	6	4	5	4	12	8	5	$\left(\begin{smallmatrix} (5) \\ 6 \end{smallmatrix}\right)$	5	3
U	NS	UL	5	4	2	3	2	4	4	4	4	2	1
	S	UL	6	5	3	4	3	9	6	5	5	3	2

UL = Unlimited; NP = Not permitted; NS = Buildings not equipped throughout with an automatic sprinkler system; S = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1; S13R = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.2.

- a See Chapters 4 and 5 for specific exceptions to the allowable height in this chapter.
- b See Section 903.2 for the minimum thresholds for protection by an automatic sprinkler system for specific occupancies.
- c New Group H occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.5.
- d The NS value is only for use in evaluation of existing building height in accordance with the International Existing Building Code.
- e New Group I-1 and I-3 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6. For new Group I-1 occupancies Condition 1, see Exception 1 of Section 903.2.6.
- f New and existing Group I-2 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6 and Section 1103.5 of the *International Fire Code*.
- g For new Group I-4 occupancies, see Exceptions 2 and 3 of Section 903.2.6.
- h New Group R occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.8.

- i Group I-1, Condition 2 Assisted living facilities licensed in accordance with chapter 388-78A WAC and residential treatment facilities as licensed by Washington state under chapter 246-337 WAC shall be permitted to use the allowable number of stories for Group R-2 occupancies.

504.4.1 Stair enclosure pressurization increase. For Group R-1, R-2, and I-1 Condition 2 Assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities as licensed by Washington state under chapter 246-337 WAC located in buildings of Type VA construction equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, the maximum number of stories permitted in Section 504.4 may be increased by one provided the interior exit stairways and ramps are pressurized in accordance with Sections 909.6.3 and 909.20. Legally required standby power shall be provided in accordance with Sections 909.11 and ~~((2702.2.16))~~ 2702.17 for buildings constructed in compliance with this section and be connected to stairway shaft pressurization equipment, elevators and lifts used for accessible means of egress (if provided), elevator hoistway pressurization equipment (if provided) and other life safety equipment as determined by the authority having jurisdiction. For the purposes of this section, legally required standby power shall comply with 2020 NEC Section 701.12, options (C), (D), (E), (F), (H) or (J) or subsequent revised section number(s).

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-06-035, § 51-50-0504, filed 2/23/21, effective 3/26/21; WSR 20-21-021, § 51-50-0504, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-0504, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-0504, filed 12/26/18, effective 7/1/19; WSR 16-03-064, § 51-50-0504, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0504, filed 2/1/13, effective 7/1/13. Statutory Authority: Chapter 19.27 RCW. WSR 10-24-059, § 51-50-0504, filed 11/29/10, effective 7/1/11.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-0505 ((Reserved.)) Section 0505—Mezzanines and equipment platforms.

505.1 General. Mezzanines shall comply with Section 505.2. Equipment platforms shall comply with Section 505.3.

EXCEPTION: Lofts in Group R occupancy dwelling units and sleeping units shall be permitted to comply with Section 420.13, subject to the limitations in Section 420.13.1.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-0505, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-0505, filed 1/19/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-0506 ((Section 506—Building area.)) Reserved.
((Table 506.2

**Allowable Area Factor (At = NS, S1, S13R, S13D or SM, as applicable)
In Square Feet^{a,b}**

Occupancy Classification	See Footnotes	Type of Construction											
		Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HF	A	B
A-1	NS	UL	UL	15,500	8,500	14,000	8,500	45,000	30,000	18,750	15,000	11,500	5,500
	S1	UL	UL	62,000	34,000	56,000	34,000	180,000	120,000	75,000	60,000	46,000	22,000
	SM	UL	UL	46,500	25,500	42,000	25,500	135,000	90,000	56,250	45,000	34,500	16,500
A-2	NS	UL	UL	15,500	9,500	14,000	9,500	45,000	30,000	18,750	15,000	11,500	6,000
	S1	UL	UL	62,000	38,000	56,000	38,000	180,000	120,000	75,000	60,000	46,000	24,000
	SM	UL	UL	46,500	28,500	42,000	28,500	135,000	90,000	56,250	45,000	34,500	18,000
A-3	NS	UL	UL	15,500	9,500	14,000	9,500	45,000	30,000	18,750	15,000	11,500	6,000
	S1	UL	UL	62,000	38,000	56,000	38,000	180,000	120,000	75,000	60,000	46,000	24,000
	SM	UL	UL	46,500	28,500	42,000	28,500	135,000	90,000	56,250	45,000	34,500	18,000
A-4	NS	UL	UL	15,500	9,500	14,000	9,500	45,000	30,000	18,750	15,000	11,500	6,000
	S1	UL	UL	62,000	38,000	56,000	38,000	180,000	120,000	75,000	60,000	46,000	24,000
	SM	UL	UL	46,500	28,500	42,000	28,500	135,000	90,000	56,250	45,000	34,500	18,000
A-5	NS	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL
	S1												
	SM												
B	NS	UL	UL	37,500	23,000	28,500	19,000	108,000	72,000	45,000	36,000	18,000	9,000
	S1	UL	UL	150,000	92,000	114,000	76,000	432,000	288,000	180,000	144,000	72,000	36,000
	SM	UL	UL	112,500	69,000	85,500	57,000	324,000	216,000	135,000	108,000	54,000	27,000
E	NS	UL	UL	26,500	14,500	23,500	14,500	76,500	51,000	31,875	25,500	18,500	9,500
	S1	UL	UL	106,000	58,000	94,000	58,000	306,000	204,000	127,500	102,000	74,000	38,000
	SM	UL	UL	79,500	43,500	70,500	43,500	229,500	153,000	95,625	76,500	55,500	28,500
F-1	NS	UL	UL	25,000	15,500	19,000	12,000	100,500	67,000	41,875	33,500	14,000	8,500
	S1	UL	UL	100,000	62,000	76,000	48,000	402,000	268,000	167,500	134,000	56,000	34,000
	SM	UL	UL	75,000	46,500	57,000	36,000	301,500	201,000	125,625	100,500	42,000	25,500
F-2	NS	UL	UL	37,500	23,000	28,500	18,000	151,500	101,000	63,125	50,500	21,000	13,000
	S1	UL	UL	150,000	92,000	114,000	72,000	606,000	404,000	252,500	202,000	84,000	52,000
	SM	UL	UL	112,500	69,000	85,500	54,000	454,500	303,000	189,375	151,500	63,000	39,000
H-1	NS ^c	21,000	16,500	11,000	7,000	9,500	7,000	10,500	10,500	10,000	10,500	7,500	NP
	S1												
H-2	NS ^c	21,000	16,500	11,000	7,000	9,500	7,000	10,500	10,500	10,000	10,500	7,500	3,000
	S1												
	SM												
H-3	NS ^c	UL	60,000	26,500	14,000	17,500	13,000	25,500	25,500	25,500	25,500	10,000	5,000
	S1												
	SM												
H-4	NS ^{c,d}	UL	UL	37,500	17,500	28,500	17,500	72,000	54,000	40,500	36,000	18,000	6,500
	S1	UL	UL	150,000	70,000	114,000	70,000	288,000	216,000	162,000	144,000	72,000	26,000
	SM	UL	UL	112,500	52,500	85,500	52,500	216,000	162,000	121,500	108,000	54,000	19,500
H-5	NS ^{c,d}	UL	UL	37,500	23,000	28,500	19,000	72,000	54,000	40,500	36,000	18,000	9,000
	S1	UL	UL	150,000	92,000	114,000	76,000	288,000	216,000	162,000	144,000	72,000	36,000
	SM	UL	UL	112,500	69,000	85,500	57,000	216,000	162,000	121,500	108,000	54,000	27,000

Occupancy Classification	See Footnotes	Type of Construction											
		Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HF	A	B
I-1	NS ^{d,e}	UL	55,000	19,000	10,000	16,500	10,000	54,000	36,000	18,000	18,000	10,500	4,500
	S1	UL	220,000	76,000	40,000	66,000	40,000	216,000	144,000	72,000	72,000	42,000	18,000
	SM	UL	165,000	57,000	30,000	49,500	30,000	162,000	108,000	54,000	54,000	31,500	13,500

Occupancy Classification	See Footnotes	Type of Construction											
		Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HF	A	B
I-2	NS ^{d,f}	UL	UL	15,000	11,000	12,000	NP	36,000	24,000	12,000	12,000	9,500	NP
	S1	UL	UL	60,000	44,000	48,000	NP	144,000	96,000	48,000	48,000	38,000	NP
	SM	UL	UL	45,000	33,000	36,000	NP	108,000	72,000	36,000	36,000	28,500	NP
I-3	NS ^{d,e}	UL	UL	15,000	10,000	10,500	7,500	36,000	24,000	12,000	12,000	7,500	5,000
	S1	UL	UL	45,000	40,000	42,000	30,000	144,000	96,000	48,000	48,000	30,000	20,000
	SM	UL	UL	45,000	30,000	31,500	22,500	108,000	72,000	36,000	36,000	22,500	15,000
I-4	NS ^{d,g}	UL	60,500	26,500	13,000	23,500	13,000	76,500	51,000	25,500	25,500	18,500	9,000
	S1	UL	121,000	106,000	52,000	94,000	52,000	306,000	204,000	102,000	102,000	74,000	36,000
	SM	UL	181,500	79,500	39,000	70,500	39,000	229,500	153,000	76,500	76,500	55,500	27,000
M	NS	UL	UL	21,500	12,500	18,500	12,500	61,500	41,000	25,625	20,500	14,000	9,000
	S1	UL	UL	86,000	50,000	74,000	50,000	246,000	164,000	102,500	82,000	56,000	36,000
	SM	UL	UL	64,500	37,500	55,500	37,500	184,500	123,000	76,875	61,500	42,000	27,000
R-1 ^h	NS ^d	UL	UL	24,000	16,000	24,000	16,000	61,500	41,000	25,625	20,500	12,000	7,000
	S13R												
	S1	UL	UL	96,000	64,000	96,000	64,000	246,000	164,000	102,500	82,000	48,000	28,000
R-2 ^h	NS ^d	UL	UL	24,000	16,000	24,000	16,000	61,500	41,000	25,625	20,500	12,000	7,000
	S13R												
	S1	UL	UL	96,000	64,000	96,000	64,000	246,000	164,000	102,500	82,000	48,000	28,000
R-3 ^h	NS ^d	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL
	S13D												
	S13R												
R-4 ^h	NS ^d	UL	UL	24,000	16,000	24,000	16,000	61,500	41,000	25,625	20,500	12,000	7,000
	S13D												
	S13R												
S-1	NS	UL	48,000	26,000	17,500	26,000	17,500	76,500	51,000	31,875	25,500	14,000	9,000
	S1	UL	192,000	104,000	70,000	104,000	70,000	306,000	204,000	127,500	102,000	56,000	36,000
	SM	UL	144,000	78,000	52,500	78,000	52,500	229,500	153,000	95,625	76,500	42,000	27,000
S-2	NS	UL	79,000	39,000	26,000	39,000	26,000	115,500	77,000	48,125	38,500	21,000	13,500
	S1	UL	316,000	156,000	104,000	156,000	104,000	462,000	308,000	192,500	154,000	84,000	54,000
	SM	UL	237,000	117,000	78,000	117,000	78,000	346,500	231,000	144,375	115,500	63,000	40,500
U	NS ⁱ	UL	35,500	19,000	8,500	14,000	8,500	54,000	36,000	22,500	18,000	9,000	5,500
	S1	UL	142,000	76,000	34,000	56,000	34,000	216,000	144,000	90,000	72,000	36,000	22,000
	SM	UL	106,500	57,000	25,500	42,000	25,500	162,000	108,000	67,500	54,000	27,000	16,500

For S1: 1 square foot = 0.0929 m².

UL = Unlimited; NP = Not permitted; NS = Buildings not equipped throughout with an automatic sprinkler system; S1 = Buildings a maximum of one story above grade plane equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1; SM = Buildings two or more stories above grade plane equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1; S13R = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.2; S13D = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.3.

- a See Chapters 4 and 5 for specific exceptions to the allowable height in this chapter.
- b See Section 903.2 for the minimum thresholds for protection by an automatic sprinkler system for specific occupancies.
- c New Group H occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.5.
- d The NS value is only for use in evaluation of existing building area in accordance with the International Existing Building Code.
- e New Group I-1 and I-3 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6. For new Group I-1 occupancies Condition 1, see Exception 1 of Section 903.2.6.
- f New and existing Group I-2 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6 and Section 1103.5 of the *International Fire Code*.
- g For new Group I-4 occupancies, see Exceptions 2 and 3 of Section 903.2.6.
- h New Group R occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.8.

- i The maximum allowable area for a single-story nonsprinklered Group U greenhouse is permitted to be 9,000 square feet, or the allowable area shall be permitted to comply with Table C102.1 of Appendix C.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-0506, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-0506, filed 12/26/18, effective 7/1/19; WSR 16-03-064, § 51-50-0506, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0506, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0506, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-0506, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

WAC 51-50-0508 Section 508—Mixed use and occupancy.

~~((508.4.4.1 Construction. Required separations shall be fire barriers constructed in accordance with Section 707 or horizontal assemblies constructed in accordance with Section 711, or both, so as to completely separate adjacent occupancies. Mass timber elements serving as fire barriers or horizontal assemblies to separate occupancies in Type IV-B or IV-C construction shall be separated from the interior of the building with an approved thermal barrier consisting of a minimum of 1/2 inch (12.7 mm) gypsum board or a material that is tested in accordance with and meets the acceptance criteria of both the Temperature Transmission Fire Test and the Integrity Fire Test of NFPA 275.))~~

508.5.1 Limitations. The following shall apply to live/work areas:

1. The live/work unit is permitted to be not greater than 3,000 square feet (279 m) in area.
2. The nonresidential area is permitted to be not more than 50 percent of the area of each live/work unit.
3. The nonresidential area function shall be limited to the first or main floor only of the live/work unit.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-02-038, § 51-50-0508, filed 12/26/18, effective 7/1/19.]

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

WAC 51-50-0509 Section 509—Incidental uses.

~~((509.4.1.1 Type IV-B and IV-C construction. Where Table 509 specifies a fire resistance-rated separation, mass timber elements serving as fire barriers or a horizontal assembly in Type IV-B or IV-C construction shall be separated from the interior of the incidental use with an approved thermal barrier consisting of a minimum of 1/2 inch (12.7 mm) gypsum board or a material that is tested in accordance with and meets the acceptance criteria of both the Temperature Transmission Fire Test and the Integrity Fire Test of NFPA 275.))~~

**Table 509
Incidental Uses**

Room or Area	Separation and/or Protection
Dry type transformers over 112.5 kVA and required to be in a fire resistant room per NEC (NFPA 70) Section 450.21 (B) ¹	1 hour or provide automatic sprinkler system

¹ Dry type transformers rated over 35,000 volts and oil-insulated transformers shall be installed in a transformer vault complying with NFPA 70.

(Remainder of table unchanged)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-02-038, § 51-50-0509, filed 12/26/18, effective 7/1/19. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0509, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0509, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-0509, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-0510 Section 510—Special provisions.

510.2 Horizontal building separation allowance. A building shall be considered as separate and distinct buildings for the purpose of determining area limitations, continuity of fire walls, limitation of number of stories and type of construction where ((all-of)) the following conditions are met:

1. The buildings are separated with a *horizontal assembly* having a *fire-resistance rating* of not less than ((3)) three hours. Where vertical offsets are provided as part of a *horizontal assembly*, the vertical offset and the structure supporting the vertical offset shall have a *fire-resistance rating* of not less than ((3)) three hours.

2. The building below, including the *horizontal assembly*, is of Type IA construction.

3. *Shaft, stairway, ramp* and escalator enclosures through the *horizontal assembly* shall have not less than a ((2-hour)) two-hour *fire-resistance rating* with opening protective in accordance with Section 716.

EXCEPTION: Where the enclosure walls below the *horizontal assembly* have not less than a ((3-hour)) three-hour *fire-resistance rating* with opening protectives in accordance with Section 716, the enclosure walls extending above the *horizontal assembly* shall be permitted to have a 1-hour *fire-resistance rating* provided that the following conditions are met:

- 1. The building above the *horizontal assembly* is not required to be of Type I construction.
- 2. The enclosure connects fewer than four stories; and
- 3. The enclosure opening protective above the *horizontal assembly* have a *fire protection rating* of not less than 1 hour.
 ((4. Interior exit stairways located within the Type IA building are permitted to be of combustible materials where both of the following requirements are met:
 4.1. The building above the Type IA building is of Type III, IV, or V construction.
 4.2. The stairway located in the Type IA building is enclosed by 3-hour *fire-resistance-rated* construction with opening protectives in accordance with Section 716.))

4. Interior exit stairways located within the Type IA building are permitted to be of combustible materials where both of the following requirements are met:

4.1. The building above the Type IA building is of Type III, IV, or V construction.

4.2. The stairway located in the Type IA building is enclosed by 3-hour fire-resistance-rated construction with opening protectives in accordance with Section 716.

5. The building or buildings above the horizontal assembly shall be permitted to have ((multiple)) Group A ((occupancy uses, each with an occupant load of less than 300, or Group B, Group I-1, Condition 2 licensed care facilities)), B, M, R, or S occupancies.

((5-)) 6. The building below the horizontal assembly shall be protected throughout by an approved automatic sprinkler system in accordance with Section 903.3.1.1, and shall be permitted to be any occupancy allowed by this code except Group H.

((6-)) 7. The maximum building height in feet (mm) shall not exceed the limits set forth in Section 504.3 for the building having the smaller allowable height as measured from the grade plane. ((Group I-1, Condition 2 licensed care facilities shall be permitted to use the values for maximum height in feet for Group R-2 occupancies.

510.5 Group R-1 and R-2 buildings of Type IIIA construction. ~~For buildings of Type IIIA construction in Groups R-1 and R-2, the maximum allowable height in Table 504.3 shall be increased by 10 feet and the maximum allowable number of stories in Table 504.4 shall be increased by one foot where the first floor assembly above the basement has a fire-resistance rating of not less than 3 hours and the floor area is subdivided by 2-hour fire-resistance-rated fire walls into areas of not more than 3,000 square feet (279 m².)~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-0510, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-0510, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-0510, filed 1/19/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

WAC 51-50-0601 ((Section 601 General.)) Reserved.

~~((Table 601~~

~~Fire-resistance Rating Requirements for Building Elements (hours)~~

Building Element	Type I		Type II		Type III		Type IV				Type V	
	A	B	A	B	A	B	A	B	C	HT	A	B
Primary structural frame ^{e,f} (see Section 202)	3 ^a	2 ^a	1	0	1 ^b	0	3 ^a	2 ^a	2 ^a	HT	1	0
Bearing walls												
Exterior ^{e,f}	3	2	1	0	2	2	3	2	2	2	1	0
Interior	3 ^a	2 ^a	1	0	1	0	3	2	2	1/HT	1	0
Nonbearing walls and partitions exterior	See Table 602											

Building Element	Type I		Type II		Type III		Type IV				Type V	
	A	B	A	B	A	B	A	B	C	HT	A	B
Nonbearing walls and partitions interior ^d	0	0	0	0	0	0	0	0	0	See Section 602.4.4.6	0	0
Floor construction and associated secondary members (see Section 202)	2	2	1	0	1	0	2	2	2	HT	1	0
Roof construction and associated secondary members (see Section 202)	1 1/2 ^b	1 ^{b,c}	1 ^{b,c}	0 ^c	1 ^{b,c}	0	1 1/2	1	1	HT	1 ^{b,c}	0

For SI: 1 foot = 304.8 mm.

- a Roof supports: Fire-resistance ratings of primary structural frame and bearing walls are permitted to be reduced by 1 hour where supporting a roof only.
- b Except in Groups F-1, H, M and S-1 occupancies, fire protection of structural members in roof construction shall not be required, including protection of primary structural frame members, roof framing and decking where every part of the roof construction is 20 feet or more above any floor immediately below. Fire-retardant-treated wood members shall be allowed to be used for such unprotected members.
- c In all occupancies, heavy timber complying with Section 2304.11 shall be allowed where a 1-hour or less fire-resistance rating is required.
- d Not less than the fire-resistance rating required by other sections of this code.
- e Not less than the fire-resistance rating based on fire separation distance (see Table 602).
- f Not less than the fire-resistance rating as referenced in Section 704.10.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-02-038, § 51-50-0601, filed 12/26/18, effective 7/1/19.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-0602 Section 602—Construction classification.

~~((Table 602~~

~~**Fire-resistance Rating Requirements for Exterior Walls Based on Fire Separation Distance**^{a, d, g}~~

Fire Separation Distance = X (feet)	Type of Construction	Occupancy Group H ^e	Occupancy Group F-1, M, S-1 ^f	Occupancy Group A, B, E, F-2, I, R ¹ , S-2, U ^h
X < 5 ^b	AH	3	2	1
5 ≤ X < 10	IA, IVA	3	2	1
	Others	2	1	
10 ≤ X < 30	IA, IB, IVA, IVB	2	1	1 ^c
	HB, VB	1	0	0
	Others	1	1	1 ^c
X ≥ 30	AH	0	0	0

For SI: 1 foot = 304.8 mm.

- a Load-bearing exterior walls shall also comply with the fire-resistance rating requirements of Table 601.
- b See Section 706.1.1 for party walls.
- c Open parking garages complying with Section 406 shall not be required to have a fire-resistance rating.
- d The fire-resistance rating of an exterior wall is determined based upon the fire separation distance of the exterior wall and the story in which the wall is located.
- e For special requirements for Group H occupancies, see Section 415.6.
- f For special requirements for Group S aircraft hangars, see Section 412.3.1.
- g Where Table 705.8 permits nonbearing exterior walls with unlimited area of unprotected openings, the required fire-resistance rating for the exterior walls is 0 hours.
- h For a building containing only a Group U occupancy private garage or carport, the exterior wall shall not be required to have a fire-resistance rating where the fire separation distance is 5 feet (1523 mm) or greater.

- i For a Group R-3 building of Type II-B or Type V-B construction, the exterior wall shall not be required to have a fire-resistance rating where the fire separation distance is 5 feet (1523 mm) or greater.

~~602.4 Type IV. Type IV construction is that type of construction in which the building elements are mass timber or noncombustible materials and have fire-resistance ratings in accordance with Table 601. Mass timber elements shall meet the fire-resistance rating requirements of this section based on either the fire-resistance rating of the noncombustible protection, the mass timber, or a combination of both and shall be determined in accordance with Section 703.2 or 703.3. The minimum dimensions and permitted materials for building elements shall comply with the provisions of this section including Section 2304.11. Mass timber elements of Types IV-A, IV-B and IV-C construction shall be protected with noncombustible protection applied directly to the mass timber in accordance with Sections 602.4.1 through 602.4.3. The time assigned to the noncombustible protection shall be determined in accordance with Section 703.8 and comply with 722.7.~~

~~Cross-laminated timber shall be labeled as conforming to ANSI/APA PRG 320 as referenced in Section 2303.1.4.~~

~~Exterior load-bearing walls and nonload-bearing walls shall be mass timber construction, or shall be of noncombustible construction.~~

~~EXCEPTION: Exterior load-bearing walls and nonload-bearing walls of Type IV-HT Construction in accordance with Section 602.4.4.~~

~~The interior building elements, including nonload-bearing walls and partitions, shall be of mass timber construction or of noncombustible construction.~~

~~EXCEPTION: Interior building elements and nonload-bearing walls and partitions of Type IV-HT Construction in accordance with Section 602.4.4.~~

~~Combustible concealed spaces are not permitted except as otherwise indicated in Sections 602.4.1 through 602.4.4. Combustible stud spaces within light frame walls of Type IV-HT construction shall not be considered concealed spaces, but shall comply with Section 718.~~

~~In buildings of Type IV-A, IV-B, and IV-C, construction with an occupied floor located more than 75 feet above the lowest level of fire department access, up to and including 12 stories or 180 feet above grade plane, mass timber interior exit and elevator hoistway enclosures shall be protected in accordance with Section 602.4.1.2. In buildings greater than 12 stories or 180 feet above grade plane, interior exit and elevator hoistway enclosures shall be constructed of noncombustible materials.~~

~~602.4.1 Type IV-A. Building elements in Type IV-A construction shall be protected in accordance with Sections 602.4.1.1 through 602.4.1.6. The required fire-resistance rating of noncombustible elements and protected mass timber elements shall be determined in accordance with Section 703.2 or Section 703.3.~~

~~602.4.1.1 Exterior protection. The outside face of exterior walls of mass timber construction shall be protected with noncombustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1. All components of the exterior wall covering, shall be of noncombustible material except water resistive barriers having a peak heat release rate of less than 150 kW/m², a total heat release of less than 20 MJ/m² and an effective heat of combustion of less than 18 MJ/kg as determined in accordance with ASTM E1354 and having a flame spread index of 25 or less and a smoke-developed index of 450 or less~~

~~as determined in accordance with ASTM E84 or UL 723. The ASTM E1354 test shall be conducted on specimens at the thickness intended for use, in the horizontal orientation and at an incident radiant heat flux of 50 kW/m².~~

~~**602.4.1.2 Interior protection.** Interior faces of all mass timber elements, including the inside faces of exterior mass timber walls and mass timber roofs, shall be protected with materials complying with Section 703.5.~~

~~**602.4.1.2.1 Protection time.** Noncombustible protection shall contribute a time equal to or greater than times assigned in Table 722.7.1(1), but not less than 80 minutes. The use of materials and their respective protection contributions listed in Table 722.7.1(2), shall be permitted to be used for compliance with Section 722.7.1.~~

~~**602.4.1.3 Floors.** The floor assembly shall contain a noncombustible material not less than 1 inch in thickness above the mass timber. Floor finishes in accordance with Section 804 shall be permitted on top of the noncombustible material. The underside of floor assemblies shall be protected in accordance with 602.4.1.2.~~

~~**602.4.1.4 Roofs.** The interior surfaces of roof assemblies shall be protected in accordance with Section 602.4.1.2. Roof coverings in accordance with Chapter 15 shall be permitted on the outside surface of the roof assembly.~~

~~**602.4.1.5 Concealed spaces.** Concealed spaces shall not contain combustibles other than electrical, mechanical, fire protection, or plumbing materials and equipment permitted in plenums in accordance with Section 602 of the *International Mechanical Code*, and shall comply with all applicable provisions of Section 718. Combustible construction forming concealed spaces shall be protected in accordance with Section 602.4.1.2.~~

~~**602.4.1.6 Shafts.** Shafts shall be permitted in accordance with Sections 713 and 718. Both the shaft side and room side of mass timber elements shall be protected in accordance with Section 602.4.1.2.~~

~~**602.4.2 Type IV-B.** Building elements in Type IV-B construction shall be protected in accordance with Sections 602.4.2.1 through 602.4.2.6. The required fire-resistance rating of noncombustible elements or mass timber elements shall be determined in accordance with Section 703.2 or 703.3.~~

~~**602.4.2.1 Exterior protection.** The outside face of exterior walls of mass timber construction shall be protected with noncombustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1. All components of the exterior wall covering shall be of noncombustible material except water resistive barriers having a peak heat release rate of less than 150 kW/m², a total heat release of less than 20 MJ/m² and an effective heat of combustion of less than 18 MJ/kg as determined in accordance with ASTM E1354, and having a flame spread index of 25 or less and a smoke-developed index of 450 or less as determined in accordance with ASTM E84 or UL 723. The ASTM E1354 test shall be conducted on specimens at the thickness intended for use, in the horizontal orientation and at an incident radiant heat flux of 50 kW/m².~~

~~602.4.2.2 Interior protection.~~ Interior faces of all mass timber elements, including the inside face of exterior mass timber walls and mass timber roofs, shall be protected, as required by this section, with materials complying with Section 703.5.

~~602.4.2.2.1 Protection time.~~ Noncombustible protection shall contribute a time equal to or greater than times assigned in Table 722.7.1(1), but not less than 80 minutes. The use of materials and their respective protection contributions listed in Table 722.7.1(2), shall be permitted to be used for compliance with Section 722.7.1.)

~~602.4.2.2.2 Protected area.~~ ((All)) Interior faces of ((all)) mass timber elements, including the inside face of exterior mass timber walls and mass timber roofs, shall be protected in accordance with Section 602.4.2.2.1 ((, including the inside face of exterior mass timber walls and mass timber roofs)).

EXCEPTIONS: Unprotected portions of mass timber ceilings and walls complying with Section 602.4.2.2.4 and the following:
 1. Unprotected portions of mass timber ceilings ~~((including attached beams, shall be permitted and shall be limited to an area equal to 20% of the floor area in any dwelling unit or fire area; or))~~ and walls complying with one of the following:
 1.1. Unprotected portions of mass timber ceilings, including attached beams, shall be permitted and shall be limited to an area less than or equal to 100 percent of the floor area in any dwelling unit or fire area.
 ((2.)) 1.2. Unprotected portions of mass timber walls, including attached columns, shall be permitted and shall be limited to an area less than or equal to ((40%)) 40 percent of the floor area in any dwelling unit or fire area ~~((; or))~~.
 ((3.)) 1.3. Unprotected portions of both walls and ceilings of mass timber, including attached columns and beams, in any dwelling unit or fire area shall be permitted in accordance with Section 602.4.2.2.3.
 ((4.)) 2. Mass timber columns and beams ~~((which))~~ that are not an integral portion of walls or ceilings, respectively, shall be permitted to be unprotected without restriction of either aggregate area or separation from one another.

~~((602.4.2.2.3 Mixed unprotected areas.~~ In each dwelling unit or fire area, where both portions of ceilings and portions of walls are unprotected, the total allowable unprotected area shall be determined in accordance with Equation 6-1.

~~(Equation 6-1)~~

$$\del{(U_{te}/U_{ae}) + (U_{tw}/U_{aw}) \leq 1}$$

where:

- U_{te} = Total unprotected mass timber ceiling areas;
- U_{ae} = Allowable unprotected mass timber ceiling area conforming to Section 602.4.2.2.2, Exception 1;
- U_{tw} = Total unprotected mass timber wall areas;
- U_{aw} = Allowable unprotected mass timber wall area conforming to Section 602.4.2.2.2, Exception 2.)

~~602.4.2.2.4 Separation distance between unprotected mass timber elements.~~ In each dwelling unit or fire area, unprotected portions of mass timber walls and ceilings shall be not less than 15 feet from unprotected portions of other walls ((and ceilings, measured horizontally along the ceiling and from other unprotected portions of walls)) measured horizontally along the floor.

~~602.4.2.3 Floors.~~ The floor assembly shall contain a noncombustible material not less than 1 inch in thickness above the mass timber. Floor finishes in accordance with Section 804 shall be permitted on top of the noncombustible material. Except where unprotected mass timber ceilings are permitted in Section 602.4.2.2.2, the underside of floor assemblies shall be protected in accordance with Section 602.4.1.2.

~~(602.4.2.4 Roofs. The interior surfaces of roof assemblies shall be protected in accordance with Section 602.4.2.2 except, in nonoccupiable spaces, they shall be treated as a concealed space with no portion left unprotected. Roof coverings in accordance with Chapter 15 shall be permitted on the outside surface of the roof assembly.~~

~~602.4.2.5 Concealed spaces. Concealed spaces shall not contain combustibles other than electrical, mechanical, fire protection, or plumbing materials and equipment permitted in plenums in accordance with Section 602 of the *International Mechanical Code*, and shall comply with all applicable provisions of Section 718. Combustible construction forming concealed spaces shall be protected in accordance with Section 602.4.1.2.~~

~~602.4.2.6 Shafts. Shafts shall be permitted in accordance with Sections 713 and 718. Both the shaft side and room side of mass timber elements shall be protected in accordance with Section 602.4.1.2.~~

~~602.4.3 Type IV-C. Building elements in Type IV-C construction shall be protected in accordance with Sections 602.4.3.1 through 602.4.3.6. The required fire-resistance rating of building elements shall be determined in accordance with Sections 703.2 or 703.3.~~

~~602.4.3.1 Exterior protection. The exterior side of walls of combustible construction shall be protected with noncombustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1. All components of the exterior wall covering, shall be of noncombustible material except water resistive barriers having a peak heat release rate of less than 150 kW/m², a total heat release of less than 20 MJ/m² and an effective heat of combustion of less than 18 MJ/kg as determined in accordance with ASTM E1354 and having a flame spread index of 25 or less and a smoke-developed index of 450 or less as determined in accordance with ASTM E84 or UL 723. The ASTM E1354 test shall be conducted on specimens at the thickness intended for use, in the horizontal orientation and at an incident radiant heat flux of 50 kW/m².~~

~~602.4.3.2 Interior protection. Mass timber elements are permitted to be unprotected.~~

~~602.4.3.3 Floors. Floor finishes in accordance with Section 804 shall be permitted on top of the floor construction.~~

~~602.4.3.4 Roofs. Roof coverings in accordance with Chapter 15 shall be permitted on the outside surface of the roof assembly.~~

~~602.4.3.5 Concealed spaces. Concealed spaces shall not contain combustibles other than electrical, mechanical, fire protection, or plumbing materials and equipment permitted in plenums in accordance with Section 602 of the *International Mechanical Code*, and shall comply with all applicable provisions of Section 718. Combustible construction forming concealed spaces shall be protected with noncombustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1.~~

~~602.4.3.6 Shafts. Shafts shall be permitted in accordance with Sections 713 and 718. Shafts and elevator hoistway and interior exit stairway enclosures shall be protected with noncombustible protection with a minimum assigned time of 40 minutes as determined in Section 722.7.1, on both the inside of the shaft and the outside of the shaft.~~

602.4.4 Type IV-HT. Type IV-HT construction (Heavy Timber, HT) is that type of construction in which the exterior walls are of noncombustible materials and the interior building elements are of solid wood, laminated heavy timber or structural composite lumber (SCL), without concealed spaces. The minimum dimensions for permitted materials including solid timber, glued-laminated timber, structural composite lumber (SCL) and cross-laminated timber (CLT) and details of Type IV construction shall comply with the provisions of this section and Section 2304.11. Exterior walls complying with Section 602.4.4.1 or 602.4.4.2 shall be permitted. Interior walls and partitions not less than 1-hour fire-resistance rating or heavy timber conforming with Section 2304.11.2.2 shall be permitted.

602.4.4.1 Fire-retardant-treated wood in exterior walls. Fire-retardant-treated wood framing and sheathing complying with Section 2303.2 shall be permitted within exterior wall assemblies not less than 6 inches (152 mm) in thickness with a 2-hour rating or less.

602.4.4.2 Cross-laminated timber in exterior walls. Cross-laminated timber complying with Section 2303.1.4 shall be permitted within exterior wall assemblies not less than 6 inches (152 mm) in thickness with a 2-hour rating or less, provided the exterior surface of the cross-laminated timber is protected by one of the following:

1. Fire-retardant-treated wood sheathing complying with Section 2303.2 and not less than 15/32 inch (12 mm) thick;
2. Gypsum board not less than 1/2 inch (12.7 mm) thick; or
3. A noncombustible material.)

602.4.4.3 Concealed spaces. Concealed spaces shall not contain combustible materials other than building elements and electrical, mechanical, fire protection, or plumbing materials and equipment permitted in plenums in accordance with Section 602 of the *International Mechanical Code*. Concealed spaces shall comply with applicable provisions of Section 718. Concealed spaces shall be protected in accordance with one or more of the following:

1. The building shall be sprinklered throughout in accordance with Section 903.3.1.1 and automatic sprinklers shall also be provided in the concealed space.
2. The concealed space shall be completely filled with noncombustible insulation.
3. Combustible surfaces within the concealed space shall be fully sheathed with not less than 5/8-inch Type X gypsum board.

EXCEPTION: Concealed spaces within interior walls and partitions with a 1-hour or greater fire-resistance rating complying with Section 2304.11.2.2 shall not require additional protection.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-0602, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-0602, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-0602, filed 12/26/18, effective 7/1/19.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-0603 ((Section 603—Combustible material in Types I and II construction.)) Reserved.

~~((603.1 Allowable materials. Combustible materials shall be permitted in buildings of Type I or II construction in the following applications and in accordance with Sections 603.1.1 through 603.1.3:~~

~~1. Fire retardant treated wood shall be permitted in:~~

~~1.1. Nonbearing partitions where the required fire-resistance rating is 2 hours or less.~~

~~1.2. Nonbearing exterior walls where fire-resistance-rated construction is not required.~~

~~1.3. Roof construction, including girders, trusses, framing and decking.~~

EXCEPTION: In buildings of Type I-A construction exceeding two stories above grade plane, fire-retardant-treated wood is not permitted in roof construction where the vertical distance from the upper floor to the roof is less than 20 feet (6096 mm).

~~1.4. Balconies, porches, decks and exterior stairways not used as required exits on buildings three stories or less above grade plane. Approved connector shall be in accordance with Section 2304.10.5.~~

~~2. Thermal and acoustical insulation, other than foam plastics, having a flame spread index of not more than 25.~~

EXCEPTIONS:

1. Insulation placed between two layers of noncombustible materials without an intervening airspace shall be allowed to have a flame spread index of not more than 100.
2. Insulation installed between a finished floor and solid decking without intervening airspace shall be allowed to have a flame-spread index of not more than 200.
3. Foam plastics in accordance with Chapter 26.
4. Roof coverings that have an A, B or C classification.
5. Interior floor finish and floor covering materials installed in accordance with Section 804.
6. Millwork such as doors, door frames, window sashes and frames.
7. Interior wall and ceiling finishes installed in accordance with Section 803.
8. Trim installed in accordance with Section 806.
9. Where not installed greater than 15 feet (4572 mm) above grade, show windows, nailing or furring strips and wooden bulkheads below show windows, including their frames, aprons and show cases.
10. Finish flooring installed in accordance with Section 805.
11. Partitions dividing portions of stores, offices or similar places occupied by one tenant only and that do not establish a corridor serving an occupant load of 30 or more shall be permitted to be constructed of fire-retardant-treated wood, 1-hour fire-resistance-rated construction or of wood panels or similar light construction up to 6 feet (1829 mm) in height.
12. Stages and platforms constructed in accordance with Sections 410.2 and 410.3, respectively.
13. Combustible exterior wall coverings, balconies and similar projections and bay or oriel windows in accordance with Chapter 14 and Section 705.2.3.1.
14. Blocking such as for handrails, millwork, cabinets, and window and door frames.
15. Light-transmitting plastics as permitted by Chapter 26.
16. Mastics and caulking materials applied to provide flexible seals between components of exterior wall construction.
17. Exterior plastic veneer installed in accordance with Section 2605.2.
18. Nailing or furring strips as permitted by Section 803.15.
19. Heavy timber as permitted by Note c to Table 601 and Sections 602.4.3 and 705.2.3.1.
20. Aggregates, component materials and admixtures as permitted by Section 703.2.2.
21. Sprayed fire-resistant materials and intumescent and mastic fire-resistant coatings, determined on the basis of fire-resistance tests in accordance with Section 703.2 and installed in accordance with Sections 1705.14 and 1705.15, respectively.
22. Materials used to protect penetrations in fire-resistance-rated assemblies in accordance with Section 714.
23. Materials used to protect joints in fire-resistance-rated assemblies in accordance with Section 715.
24. Materials allowed in the concealed spaces of buildings of Types I and II construction in accordance with Section 718.5.
25. Materials exposed within plenums complying with Section 602 of the International Mechanical Code.
26. Wall construction of freezers and coolers of less than 1,000 square feet (92.9 m²), in size, lined on both sides with noncombustible materials and the building is protected throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-0603, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-0603, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-0603, filed 12/26/18, effective 7/1/19.]

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

WAC 51-50-0703 ((Section 703—Fire-resistance ratings and fire tests.)) Reserved.

~~((703.8 Determination of noncombustible protection time contribution. The time, in minutes, contributed to the fire-resistance rating by the~~

~~noncombustible protection of mass timber building elements, components, or assemblies, shall be established through a comparison of assemblies tested using procedures set forth in ASTM E119 or UL 263. The test assemblies shall be identical in construction, loading, and materials, other than the noncombustible protection. The two test assemblies shall be tested to the same criteria of structural failure.~~

~~1. Test Assembly 1 shall be without protection.~~

~~2. Test Assembly 2 shall include the representative noncombustible protection. The protection shall be fully defined in terms of configuration details, attachment details, joint sealing details, accessories and all other relevant details.~~

~~The noncombustible protection time contribution shall be determined by subtracting the fire resistance time, in minutes, of Test Assembly 1 from the fire resistance time, in minutes, of Test Assembly 2.~~

~~**703.9 Sealing of adjacent mass timber elements.** In buildings of Type IV-A, IV-B, and IV-C construction, sealant or adhesive shall be provided to resist the passage of air in the following locations:~~

~~1. At abutting edges and intersections of mass timber building elements required to be fire-resistance-rated.~~

~~2. At abutting intersections of mass timber building elements and building elements of other materials where both are required to be fire-resistance-rated.~~

~~Sealants shall meet the requirements of ASTM C920. Adhesives shall meet the requirements of ASTM D3498.~~

~~EXCEPTION: Sealants or adhesives need not be provided where a fire-resistance-rated assembly does not include them as a required component.)~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-02-038, § 51-50-0703, filed 12/26/18, effective 7/1/19.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-0704 Section 704—Fire-resistance rating of structural members.

704.6.1 Secondary (nonstructural) attachments to structural members.

Where primary and secondary structural steel members require fire protection, ~~((secondary (nonstructural) tubular steel attachments to those structural members shall be protected with the same fire resistive rating as required for the structural member. The protection shall extend from the structural member a distance of not less than 12 inches. An open tubular attachment shall be filled with an equivalent fire protection method for a distance of 12-inch length from the structural member, or the entire length of the open tube, whichever is less))~~ any additional structural steel members having direct connection to the primary structural frame or secondary structural members shall be protected with the same fire-resistive material and thickness as required for the structural member. The protection shall extend away from the structural member a distance of not less than 12 inches (305 mm), or shall be applied to the entire length where the attachment is less than 12 inches (305 mm) long. Where an attachment is hollow and the ends are open, the fire-resistive material and thickness

shall be applied to both exterior and interior of the hollow steel attachment.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-0704, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-0705 Section 705—Exterior walls ((and projections)).

~~((705.1 General. Exterior walls and projections shall comply with this section.))~~

705.2 Projections. Cornices, roof and eave overhangs, projecting floors above, exterior balconies and similar projections extending beyond the exterior wall shall conform to the requirements of this section and Section 1405. Exterior egress balconies and exterior exit stairways and ramps shall comply with Sections 1021 and 1027, respectively. Projections shall not extend any closer to the line used to determine the fire separation distance than shown in Table 705.2.

EXCEPTIONS: 1. Buildings on the same lot and considered as portions of one building in accordance with Section 705.3 are not required to comply with this section for projections between the buildings.
2. Projecting floors complying with Section 705.2.4 are not required to comply with the projection limitations of Table 705.2.

~~((705.2.4))~~ **705.2.5 Projecting floors.** Where the fire separation distance on a lower floor is greater than the fire separation distance on the floor immediately above, the projecting floor shall have not less than the *fire-resistance rating* as the exterior wall above based on Table 602. The *fire-resistant rating* of the *horizontal* portion shall be continuous to the lower *vertical* wall.

~~((705.2.5 Bay and oriel windows. Bay and oriel windows constructed of combustible materials shall conform to the type of construction required for the building to which they are attached.~~

EXCEPTION: Fire-retardant-treated wood shall be permitted on buildings three stories or less above grade plane of Type I, II, III or IV construction.))

Table 705.5
Fire-Resistance Rating Requirements for Exterior Walls Based on Fire Separation Distance^{a, d, g, j}

Fire Separation Distance = X (feet)	Type of Construction	Occupancy Group H^c	Occupancy Group F-1, M, S-1^f	Occupancy Group A, B, E, F-2, I, R^l, S-2, U^h
<u>X < 5^b</u>	<u>All</u>	<u>3</u>	<u>2</u>	<u>1</u>
<u>5 ≤ X < 10</u>	<u>IA, IVA</u>	<u>3</u>	<u>2</u>	<u>1</u>
	<u>Others</u>	<u>2</u>	<u>1</u>	
<u>10 ≤ X < 30</u>	<u>IA, IB, IVA, IVB</u>	<u>2</u>	<u>1</u>	<u>1^c</u>
	<u>IIB, VB</u>	<u>1</u>	<u>0</u>	<u>0</u>
	<u>Others</u>	<u>1</u>	<u>1</u>	<u>1^c</u>
<u>X ≥ 30</u>	<u>All</u>	<u>0</u>	<u>0</u>	<u>0</u>

For SI: 1 foot = 304.8 mm.

^a Load-bearing exterior walls shall also comply with the fire-resistance rating requirements of Table 601.

^b See Section 706.1.1 for party walls.

^c Open parking garages complying with Section 406 shall not be required to have a fire-resistance rating.

^d The fire-resistance rating of an exterior wall is determined based upon the fire separation distance of the exterior wall and the story in which the wall is located.

- e For special requirements for Group H occupancies, see Section 415.6.
- f For special requirements for Group S aircraft hangars, see Section 412.3.1.
- g Where Table 705.8 permits nonbearing exterior walls with unlimited area of unprotected openings, the required fire-resistance rating for the exterior walls is 0 hours.
- h For a building containing only a Group U occupancy private garage or carport, the exterior wall shall not be required to have a fire-resistance rating where the fire separation distance is 5 feet (1523 mm) or greater.
- i For a Group R-3 building of Type II-B or Type V-B construction, the exterior wall shall not be required to have a fire-resistance rating where the fire separation distance is 5 feet (1523 mm) or greater.
- j In a mixed occupancy building containing Group R-3 and Group U private garage, the exterior wall fire-resistance rating shall be as required for Group R-3.

Table 705.8

Maximum Area of Exterior Wall Openings Based on Fire Separation Distance and Degree of Opening Protection

Fire Separation Distance (feet)	Degree of Opening Protection	Allowable Area^a
<u>0 to less than 3^{b,c,k}</u>	Unprotected, Nonsprinklered (UP, NS)	Not Permitted ^k
	Unprotected, Sprinklered (UP, S) ⁱ	Not Permitted ^k
	Protected (P)	Not Permitted ^k
<u>3 to less than 5^{d,e}</u>	Unprotected, Nonsprinklered (UP, NS)	Not Permitted ^k
	Unprotected, Sprinklered (UP, S) ⁱ	15%
	Protected (P)	15%
<u>5 to less than 10^{e,f,j}</u>	Unprotected, Nonsprinklered (UP, NS)	10% ^h
	Unprotected, Sprinklered (UP, S) ⁱ	25%
	Protected (P)	25%
<u>10 to less than 15^{e,f,g,j}</u>	Unprotected, Nonsprinklered (UP, NS)	15% ^h
	Unprotected, Sprinklered (UP, S) ⁱ	45%
	Protected (P)	45%
<u>15 to less than 20^{f,g,j}</u>	Unprotected, Nonsprinklered (UP, NS)	25%
	Unprotected, Sprinklered (UP, S) ⁱ	75%
	Protected (P)	75%
<u>20 to less than 25^{f,g,j}</u>	Unprotected, Nonsprinklered (UP, NS)	45%
	Unprotected, Sprinklered (UP, S) ⁱ	No Limit
	Protected (P)	No Limit
<u>25 to less than 30^{f,g,j}</u>	Unprotected, Nonsprinklered (UP, NS)	70%
	Unprotected, Sprinklered (UP, S) ⁱ	No Limit
	Protected (P)	No Limit
<u>30 or greater</u>	Unprotected, Nonsprinklered (UP, NS)	No Limit
	Unprotected, Sprinklered (UP, S) ⁱ	No Limit
	Protected (P)	No Limit

For SI: 1 foot = 304.8 mm.

UP, NS = Unprotected openings in buildings not equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

UP, S = Unprotected openings in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

P = Openings protected with an opening protective assembly in accordance with Section 705.8.2.

a Values indicated are the percentage of the area of the exterior wall, per story.

b For the requirements for fire walls of buildings with differing heights, see Section 706.6.1.

c For openings in a fire wall for buildings on the same lot, see Section 706.8.

d The maximum percentage of unprotected and protected openings shall be 25 percent for Group R-3 occupancies.

e Unprotected openings shall not be permitted for openings with a fire separation distance of less than 15 feet for Group H-2 and H-3 occupancies.

f The area of unprotected and protected openings shall not be limited for Group R-3 occupancies, with a fire separation distance of 5 feet or greater.

g The area of openings in an open parking structure with a fire separation distance of 10 feet or greater shall not be limited.

h Includes buildings accessory to Group R-3.

i Not applicable to Group H-1, H-2, and H-3 occupancies.

j The area of openings in a building containing only a Group U occupancy private garage or carport with a fire separation distance of 5 feet or greater shall not be limited.

k For openings between S-2 parking garage and Group R-2 building, see Section 705.3, Exception 2.

l In a mixed occupancy building containing Group R-3 and Group U private garage, the maximum area of exterior openings shall be as required for Group R-3.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-0705, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-0705, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-0706 Section 706—Fire walls.

~~((706.6.1 Stepped buildings. Where a fire wall also serves as an exterior wall for a building and separates buildings having different roof levels, such wall shall terminate at a point not less than 30 inches (762 mm) above the lower roof level. Exterior walls above the fire wall extending more than 30 inches above the lower roof shall be of not less than 1-hour fire-resistance-rated construction from both sides with openings protected by fire assemblies having a fire protection rating of not less than 3/4 hour. Portions of the exterior walls exceeding 15 feet above the lower roof shall be permitted to be of nonfire-resistance-rated construction unless otherwise required by other provisions of this code.~~

EXEMPTION: A fire wall serving as part of an exterior wall that separates buildings having different roof levels shall be permitted to terminate at the underside of the roof sheathing, deck or slab of the lower roof, provided items 1, 2, and 3 below are met. The exterior wall above the fire wall is not required to be of fire-resistance-rated construction, unless required by other provisions of this code.
 1. The lower roof assembly within 10 feet (3048 mm) of the fire wall has not less than a 1-hour fire-resistance rating.
 2. The entire length and span of supporting elements for the rated roof assembly has a fire-resistance rating of not less than 1 hour.
 3. Openings in the lower roof are not located within 10 feet (3048 mm) of the fire wall.)

706.3 Materials. Fire walls that separate a building of Type I or II construction from a building of any construction type shall be of any approved noncombustible materials. Other fire walls shall be built of materials consistent with the types permitted for the type of construction of the building.

706.4 Fire-resistance rating. Fire walls shall have a fire-resistance rating of not less than that required by Table 706.4.

**Table 706.4
Fire Wall Fire-resistance Ratings**

GROUP	FIRE-RESISTANCE RATING (hours)
<u>A, B, E, H-4, I, R-1, R-2, U</u>	<u>3^a</u>
<u>F-1, H-3^b, H-5, M, S-1</u>	<u>3</u>
<u>H-1, H-2</u>	<u>4^b</u>
<u>F-2, S-2, R-3</u>	<u>2</u>

^a In Type II, III, IV, or V construction, walls shall be permitted to have a 2-hour fire-resistance rating.
^b For Group H-1, H-2, or H-3 buildings, also see Sections 415.7 and 415.8.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-0706, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-0706, filed 1/19/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-07070 ((Section 707—Fire barriers.)) Reserved.

~~((707.4 Exterior walls. Where exterior walls serve as a part of a required fire-resistance-rated shaft or separation or enclosure for a stairway, ramp or exit passageway, such walls shall comply with the requirements of Section 705 for exterior walls and the fire-resistance-rated enclosure or separation requirements shall not apply.~~

EXCEPTION: Exterior walls required to be fire-resistance-rated in accordance with Section 1021 for exterior egress balconies, Section 1023.7 for interior exit stairways and ramps, Section 1024.8 for exit passageways and Section 1027.6 for exterior exit stairways and ramp.

~~707.5 Continuity. Fire barriers shall extend from the top of the foundation or floor/ceiling assembly below to the underside of the floor or roof sheathing, slab or deck above and shall be securely attached thereto. Such fire barriers shall be continuous through concealed space, such as the space above a suspended ceiling. Joints and voids at intersections shall comply with Sections 707.8 and 707.9.~~

EXCEPTIONS: 1. Shaft enclosures shall be permitted to terminate at a top enclosure complying with Section 713.12.
2. Interior exit stairway and ramp enclosures required by Section 1023 and exit access stairway and ramp enclosures required by Section 1019 shall be permitted to terminate at a top enclosure complying with Section 713.12.
3. An exit passageway enclosure required by Section 1024.3 that does not extend to the underside of the roof sheathing, slab or deck above shall be enclosed at the top with construction of the same fire-resistance rating as required for the exit passageway.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-07070, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-0713 Section 713—Shaft enclosures.

~~((713.13.4 Chute discharge room. Waste or linen chutes shall discharge into an enclosed room separated by fire barriers with a fire-resistance rating not less than the required fire rating of the shaft enclosure and constructed in accordance with Section 707 or horizontal assemblies constructed in accordance with Section 711, or both. Openings into the discharge room from the remainder of the building shall be protected by opening protectives having a fire-protection rating equal to the protection required for the shaft enclosure. Through penetrations of piping and conduit not necessary for the purpose of the chute discharge room are permitted as long as they are protected in accordance with Section 714 and do not impact the operation of the trash collection system. Doors shall be self- or automatic-closing upon the detection of smoke in accordance with Section 716.2.6.6. Waste chutes shall not terminate in an incinerator room. Waste and linen rooms that are not provided with chutes need only comply with Table 509.))~~

713.13.7 Chute venting and roof termination. The full diameter of waste and linen chutes shall extend a minimum of 3 feet (0.92 m) above the building roof and be gravity vented in accordance with *International Mechanical Code* Section 515.

EXCEPTIONS: 1. Where mechanically ventilated in accordance with *International Mechanical Code* Section 515 the full diameter of the chute shall extend through the roof a minimum of 3 feet (0.92 m) and terminate at a blast cap. The mechanical exhaust connection shall tap into the side of the blast cap extension above the roof.

2. Where the trash chute does not extend to the upper floor of the building below the roof the trash chute shall be permitted to gravity vent to a sidewall louver termination. The horizontal extension of the trash chute shall be the full diameter of the chute and shall be enclosed in rated construction equal to the rating of the shaft enclosure. Where the chute is mechanically ventilated in accordance with *International Mechanical Code* Section 515 the blast cap shall terminate behind the louver and the exhaust fan and duct connection will be enclosed in the rated shaft.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-0713, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

**WAC 51-50-0717 ((Section 717—Ducts and air transfer openings.))
Reserved.**

~~((717.5.2 Fire barriers. Ducts and air transfer openings of fire barriers shall be protected with listed fire dampers installed in accordance with their listing. Ducts and air transfer openings shall not penetrate enclosures for interior exit stairways and ramps and exit passageways, except as permitted by Sections 1023.5 and 1024.6, respectively.~~

EXCEPTION: Fire dampers are not required at penetrations of fire barriers where any of the following apply:
 1. Penetrations are tested in accordance with ASTM E119 or UL 263 as part of the *fire-resistance-rated* assembly.
 2. Ducts are used as part of an approved smoke control system in accordance with Section 909 and where the use of a fire damper would interfere with the operation of a smoke control system.
 3. Such walls shall have a required *fire-resistance rating* of 1 hour or less, penetrated by ducted HVAC systems, in areas of other than Group H and are in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2. For the purposes of this exception, a ducted HVAC system shall be a duct system for conveying supply, return or exhaust air as part of the structure's HVAC system. Such a duct system shall be constructed of sheet steel not less than No. 26 gage thickness and shall be continuous without openings from the air-handling appliance or equipment to the air outlet and inlet terminals, located on the opposite side of the wall assembly.

~~717.5.4 Fire partitions. Ducts and air transfer openings that penetrate fire partitions shall be protected with listed fire dampers installed in accordance with their listing.~~

EXCEPTION: In occupancies other than Group H, fire dampers are not required where any of the following apply:
 1. Corridor walls in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and the duct is protected as a through penetration in accordance with Section 714.
 2. Tenant partitions in covered and open mall buildings where the walls are not required by provisions elsewhere in the code to extend to the underside of the floor or roof sheathing, slab or deck above.
 3. The duct system is constructed of approved materials in accordance with the *International Mechanical Code* and the duct penetrating the wall complies with all of the following requirements:
 3.1. The duct shall not exceed 100 square inches (0.06 m²).
 3.2. The duct shall be constructed of steel not less than 0.0217-inch (0.55 mm) in thickness.
 3.3. The duct shall not have openings that communicate the corridor with adjacent spaces or rooms.
 3.4. The duct shall be installed above a ceiling.
 3.5. The duct shall not terminate at a wall register in the *fire-resistance-rated* wall.
 3.6. A minimum 12-inch-long (305 mm) by 0.060-inch-thick (1.52 mm) steel sleeve shall be centered in each duct opening. The sleeve shall be secured to both sides of the wall and all four sides of the sleeve with minimum 1.5-inch by 1.5-inch by 0.060-inch (38 mm by 38 mm by 1.52 mm) steel retaining angles. The retaining angles shall be secured to the sleeve and the wall with No. 10 (M5) screws. The annular space between the steel sleeve and the wall opening shall be filled with mineral wool batting on all sides.
 4. Such walls shall have a required *fire-resistance rating* of 1 hour or less, penetrated by ducted HVAC systems in areas of other than Group H and are in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2. For the purposes of this exception, a ducted HVAC system shall be a duct system for conveying supply, return or exhaust air as part of the structure's HVAC system. Such a duct system shall be constructed of sheet steel not less than No. 26 gage thickness and shall be continuous without openings from the air-handling appliance or equipment to the air outlet and inlet terminals located on the opposite side of the wall assembly.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-0717, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

WAC 51-50-0718 ((Section 718—Concealed spaces.)) Reserved.

~~((718.2.1 Fireblocking materials. Fireblocking shall consist of the following materials:~~

- ~~1. Two inch (51 mm) nominal lumber.~~
- ~~2. Two thicknesses of 1 inch (25 mm) nominal lumber with broken lap joints.~~
- ~~3. One thickness of 0.719 inch (18.3 mm) wood structural panels with joints backed by 0.719 inch (18.3 mm) wood structural panels.~~
- ~~4. One thickness of 0.75 inch (19.1 mm) particleboard with joints backed by 0.75 inch (19 mm) particleboard.~~
- ~~5. One half inch (12.7 mm) gypsum board.~~
- ~~6. One fourth inch (6.4 mm) cement-based millboard.~~
- ~~7. Batts or blankets of mineral wool, mineral fiber or other approved materials installed in such a manner as to be securely retained in place.~~
- ~~8. Cellulose insulation installed as tested for the specific application.~~
- ~~9. Mass timber complying with Section 2304.11.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-02-038, § 51-50-0718, filed 12/26/18, effective 7/1/19.]

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

WAC 51-50-0722 Section 722—Calculated fire resistance.

~~((722.7 Fire-resistance rating of mass timber. The required fire resistance of mass timber elements in Section 602.4 shall be determined in accordance with Section 703.2 or 703.3. The fire-resistance rating of building elements shall be as required in Tables 601 and 602 and as specified elsewhere in this code. The fire-resistance rating of the mass timber elements shall consist of the fire resistance of the unprotected element added to the protection time of the noncombustible protection.~~

~~**722.7.1 Minimum required protection.** When required by Sections 602.4.1 through 602.4.3, noncombustible protection shall be provided for mass timber building elements in accordance with Table 722.7.1(1). The rating, in minutes, contributed by the noncombustible protection of mass timber building elements, components, or assemblies, shall be established in accordance with Section 703.8. The protection contributions indicated in Table 722.7.1(2) shall be deemed to comply with this requirement when installed and fastened in accordance with Section 722.7.2.~~

~~**Table 722.7.1(1)
Protection Required from Noncombustible Covering Material**~~

Required Fire-Resistance Rating of Building Element per Tables 601 and 602 (hours)	Minimum Protection Required from Noncombustible Protection (minutes)
1	40
2	80
3 or more	120

**Table 722.7.1(2)
Protection Provided by Noncombustible Covering Material**

Noncombustible Protection	Protection Contribution (minutes)
1/2 inch Type X Gypsum board	25
5/8 inch Type X Gypsum board	40

722.7.2 Installation of gypsum board noncombustible protection. Gypsum board complying with Table 722.7.1(2) shall be installed in accordance with this section.

722.7.2.1 Interior surfaces. Layers of Type X gypsum board serving as noncombustible protection for interior surfaces of wall and ceiling assemblies determined in accordance with Table 722.7.1(1) shall be installed in accordance with the following:

1. Each layer shall be attached with Type S drywall screws of sufficient length to penetrate the mass timber at least 1 inch when driven flush with the paper surface of the gypsum board.

EXCEPTION: The third layer, where determined necessary by Section 722.7, shall be permitted to be attached with 1-inch #6 Type S drywall screws to furring channels in accordance with ASTM C645.

2. Screws for attaching the base layer shall be 12 inches on center in both directions.

3. Screws for each layer after the base layer shall be 12 inches on center in both directions and offset from the screws of the previous layers by 4 inches in both directions.

4. All panel edges of any layer shall be offset 18 inches from those of the previous layer.

5. All panel edges shall be attached with screws sized and offset as in items 1 through 4 above and placed at least 1 inch but not more than 2 inches from the panel edge.

6. All panels installed at wall-to-ceiling intersections shall be installed such that the ceiling panel(s) is installed first and the wall panel(s) is installed after the ceiling panel has been installed and is fitted tight to the ceiling panel. Where multiple layers are required, each layer shall repeat this process.

7. All panels installed at a wall-to-wall intersection shall be installed such that the panel(s) covering an exterior wall or a wall with a greater fire-resistance rating shall be installed first and the panel(s) covering the other wall shall be fitted tight to the panel covering the first wall. Where multiple layers are required, each layer shall repeat this process.

8. Panel edges of the face layer shall be taped and finished with joint compound. Fastener heads shall be covered with joint compound.

9. Panel edges protecting mass timber elements adjacent to unprotected mass timber elements in accordance with Section 602.4.2.2 shall

be covered with 1 1/4 inch metal corner bead and finished with joint compound.)

722.7.2.2 Exterior surfaces. Layers of Type X gypsum board serving as *noncombustible* protection for the outside of the exterior heavy timber walls determined in accordance with Table 722.7.1(a) shall be fastened 12 inches on center each way and 6 inches on center at all joints or ends. All panel edges shall be attached with fasteners located at least 1 inch but not more than 2 inches from the panel edge. Fasteners shall comply with one of the following:

1. Galvanized nails of minimum 12 gage with a 7/16 inch head of sufficient length to penetrate the mass timber a minimum of 1 inch.
2. Screws that comply with ASTM C1002 (Type S, Type W, or Type G) of sufficient length to penetrate the mass timber a minimum of 1 inch.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-02-038, § 51-50-0722, filed 12/26/18, effective 7/1/19.]

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

WAC 51-50-0803 ((Section 803—Wall and ceiling finishes.)) Re-served.

~~((803.3 Heavy timber exemption. Exposed portions of building elements complying with the requirements for buildings of Type IV construction in Section 602.4 shall not be subject to interior finish requirements except in interior exit stairways, interior exit ramps, and exit passageways.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-02-038, § 51-50-0803, filed 12/26/18, effective 7/1/19.]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-0902 ((Section 902—)) Reserved.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0902, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-0902, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-0903 Section 903—Automatic sprinkler systems.

903.2.1.3 Group A-3. An automatic sprinkler system shall be provided throughout stories containing Group A-3 occupancies and throughout all stories from the Group A-3 occupancy to and including the levels of

exit discharge serving that occupancy where one of the following conditions exists:

1. The fire area exceeds 12,000 square feet (1115 m²).
2. The fire area has an occupant load of 300 or more.
3. The fire area is located on a floor other than a level of exit discharge serving such occupancies.

EXCEPTION: For fixed guideway transit and passenger rail system stations, an automatic sprinkler system shall be provided in accordance with Section 3114.

903.2.1.6 Assembly occupancies on roofs. Where an occupied roof has an assembly occupancy with an occupant load exceeding 100 for Group A-2, and 300 for other Group A occupancies, the building shall be equipped with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2.

EXCEPTION: Open parking garages of Type I or Type II construction.

903.2.1.8 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code.

903.2.3 Group E. An automatic sprinkler system shall be provided for fire areas containing Group E occupancies where the fire area has an occupant load of 51 or more, calculated in accordance with Table ((1004.1.2)) 1004.5.

EXCEPTIONS:

1. Portable school classrooms with an occupant load of 50 or less calculated in accordance with Table ((1004.1.2)) 1004.5, provided that the aggregate area of any cluster of portable school classrooms does not exceed 6,000 square feet (557 m²); and clusters of portable school classrooms shall be separated as required by the building code; or
2. Portable school classrooms with an occupant load from 51 through 98, calculated in accordance with Table ((1004.1.2)) 1004.5, and provided with two means of direct independent exterior egress from each classroom in accordance with Chapter 10, and one exit from each class room shall be accessible, provided that the aggregate area of any cluster of portable classrooms does not exceed 6,000 square feet (557 m²); and clusters of portable school classrooms shall be separated as required by the building code; or
3. Fire areas containing day care and preschool facilities with a total occupant load of 100 or less located at the level of exit discharge where every room in which care is provided has not fewer than one exit discharge door.

903.2.6 Group I. An automatic sprinkler system shall be provided throughout buildings with a Group I fire area.

EXCEPTIONS:

1. An automatic sprinkler system installed in accordance with Section 903.3.1.2 shall be permitted in Group I-1 Condition 1 facilities.
2. Where new construction house ((sixteen)) 16 persons receiving care, an automatic sprinkler system installed in accordance with Section 903.3.1.2 shall be permitted for Group I-1, Condition 2, assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities licensed under chapter 246-337 WAC.
3. An automatic sprinkler system installed in accordance with Section 903.3.1.2 shall be permitted in additions to existing buildings where both of the following situations are true:
 - 3.1. The addition is made to a building previously approved as Group LC or Group R-2 that houses either an assisted living facility licensed under chapter 388-78A WAC or residential treatment facility licensed under chapter 246-337 WAC.
 - 3.2. The addition contains spaces for ((sixteen)) 16 or fewer persons receiving care.

903.2.6.1 Group I-4. An automatic sprinkler system shall be provided in fire areas containing Group I-4 occupancies where the fire area has an occupant load of 51 or more, calculated in accordance with Table ((1004.1.2)) 1004.5.

EXCEPTIONS:

1. An automatic sprinkler system is not required for Group I-4 day care facilities with a total occupant load of 100 or less, and located at the level of exit discharge and where every room where care is provided has not fewer than one exterior exit door.
2. In buildings where Group I-4 day care is provided on levels other than the level of exit discharge, an automatic sprinkler system in accordance with Section 903.3.1.1 shall be installed on the entire floor where care is provided, all floors between the level of care and the level of exit discharge and all floors below the level of exit discharge other than areas classified as an open parking garage.

~~((903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy, where one of the following conditions exists:~~

- ~~1. A Group M fire area exceeds 12,000 square feet (1115 m²).~~
- ~~2. A Group M fire area is located more than three stories above grade plane.~~
- ~~3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m²).~~

~~4. Where a Group M occupancy that is used for the display and sale of upholstered furniture or mattresses exceeds 5000 square feet (464 m²).~~)

903.2.8 Group R. An automatic fire sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION: Group R-1 if all of the following conditions apply:

1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

~~((903.2.9.3 Group S-1 upholstered furniture and mattresses. An automatic sprinkler system shall be provided throughout a Group S-1 fire area where the area used for storage of upholstered furniture exceeds 2,500 square feet (232 m²).~~

EXCEPTION: Self-service storage facilities no greater than one story above grade plane where all storage spaces can be accessed directly from the exterior.))

903.2.11 Specific building areas and hazards. In all occupancies other than Group U, an automatic sprinkler system shall be installed for building design or hazards in the locations set forth in Sections 903.2.11.1 through 903.2.11.7.

903.2.11.1.3 Basements. Where any portion of a basement is located more than 75 feet (22,860 mm) from openings required by Section 903.2.11.1, or where new walls, partitions or other similar obstructions are installed that increase the exit access travel distance to more than 75 feet, the basement shall be equipped throughout with an approved automatic sprinkler system.

903.2.11.7 Relocatable buildings within buildings. Relocatable buildings or structures located within a building with an approved fire sprinkler system shall be provided with fire sprinkler protection within the occupiable space of the building and the space underneath the relocatable building.

EXCEPTIONS:

1. Sprinkler protection is not required underneath the building when the space is separated from the adjacent space by construction resisting the passage of smoke and heat and combustible storage will not be located there.
2. If the building or structure does not have a roof or ceiling obstructing the overhead sprinklers.
3. Construction trailers and temporary offices used during new building construction prior to occupancy.
4. Movable shopping mall kiosks with a roof or canopy dimension of less than 4 feet on the smallest side.

903.3.1.2 NFPA 13R sprinkler systems. Automatic sprinkler systems in Group R occupancies up to and including four stories in height in buildings not exceeding 60 feet (18,288 mm) in height above grade plane shall be permitted to be installed throughout in accordance with NFPA 13R.

The number of stories of Group R occupancies constructed in accordance with Sections 510.2 and 510.4 shall be measured from the horizontal assembly creating separate buildings.

903.3.5.3 Underground portions of fire protection system water supply piping. The installation or modification of an underground water main, public or private, supplying a water-based fire protection system shall be in accordance with NFPA 24 and chapter 18.160 RCW. Piping and appurtenances downstream of the first control valve on the lateral or service line from the distribution main to one-foot above finished floor shall be approved by the fire code official. Such underground piping shall be installed by a fire sprinkler system contractor li-

censed in accordance with chapter 18.160 RCW and holding either a Level U or a Level 3 license. For underground piping supplying systems installed in accordance with Section 903.3.1.2, a Level 2, 3, or U licensed contractor is acceptable.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-0903, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-0903, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-0903, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-089, § 51-50-0903, filed 12/1/14, effective 5/1/15. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0903, filed 2/1/13, effective 7/1/13. Statutory Authority: Chapter 19.27 RCW. WSR 10-24-059, § 51-50-0903, filed 11/29/10, effective 7/1/11. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0903, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 08-01-110, § 51-50-0903, filed 12/18/07, effective 4/1/08. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-0903, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074, and chapters 19.27 and 34.05 RCW. WSR 05-24-070, § 51-50-0903, filed 12/5/05, effective 7/1/06. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-0903, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-0907 Section 907—Fire alarm and detection systems.

[F] 907.2.3 Group E. Group E occupancies shall be provided with a *manual fire alarm system* that initiates the occupant notification signal utilizing one of the following:

1. An emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6; or
2. A system developed as part of a safe school plan adopted in accordance with RCW 28A.320.125 or developed as part of an emergency response system consistent with the provisions of RCW 28A.320.126. The system must achieve all of the following performance standards:
 - 2.1 The ability to broadcast voice messages or customized announcements;
 - 2.2 Includes a feature for multiple sounds, including sounds to initiate a lock down;
 - 2.3 The ability to deliver messages to the interior of a building, areas outside of a building as designated pursuant to the safe school plan, and to personnel;
 - 2.4 The ability for two-way communications;
 - 2.5 The ability for individual room calling;
 - 2.6 The ability for a manual override;
 - 2.7 Installation in accordance with NFPA 72;
 - 2.8 Provide 15 minutes of battery backup for alarm and 24 hours of battery backup for standby; and
 - 2.9 Includes a program for annual inspection and maintenance in accordance with NFPA 72.

EXCEPTIONS:

1. A manual fire alarm system ((is)) shall not be required in Group E occupancies with an occupant load of 50 or less.
2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, such as individual portable school classroom buildings; provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.
3. Where an existing approved alarm system is in place, an emergency voice/alarm system is not required in any portion of an existing Group E building undergoing any one of the following repairs, alteration or addition:
 - 3.1 Alteration or repair to an existing building including, without limitation, alterations to rooms and systems, and/or corridor configurations, not exceeding 35 percent of the fire area of the building (or the fire area undergoing the alteration or repair if the building is comprised of two or more fire areas); or
 - 3.2 An addition to an existing building, not exceeding 35 percent of the fire area of the building (or the fire area to which the addition is made if the building is comprised of two or more fire areas).
4. Manual fire alarm boxes ((are)) shall not be required in Group E occupancies where all of the following apply:
 - 4.1 Interior *corridors* are protected by smoke detectors.
 - 4.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by *heat detectors* or other *approved* detection devices.
 - 4.3 Shops and laboratories involving dust or vapors are protected by heat detectors or other approved detection devices.
 - 4.4 Manual activation is provided from a normally occupied location.
5. Manual fire alarm boxes shall not be required in Group E occupancies where all of the following apply:
 - 5.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.
 - 5.2 The emergency voice/alarm communication system will activate on sprinkler waterflow.
 - 5.3 Manual activation is provided from a normally occupied location.

[F] 907.2.3.1 Sprinkler systems or detection. When *automatic sprinkler systems* or *smoke detectors* are installed, such systems or detectors shall be connected to the building *fire alarm system*.

[F] 907.2.6.4 Group I-4 occupancies. A manual *fire alarm system* that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When *automatic sprinkler systems* or *smoke detectors* are installed, such systems or detectors shall be connected to the building *fire alarm system*.

EXCEPTIONS:

1. A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.
2. Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

907.2.11.1 Group R-1. Single- or multiple-station smoke alarms shall be installed in all of the following locations in Group R-1:

1. In sleeping areas.
 2. In each *loft* constructed in accordance with Section 420.14.
 3. In every room in the path of the means of egress from the sleeping area to the door leading from the sleeping unit.
 4. In each story within the sleeping unit, including basements.
- For sleeping units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

907.2.11.2 Groups R-2, R-3, R-4, and I-1. Single- or multiple-station smoke alarms shall be installed and maintained in Groups R-2, R-3, R-4, and I-1 regardless of occupant load at all of the following locations:

1. On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.
2. In each room used for sleeping purposes.
3. In each *loft* constructed in accordance with Section 420.14.
4. In each story within a *dwelling unit*, including *basements* but not including crawl spaces and uninhabitable attics. In *dwellings* or *dwelling units* with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

[F] 907.5.2.1.2 Maximum sound pressure. The ~~((maximum))~~ total sound pressure level ~~((for))~~ produced by combining the ambient sound pressure level with all audible ~~((alarm))~~ notification appliances operating shall ~~((be))~~ not exceed 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall not be required.

[F] 907.10 NICET: National Institute for Certification in Engineering Technologies.

907.10.1 Scope. This section shall apply to new and existing fire alarm systems.

907.10.2 Design review. All construction documents shall be reviewed by a NICET III in fire alarms or a licensed professional engineer (PE) in Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction. (Effective July 1, 2018.)

907.10.3 Testing/maintenance. All inspection, testing, maintenance and programming not defined as "electrical construction trade" by chapter 19.28 RCW shall be completed by a NICET II in fire alarms. (Effective July 1, 2018.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-0907, filed 12/12/19, effective 7/1/20. Statutory Authority: RCW 19.27.074 and 19.27.550. WSR 18-01-104, § 51-50-0907, filed 12/19/17, effective 7/1/18. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-0907, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.074 and 19.27.530. WSR 12-01-099, § 51-50-0907, filed 12/20/11, effective 4/1/12. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-0907, filed 1/20/10, effective 7/1/10.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-0908 ((Section 908)) Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-0908, filed 1/19/16, effective 7/1/16. Statutory Authority: Chapters 19.27A, 19.27, and 34.05 RCW. WSR 13-23-087, § 51-50-0908, filed 11/19/13, effective 4/1/14. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-0908, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.074 and 19.27.530. WSR 12-01-099, § 51-50-0908, filed 12/20/11, effective 4/1/12.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-0911 Section 911—(~~Reserved.~~) Fire command center.

911.1.2 Separation. The fire command center shall be separated from the remainder of the building by not less than a one 2-hour fire barrier constructed in accordance with Section 707 or horizontal assembly constructed in accordance with Section 711, or both.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-0911, filed 1/19/16, effective 7/1/16; WSR 10-03-097, § 51-50-0911, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-0913 Section 913—Fire pumps.

913.2.1 Protection of fire pump rooms and access. Fire pumps shall be located in rooms that are separated from all other areas of the building by 2-hour fire barriers constructed in accordance with Section 707 or 2-hour *horizontal assemblies* constructed in accordance with Section 711, or both. Fire pump rooms not directly accessible from the outside shall be accessible through an enclosed passageway from an interior exit stairway or exterior exit. The enclosed passageway shall have a *fire-resistance rating* not less than the *fire-resistance rating* of the fire pump room (see NFPA 20 Section (~~4.12.2.1.2~~) 4.14.2.1.2).

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-0913, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-0915 Section 915—Carbon monoxide detection.

~~((915.1 General. Carbon monoxide detection shall be installed in new buildings in accordance with Sections 915.1.1 through 915.6. Carbon monoxide detection shall be installed in existing buildings in accordance with Chapter 11 of the *International Fire Code*.)~~

915.1.1 Where required. Carbon monoxide detection shall be provided in Group I and R occupancies and in classrooms in Group E occupancies in the locations specified in Section 915.2 where any of the conditions in Sections 915.1.2 through 915.1.6 exist.

EXCEPTIONS: 1. R-2 occupancies, with the exception of R-2 college dormitories, are required to install carbon monoxide detectors without exception.
2. Sleeping units or dwelling units in I and R-1 occupancies and R-2 college dormitories, hotel, DOC prisons and work releases and DSHS licensed boarding home and residential treatment facility occupancies which do not themselves contain a fuel-burning appliance, a fuel-burning fireplace, or have an attached garage, need not be provided with carbon monoxide alarms provided that they comply with the exceptions of 915.1.4.

~~((915.1.2 Fuel-burning appliances and fuel-burning fireplaces. Carbon monoxide detection shall be provided in dwelling units, sleeping units and classrooms that contain a fuel-burning appliance or a fuel-burning fireplace.~~

~~**915.1.3 Forced-air furnaces.** Carbon monoxide detection shall be provided in dwelling units, sleeping units and classrooms served by a fuel-burning, forced-air furnace.~~

EXCEPTION: Carbon monoxide detection shall not be required in dwelling units, sleeping units and classrooms where carbon monoxide detection is provided in the first room or area served by each main duct leaving the furnace, and the carbon monoxide alarm signals are automatically transmitted to an approved location.

~~**915.1.4 Fuel-burning appliances outside of dwelling units, sleeping units and classrooms.** Carbon monoxide detection shall be provided in dwelling units, sleeping units and classrooms located in buildings that contain fuel-burning appliances or fuel-burning fireplaces.~~

EXCEPTIONS: 1. Carbon monoxide detection shall not be required in dwelling units, sleeping units and classrooms where there are no communicating openings between the fuel-burning appliance or fuel-burning fireplace and the dwelling unit, sleeping unit or classroom.
2. Carbon monoxide detection shall not be required in dwelling units, sleeping units and classrooms where carbon monoxide detection is provided in one of the following locations:
2.1. In an approved location between the fuel-burning appliance or fuel-burning fireplace and the dwelling unit, sleeping unit or classroom.
2.2. On the ceiling of the room containing the fuel-burning appliance or fuel-burning fireplace.

~~**915.1.5 Private garages.** Carbon monoxide detection shall be provided in dwelling units, sleeping units and classrooms in buildings with attached private garages.~~

EXCEPTIONS: 1. Carbon monoxide detection shall not be required where there are no communicating openings between the private garage and the dwelling unit, sleeping unit or classroom.
2. Carbon monoxide detection shall not be required in dwelling units, sleeping units and classrooms located more than one story above or below a private garage.
3. Carbon monoxide detection shall not be required where the private garage connects to the building through an open-ended corridor.
4. Where carbon monoxide detection is provided in an approved location between openings to a private garage and dwelling units, sleeping units or classrooms, carbon monoxide detection shall not be required in the dwelling units, sleeping units or classrooms.

~~**915.1.6 Exempt garages.** For determining compliance with Section 915.1.5, an open parking garage complying with Section 406.5 of the *International Building Code* or an enclosed parking garage complying with Section 406.6 of the *International Building Code* shall not be considered a private garage.~~

~~**915.2 Locations.** Where required by Section 915.1.1, carbon monoxide detection shall be installed in the locations specified in Sections 915.2.1 through 915.2.3.~~

~~**915.2.1 Dwelling units.** Carbon monoxide detection shall be installed in dwelling units outside of each separate sleeping area in the immediate vicinity of the bedrooms and on each level of the dwelling. Where a fuel-burning appliance or fuel-burning fireplace is located within a bedroom or its attached bathroom, carbon monoxide detection shall be installed within the bedroom.~~

~~**915.2.2 Sleeping units.** Carbon monoxide detection shall be installed in sleeping units.~~

EXCEPTION: Carbon monoxide detection shall be allowed to be installed outside of each separate sleeping area in the immediate vicinity of the sleeping unit where the sleeping unit or its attached bathroom does not contain a fuel-burning appliance or fuel-burning fireplace and is not served by a forced air furnace.)

~~**915.2.3 Group E occupancies.** When required by Section 915.1 in new buildings, or by Chapter 11 of the *International Fire Code*, carbon monoxide detection shall be installed in classrooms in Group E occupancies. Carbon monoxide alarm signals shall be automatically transmitted to an on-site location that is staffed by school personnel.~~

EXCEPTIONS: 1. Carbon monoxide alarm signals shall not be required to be automatically transmitted to an on-site location that is staffed by school personnel in Group E occupancies with an occupant load of 50 or less.
2. Carbon monoxide alarm signals shall not be required to be automatically transmitted to an on-site location that is staffed by school personnel in Group E occupancies where an exception contained in Section 915.1 applies, or in Group E occupancies where signals are transmitted to an off-site service monitored by a third party, such as a service that monitors fire protection systems in the building.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-0915, filed 1/19/16, effective 7/1/16.]

NEW SECTION

WAC 51-50-0918 Section 918—Emergency responder communication coverage enhancement.

918.1 General. In-building *emergency responder communication enhancement system* shall be provided in all new buildings in accordance with Section 510 of the *International Fire Code*.

[]

NEW SECTION

WAC 51-50-1003 Section 1003—General means of egress.

1003.7 Elevators, escalators and moving walks. Elevators, escalators and moving walks shall not be used as a component of a required means of egress from any other part of the building.

EXCEPTIONS: 1. Elevators used as an accessible means of egress in accordance with Section 1009.4.
2. Escalators used as a means of egress for fixed transit and passenger rail system accordance with Section 3116.

[]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-1004 Section 1004—Occupant load.

~~((Table 1004.5, Maximum Floor Area Allowances Per Occupant))~~

**Table 1004.5
Maximum Floor Area Allowance Per Occupant**

FUNCTION OF SPACE	OCCUPANT LOAD FACTOR ^a
Accessory storage areas, mechanical equipment room	300 gross
Agricultural building	300 gross
Aircraft hangars	500 gross
Airport terminal	
Baggage claim	20 gross
Baggage handling	300 gross
Concourse	100 gross
Waiting areas	15 gross
Assembly	
Gaming floors (keno, slots, etc.)	11 gross
Exhibit gallery and museum	30 net
Billiard table/game table area	50 gross
Assembly with fixed seats	See Section 1004.6
Assembly without fixed seats	

FUNCTION OF SPACE	OCCUPANT LOAD FACTOR ^a
Concentrated (chairs only - not fixed)	7 net
Standing space	5 net
Unconcentrated (tables and chairs)	15 net
Bowling centers, allow 5 persons for each lane including 15 feet of runway, and for additional areas	7 net
Business areas	
Concentrated business use areas	150 gross (See Section 1004.8)
Courtrooms - Other than fixed seating areas	40 net
Day care	35 net
Dormitories	50 gross
Educational	
Classroom area	20 net
Shops and other vocational room areas	50 net
Exercise rooms	50 gross
<u>Fixed guideway transit and passenger rail systems</u> <u>Platform</u> <u>Concourse/lobby</u>	100 gross (See Section 3114)
Group H-5 fabrication and manufacturing areas	200 gross
Industrial areas	100 gross
Institutional areas	
Inpatient treatment areas	240 gross
Outpatient areas	100 gross
Sleeping areas	120 gross
Kitchens, commercial	200 gross
Library	
Reading rooms	50 net
Stack area	100 gross
Locker rooms	50 gross
Mall buildings - Covered and open	See Section 402.8.2
Mercantile	60 gross
Storage, stock, shipping areas	300 gross
((Group M art gallery	30 gross)
Parking garages	200 gross
Residential	200 gross
Skating rinks, swimming pools	
Rink and pool	50 gross
Decks	15 gross
Stages and platforms	15 net
Warehouses	500 gross

((For SI: 1 foot = 304.8 mm, 1 square foot = 0.0929 m².)

a Floor area in square feet per occupant.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-1004, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-1004, filed 12/26/18, effective 7/1/19; WSR 16-03-064, § 51-50-1004, filed 1/19/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-1005 Section 1005—(~~Reserved~~) Means of egress sizing.

1005.1 General. All portions of the means of egress system shall be sized in accordance with this section.

EXCEPTIONS: 1. Aisles and aisle accessways in rooms or spaces used for assembly purposes complying with Section 1030.
2. The capacity in inches, of means of egress components for fixed guideway transit and passenger rail stations, shall meet the requirements of Section 3116.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1005, filed 2/1/13, effective 7/1/13. Statutory Authority: Chapter 19.27 RCW. WSR 10-24-059, § 51-50-1005, filed 11/29/10, effective 7/1/11.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-1006 Section 1006—Number of exits and exit access doorways.

Table 1006.2.1

Spaces with One Exit or Exit Access Doorway

OCCUPANCY	MAXIMUM OCCUPANT LOAD OF SPACE	MAXIMUM COMMON PATH OF EGRESS TRAVEL DISTANCE (feet)		
		Without Sprinkler System (feet)		With Sprinkler System (feet)
		Occupant Load		
		OL ≤ 30	OL ≥ 30	
A ^c , E ^h , M	49	75	75	75 ^a
B	49	100	75	100 ^a
F	49	75	75	100 ^a
H-1, H-2, H-3	3	NP	NP	25 ^b
H-4, H-5	10	NP	NP	75 ^b
I-1, I-2 ^d , I-4	10	NP	NP	75 ^b
I-3	10	NP	NP	100 ^a
R-1	10	NP	NP	75 ^a
R-2	20	NP	NP	125 ^a
R-3 ^e	20	NP	NP	125 ^{a,g}
R-4 ^e	20	NP	NP	125 ^{a,g}
S ^f	29	100	75	100 ^a

OCCUPANCY	MAXIMUM OCCUPANT LOAD OF SPACE	MAXIMUM COMMON PATH OF EGRESS TRAVEL DISTANCE (feet)		
		Without Sprinkler System (feet)		With Sprinkler System (feet)
		Occupant Load		
		OL ≤ 30	OL ≥ 30	
U	49	100	75	75 ^a

For SI: 1 foot = 304.8 mm.

NP = Not Permitted.

- a Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2. See Section 903 for occupancies where automatic sprinkler systems are permitted in accordance with Section 903.3.1.2.
- b Group H occupancies equipped throughout with an automatic sprinkler system in accordance with Section 903.2.5.
- c For a room or space used for assembly purposes having fixed seating, see Section 1029.8.
- d For the travel distance limitations in Group I-2, see Section 407.4.
- e The common path of egress travel distance shall only apply in a Group R-3 occupancy located in a mixed occupancy building.
- f The length of common path of egress travel distance in a Group S-2 open parking garage shall be not more than 100 feet.
- g For the travel distance limitations in Groups R-3 and R-4 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.3, see Section 1006.2.2.6.
- h Day care facilities, rooms or spaces where care is provided for more than 10 children that are 2 1/2 years of age or less, shall have access to not less than two exits or exit access doorways.

1006.2.1 Egress based on occupant load and common path of egress travel distance. Two exits or exit access doorways from any space shall be provided where the design occupant load or the common path of egress travel distance exceeds the values listed in Table 1006.2.1. The cumulative occupant load from adjacent rooms, areas or spaces shall be determined in accordance with Section 1004.2.

- EXCEPTIONS:
1. The number of exits from foyers, lobbies, vestibules or similar spaces need not be based on cumulative occupant loads for areas discharging through such spaces, but the capacity of the exits from such spaces shall be based on applicable cumulative occupant loads.
 2. Care suites in Group I-2 occupancies complying with Section 407.4.
 3. Unoccupied mechanical rooms and penthouses are not required to comply with the common path of egress travel distance measurement.
 4. The common path of travel for fixed transit and passenger rail system stations shall be in accordance with Section 3116.

~~((1006.2.2.4 Group I-4 means of egress. This section is not adopted.~~

~~**1006.2.2.7 Electrical equipment rooms.** Rooms containing electrical equipment shall be provided with a second exit or exit access doorways as required by NFPA 70 Article 110 where all of the following apply:~~

- ~~1. The electrical equipment is rated at 1,200 amperes or more.~~
- ~~2. The electrical equipment is over 6 feet (1829 mm) wide.~~
- ~~3. The electrical equipment contains overcurrent devices, switching devices or control devices.~~

~~**1006.3.3) 1006.2.1.1 Three or more exits or exit access doorways.** Three exits or exit access doorways shall be provided from any space with an occupant load of 501 to 1,000. Four exits or exit access doorways shall be provided from any space with an occupant load greater than 1,000.~~

~~EXCEPTION: The number of required exits for fixed transit and passenger rail systems may be reduced by one at open stations.~~

~~**1006.3.4 Single exits.** A single exit or access to a single exit shall be permitted from any story or occupied roof where one of the following conditions exists:~~

- ~~1. The occupant load, number of dwelling units and exit access travel distance within the portion of the building served by the single exit do not exceed the values in Table ((1006.3.3(1) or 1006.3.3(2)) 1006.3.4(1) or 1006.3.4(2).~~
- ~~2. Rooms, areas and spaces complying with Section 1006.2.1 with exits that discharge directly to the exterior at the level of exit discharge, are permitted to have one exit or access to a single exit.~~
- ~~3. Parking garages where vehicles are mechanically parked shall be permitted to have one exit or access to a single exit.~~

4. Groups R-3 and R-4 occupancies shall be permitted to have one *exit* or *access* to a single *exit*.

5. Individual single-story or multistory dwelling units shall be permitted to have a single *exit* or *access* to a single *exit* from the *dwelling unit* provided that both of the following criteria are met:

5.1. The *dwelling unit* complies with Section 1006.2.1 as a space with one *means of egress*.

5.2. Either the *exit* from the *dwelling unit* discharges directly to the exterior at the level of *exit discharge*, or the *exit access* outside the *dwelling unit's* entrance door provides access to not less than two approved independent *exits*.

~~(Table 1006.3.3(1))~~

~~Stories with One Exit or Access to One Exit for R-2 Occupancies~~

Story	Occupancy	Maximum Number of Dwelling Units	Maximum Exit Access Travel Distance
Basement, first, second, or third story above grade plane	R-2 ^{a,b}	4 dwelling units	125 feet
Fourth story above grade plane and higher	NP	NA	NA

For SI: 1 foot = 304.8 mm.

NP = Not Permitted.

NA = Not Applicable.

a Buildings classified as Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and provided with emergency escape and rescue openings in accordance with Section 1030.

b This table is used for R-2 occupancies consisting of dwelling units. For R-2 occupancies consisting of sleeping units, use Table 1006.3.3(2).

~~Table 1006.3.3(2)~~

~~Stories with One Exit or Access to One Exit for Other Occupancies~~

Story	Occupancy	Maximum Occupant Load per Story	Maximum Exit Access Travel Distance (feet)
First story above or below grade plane	A, B ^b , E, F ^b , M, U	49	75
	H-2, H-3	3	25
	H-4, H-5, I, R-1, R-2 ^{a,c}	10	75
	S ^{b,d}	29	75
Second story above grade plane	B, F, M, S ^d	29	75
Third story above grade plane and higher	NP	NA	NA

For SI: 1 foot = 304.8 mm.

NP = Not Permitted.

NA = Not Applicable.

a Buildings classified as Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and provided with emergency escape and rescue openings in accordance with Section 1030.

- b Group B, F and S occupancies in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 shall have a maximum exit access travel distance of 100 feet.
- c This table is used for R-2 occupancies consisting of sleeping units. For R-2 occupancies consisting of dwelling units, use Table 1006.3.3(1).
- d The length of exit access travel distance in a Group S-2 open parking garage shall be not more than 100 feet.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-1006, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-1006, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-1006, filed 1/19/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-1009 Section 1009—Accessible means of egress.

1009.1 Accessible means of egress required. *Accessible means of egress* shall comply with this section. *Accessible spaces* shall be provided with not less than one *accessible means of egress*. Where more than one *means of egress* is required by Section 1006.2 or 1006.3 from any *accessible space*, each *accessible portion* of the space shall be served by not less than two *accessible means of egress*.

EXCEPTIONS:

1. *Accessible means of egress* are not required to be provided in existing buildings.
2. One *accessible means of egress* is required from an *accessible mezzanine* level in accordance with Section 1009.3, 1009.4 or 1009.5.
3. In assembly areas with ramped *aisles* or stepped *aisles*, one *accessible means of egress* is permitted where the *common path of egress travel* is *accessible* and meets the requirements in Section ((1029.8)) 1030.8.
4. In parking garages, *accessible means of egress* are not required to serve parking areas that do not contain *accessible parking spaces*.

~~((1009.2.1 Elevators required. In buildings where a required accessible floor or accessible occupied roof is four or more stories above or below a level of exit discharge, not less than one required accessible means of egress shall be an elevator complying with Section 1009.4.~~

EXCEPTIONS:

1. In buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the elevator shall not be required on floors provided with a horizontal exit and located at or above the levels of exit discharge.
2. In buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the elevator shall not be required on floors provided with a ramp conforming to the provisions of Section 1012.)

1009.8 Two-way communication. A two-way communication system complying with Sections 1009.8.1 and 1009.8.2 shall be provided at the landing serving each elevator or bank of elevators on each *accessible floor* that is one or more stories above or below the *level of exit discharge*.

EXCEPTIONS:

1. Two-way communication systems are not required at the landing serving each elevator or bank of elevators where the two-way communication system is provided within *areas of refuge* in accordance with Section 1009.6.5.
2. Two-way communication systems are not required on floors provided with *ramps* that provide a direct path of egress travel to grade or the level of exit discharge conforming to the provisions of Section 1012.
3. Two-way communication systems are not required at the landings serving only service elevators that are not designated as part of the *accessible means of egress* or serve as part of the required *accessible route* into a facility.
4. Two-way communication systems are not required at the landings serving only freight elevators.
5. Two-way communication systems are not required at the landing serving a private residence elevator.
6. Two-way communication systems are not required in Group I-2 or I-3 facilities.

1009.8.1 System requirements. Two-way communication systems shall provide communication between each required location and the *fire command center* or a central control point location *approved* by the fire department. Where the central control point is not a *constantly attended location*, a two-way communication system shall have a timed automatic telephone dial-out capability (~~(to a monitoring location)~~) that provides two-way communication with an approved supervising station. The two-way communication system shall include both audible and visible signals. The two-way communication system shall have a battery backup

or an approved alternate source of power that is capable of 90 minutes use upon failure of the normal power source.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-1009, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-1009, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-1009, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1009, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-1009, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-1009, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-1009, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-10100 Section 1010—Doors, gates, and turnstiles.

~~((1010.1.9.4 Locks and latches. Locks and latches shall be permitted to prevent operation of doors where any of the following exists:~~

- ~~1. Places of detention or restraint.~~
- ~~2. In buildings in occupancy Group A having an occupant load of 300 or less, Groups B, F, M and S, and in places of religious worship, the main door or doors are permitted to be equipped with key-operated locking devices from the egress side, provided:

 - ~~2.1. The locking device is readily distinguishable as locked;~~
 - ~~2.2. A readily visible and durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background; and~~
 - ~~2.3. The use of the key-operated locking device is revocable by the building official for due cause.~~~~
- ~~3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no doorknob or surface-mounted hardware.~~
- ~~4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt, or security chain, provided such devices are openable from the inside without the use of a key or a tool.~~
- ~~5. Fire doors after the minimum elevated temperature has disabled the unlatching mechanism in accordance with listed fire door test procedures.~~
- ~~6. Doors serving roofs not intended to be occupied shall be permitted to be locked preventing entry to the building from the roof.~~
- ~~7. Approved, listed locks without delayed egress shall be permitted in Group I-1 condition 2 assisted living facilities licensed by the state of Washington, provided that:

 - ~~7.1. The clinical needs of one or more patients require specialized security measures for their safety.~~~~

~~7.2. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.~~

~~7.3. The doors unlock upon loss of electrical power controlling the lock or lock mechanism.~~

~~7.4. The lock shall be capable of being deactivated by a signal from a switch located in an approved location.~~

~~7.5. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.~~

~~8. Other than egress courts, where occupants must egress from an exterior space through the building for means of egress, exit access doors shall be permitted to be equipped with an approved locking device where installed and operated in accordance with all of the following:~~

~~8.1. The occupant load of the occupied exterior area shall not exceed 300 as determined by IBC Section 1004.~~

~~8.2. The maximum occupant load shall be posted where required by Section 1004.9. Such sign shall be permanently affixed inside the building and shall be posted in a conspicuous space near all the exit access doorways.~~

~~8.3. A weatherproof telephone or two-way communication system installed in accordance with Sections 1009.8.1 and 1009.8.2 shall be located adjacent to not less than one required exit access door on the exterior side.~~

~~8.4. The egress door locking device is readily distinguishable as locked and shall be a key-operated locking device.~~

~~8.5. A clear window or glazed door opening, not less than 5 square feet (0.46 m²) sq. ft. in area, shall be provided at each exit access door to determine if there are occupants using the outdoor area.~~

~~8.6. A readily visible durable sign shall be posted on the interior side on or adjacent to each locked required exit access door serving the exterior area stating: THIS DOOR TO REMAIN UNLOCKED WHEN THE OUTDOOR AREA IS OCCUPIED. The letters on the sign shall be not less than 1 inch high on a contrasting background.~~

~~9. Locking devices are permitted on doors to balconies, decks or other exterior spaces serving individual dwelling or sleeping units.~~

~~10. Locking devices are permitted on doors to balconies, decks or other exterior spaces of 250 square feet or less, serving a private office space.~~

~~**1010.1.9.7 Controlled egress doors in Groups I-1 and I-2.** Electric locking systems, including electromechanical locking systems and electromagnetic locking systems, shall be permitted to be locked in the means of egress in Group I-1 or I-2 occupancies where the clinical needs of persons receiving care require their containment. Controlled egress doors shall be permitted in such occupancies where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors are installed and operate in accordance with all of the following:~~

~~1. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.~~

~~2. The doors unlock upon loss of power controlling the lock or lock mechanism.~~

~~3. The door locking system shall be installed to have the capability of being unlocked by a switch located at the fire command center, a nursing station or other approved location. The switch shall directly break power to the lock.~~

~~4. A building occupant shall not be required to pass through more than one door equipped with a special egress lock before entering an exit.~~

~~5. The procedures for unlocking the doors shall be described and approved as part of the emergency planning and preparedness required by Chapter 4 of the *International Fire Code*.~~

~~6. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door. All clinical staff shall have the keys, codes or other means necessary to operate the locking systems.~~

~~7. Emergency lighting shall be provided at the door.~~

~~8. The door locking system units shall be listed in accordance with UL 294.~~

EXCEPTION:

- ~~1. Items 1 through 4 and 6 shall not apply to doors to areas where persons, which because of clinical needs, require restraint or containment as part of the function of a psychiatric treatment area provided that all clinical staff shall have the keys, codes or other means necessary to operate the locking devices.~~
- ~~2. Items 1 through 4 and 6 shall not apply to doors to areas where a listed egress control system is utilized to reduce the risk of child abduction from nursery and obstetric areas of a Group I-2 hospital.~~

~~**1010.1.10 Panic and fire exit hardware.** Swinging doors serving a Group H occupancy and swinging doors serving rooms or spaces with an occupant load of 50 or more in a Group A or E occupancy shall not be provided with a latch or lock other than panic hardware or fire exit hardware.~~

EXCEPTIONS:

- ~~1. A main exit of a Group A occupancy shall be permitted to have locking devices in accordance with Section 1010.1.9.4, Item 2.~~
- ~~2. Doors provided with panic hardware or fire exit hardware and serving a Group A or E occupancy shall be permitted to be electromagnetically locked in accordance with Section 1010.1.9.9 or 1010.1.9.10.~~
- ~~3. Exit access doors serving occupied exterior areas shall be permitted to be locked in accordance with Section 1010.1.9.4, Item 7.~~

~~Electrical rooms with equipment rated 1,200 amperes or more and over 6 feet (1829 mm) wide, and that contain overcurrent devices, switching devices or control devices with exit or exit access doors, shall be equipped with panic hardware or fire exit hardware. The doors shall swing in the direction of egress travel.~~

~~**1010.1.10.3 Electrical rooms and working clearances.** Exit and exit access doors serving electrical rooms and working spaces shall swing in the direction of egress travel and shall be equipped with panic hardware or fire exit hardware where such rooms or working spaces contain one or more of the following:~~

- ~~1. Equipment operating at more than 600 volts, nominal.~~
- ~~2. Equipment operating at 600 volts or less, nominal and rated at 800 amperes or more, and where the equipment contains overcurrent devices, switching devices or control devices.~~

EXCEPTION:

~~Panic and fire exit hardware is not required on exit and exit access doors serving electrical equipment rooms and working spaces where such doors are not less than twenty-five feet (7.6 m) from the nearest edge of the electrical equipment.)~~

~~**1010.2.4 Locks and latches.** Locks and latches shall be permitted to prevent operation of doors where any of the following exists:~~

- ~~1. Places of detention or restraint.~~
- ~~2. Approved, listed locks without delayed egress shall be permitted in Group I-1 condition 2 assisted living facilities licensed by the state of Washington, provided that:~~
 - ~~2.1. The clinical needs of one or more patients require specialized security measures for their safety.~~

2.2. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

2.3. The doors unlock upon loss of electrical power controlling the lock or lock mechanism.

2.4. The lock shall be capable of being deactivated by a signal from a switch located in an approved location.

2.5. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

3. In buildings in occupancy Group A having an occupant load of 300 or less, Groups B, F, M and S, and in places of religious worship, the main door or doors are permitted to be equipped with key-operated locking devices from the egress side, provided:

3.1. The locking device is readily distinguishable as locked.

3.2. A readily visible and durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN THIS SPACE IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background.

3.3. The use of the key-operated locking device is revocable by the building official for due cause.

4. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no doorknob or surface-mounted hardware.

5. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt, or security chain, provided such devices are openable from the inside without the use of a key or a tool.

6. Fire doors after the minimum elevated temperature has disabled the unlatching mechanism in accordance with listed fire door test procedures.

7. Doors serving roofs not intended to be occupied shall be permitted to be locked preventing entry to the building from the roof.

8. Other than egress courts, where occupants must egress from an exterior space through the building for means of egress, exit access doors shall be permitted to be equipped with an approved locking device where installed and operated in accordance with all of the following:

8.1. The maximum occupant load shall be posted where required by Section 1004.9. Such signage shall be permanently affixed inside the building and shall be posted in a conspicuous space near all the exit access doorways.

8.2. A weatherproof telephone or two-way communication system installed in accordance with Sections 1009.8.1 and 1009.8.2 shall be located adjacent to not less than one required exit access door on the exterior side.

8.3. The egress door locking device is readily distinguishable as locked and shall be a key-operated locking device.

8.4. A clear window or glazed door opening, not less than 5 square feet (0.46 m²) in area, shall be provided at each exit access door to determine if there are occupants using the outdoor area.

8.5. A readily visible durable sign shall be posted on the interior side on or adjacent to each locked required exit access door serving the exterior area stating: THIS DOOR TO REMAIN UNLOCKED WHEN THE OUTDOOR AREA IS

OCCUPIED. The letters on the sign shall be not less than 1 inch high on a contrasting background.

8.6. The occupant load of the occupied exterior area shall not exceed 300 occupants in accordance with Section 1004.

9. Locking devices are permitted on doors to balconies, decks or other exterior spaces serving individual dwelling or sleeping units.

10. Locking devices are permitted on doors to balconies, decks or other exterior spaces of 250 square feet or less, serving a private office space.

1010.2.14 Controlled egress doors in Groups I-1 and I-2. Electric locking systems, including electromechanical locking systems and electromagnetic locking systems, shall be permitted to be locked in the means of egress in Group I-1 or I-2 occupancies where the clinical needs of persons receiving care require their containment. Controlled egress doors shall be permitted in such occupancies where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke detection system installed in accordance with Section 907, provided that the doors are installed and operate in accordance with all of the following:

1. The door locks shall unlock on actuation of the automatic sprinkler system or automatic smoke detection system.

2. The doors locks shall unlock on loss of power controlling the lock or lock mechanism.

3. The door locking system shall be installed to have the capability of being unlocked by a switch located at the fire command center, a nursing station or other approved location. The switch shall directly break power to the lock.

4. A building occupant shall not be required to pass through more than one door equipped with a controlled egress locking system before entering an exit.

5. The procedures for unlocking the doors shall be described and approved as part of the emergency planning and preparedness required by Chapter 4 of the International Fire Code.

6. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door. All clinical staff shall have the keys, codes or other means necessary to operate the locking systems.

7. Emergency lighting shall be provided at the door.

8. The door locking system units shall be listed in accordance with UL 294.

EXCEPTIONS:

1. Items 1 through 4, and 6, shall not apply to doors to areas occupied by persons who, because of clinical needs, require restraint or containment as part of the function of a psychiatric or cognitive treatment area, provided that all clinical staff shall have the keys, codes or other means necessary to operate the locking devices.

2. Items 1 through 4, and 6, shall not apply to doors to areas where a listed egress control system is utilized to reduce the risk of child abduction from nursery and obstetric areas of a Group I-2 hospital.

1010.3.4.1 Fixed transit and passenger rail systems. In fixed transit and passenger rail system stations, horizontal and vertical security grilles are permitted at station entrances as a component in the means of egress when the station is under constant supervision by on-site security personnel and an exit door with panic hardware that swings in the direction of egress, with a minimum clear width of 32 inches, provided within 10 feet of the gate. The security grilles shall remain secured in the full-open position during the period of occupancy by the general public.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-10100, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-10100, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-10100, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-10100, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-1011 Section 1011—Stairways.

~~((1011.7 Stairway construction. Stairways shall be built of materials consistent with the types permitted for the type of construction of the building.~~

EXCEPTIONS: 1. Wood handrails shall be permitted in all types of construction.
2. Interior exit stairway in accordance with Section 510.2.

~~1011.17 Stairways in individual dwelling units. Stairs or ladders within an individual dwelling unit used for access to areas of 200 square feet (18.6 m²) or less, and not containing the primary bathroom or kitchen, are exempt from the requirements of Section 1011.)~~

1011.1 General. Stairways serving occupied portions of a building shall comply with the requirements of Sections 1011.2 through 1011.13. Alternating tread devices shall comply with Section 1011.14. Ship's ladders shall comply with Section 1011.15. Ladders shall comply with Section 1011.16.

EXCEPTIONS: 1. Within rooms or spaces used for assembly purposes, stepped aisles shall comply with Section 1029.
2. Stairways, alternating tread devices, ship's ladders, or ladders within an individual dwelling unit or sleeping unit used for egress from areas of 200 square feet (18.6 m²) or less, and not containing the primary bathroom or kitchen, are exempt from the requirements of Section 1011. Such areas shall not be located more than 10 feet (3048 mm) above the finished floor of the space below.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-1011, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-1011, filed 1/19/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-1012 Section 1012—Ramps.

1012.1 Scope. The provisions of this section shall apply to ramps used as a component of a *means of egress*.

EXCEPTIONS: 1. Ramped *aisles* within assembly rooms or spaces shall ~~((conform))~~ comply with the provisions in Section ~~((4029.13))~~ 1030.13.
2. Curb ramps shall comply with ICC A117.1.
3. Vehicle ramps in parking garages for pedestrian *exit access* shall not be required to comply with Sections 1012.3 through 1012.10 where they are not an *accessible route* serving *accessible* parking spaces, other required *accessible* elements, or part of an *accessible means of egress*.
4. In a parking garage where one accessible means of egress serving accessible parking spaces or other accessible elements is provided, a second accessible means of egress serving that area may include a vehicle ramp that does not comply with Sections 1012.5, 1012.6, and 1012.9. A landing complying with Sections 1012.6.1 and 1012.6.4 shall be provided at any change of direction in the accessible means of egress.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-1012, filed 1/19/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-1014 (~~Reserved~~) Section 1014—Handrails.

1014.2 Height and location. Handrails serving flights of stairways, ramps, stepped aisles, and ramped aisles shall comply with the provisions of Sections 1014.2.1 and 1014.2.2.

1014.2.1 Height. Handrail height, measured above stair tread nosings, or finish surface of ramp slope, shall be uniform, not less than 34 inches (864 mm) and not more than 38 inches (965 mm). Handrail height of alternating tread devices and ships ladders, measured above tread nosings, shall be uniform, not less than 30 inches (762 mm) and not more than 34 inches (864 mm).

EXCEPTIONS:

1. Where *handrail* fittings or bendings are used to provide continuous transition between flights, the fittings or bendings shall be permitted to exceed the maximum height.
2. In Group R-3 occupancies; within *dwelling units* in Group R-2 occupancies; and in Group U occupancies that are associated with a Group R-3 occupancy or associated with individual *dwelling units* in Group R-2 occupancies; where *handrail* fittings or bendings are used to provide continuous transition between flights, transition at *winder* treads, transition from *handrail* to guard, or where used at the start of a *flight*, the *handrail* height at the fittings or bendings shall be permitted to exceed the maximum height.
3. *Handrails* on top of a *guard* where permitted along stepped *aisles* and ramped *aisles* in accordance with Section 1030.16.

1014.2.2 Lateral location. Handrails located outward from the edge of the walking surface of flights of stairways, ramps, stepped aisles, and ramped aisles shall be located within 6 inches (152.4 mm) measured horizontally from the edge of the walking surface. Handrails projecting into the width of the walking surface shall comply with Section 1014.8.

1014.8 Projections. On ramps and on ramped aisles that are part of an accessible route, the clear width between handrails shall be 36 inches (914 mm) minimum. Projections into the required width of stepped and ramped aisles, flights of stairways and ramps at each side shall not exceed 4.5 inches (114 mm) at or below the handrail height. Projections into the required width shall not be limited above the minimum headroom height required in Section 1011.3. Projections due to intermediate handrails shall not constitute a reduction in the egress width. Where a pair of intermediate handrails are provided within the stairway width without a walking surface between the pair of intermediate handrails and the distance between the pair of intermediate handrails is greater than 6 inches (152 mm), the available egress width shall be reduced by the distance between the closest edges of each such intermediate pair of handrails that is greater than 6 inches (152 mm).

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1014, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-1014, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-1014, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 10-03-097, filed 1/20/10, effective 7/1/10)

WAC 51-50-1015 (~~(Reserved.)~~) Section 1015—Guards.

1015.2 Where required. Guards shall be located along open-sided walking surfaces, including mezzanines, equipment platforms, lofts in accordance with Section 420.14, aisles, stairs, ramps and landings that are located more than 30 inches (762 mm) measured vertically to the floor or grade below at any point within 36 inches (914 mm) horizontally to the edge of the open side. Guards shall be provided at the perimeter of the occupied portions of an occupied roof. Guards shall be adequate in strength and attachment in accordance with Section 1607.9.

EXCEPTION:

Guards are not required for the following locations:

1. On the loading side of loading docks or piers.
2. On the audience side of stages and raised platforms, including stairs leading up to the stage and raised platforms.
3. On raised stage and platform floor areas, such as runways, ramps and side stages used for entertainment or presentations.
4. At vertical openings in the performance area of stages and platforms.
5. At elevated walking surfaces appurtenant to stages and platforms for access to and utilization of special lighting or equipment.
6. Along vehicle service pits not accessible to the public.
7. In assembly seating areas at cross aisles in accordance with Section 1030.17.2.
8. On the loading side of station platforms on fixed guideway transit or passenger rail stations.
9. Portions of an occupied roof located less than 30 inches measured vertically to adjacent unoccupied roof areas when approved guards are present at the perimeter of the roof.
10. At an occupied portion of an occupied roof where a barrier approved by the building official is provided.

1015.3 Height. Required guards shall be not less than 42 inches (1067 mm) high, measured vertically as follows:

1. From the adjacent walking surfaces.
2. On stairways and stepped aisles, from the line connecting the leading edges of the tread nosings.
3. On ramps and ramped aisles, from the ramp surface at the guard.

EXCEPTIONS:

1. For occupancies in Group R-3 not more than three stories above grade in height and within individual dwelling units in occupancies in Group R-2 not more than three stories above grade in height with separate means of egress, required guards shall be not less than 36 inches (914 mm) in height measured vertically above the adjacent walking surfaces.
2. For occupancies in Group R-3, and within individual dwelling units in occupancies in Group R-2, guards on the open sides of stairs shall have a height not less than 34 inches (864 mm) measured vertically from a line connecting the leading edges of the treads.
3. For occupancies in Group R-3, and within individual dwelling units in occupancies in Group R-2, where the top of the guard serves as a handrail on the open sides of stairs, the top of the guard shall be not less than 34 inches (864 mm) and not more than 38 inches (965 mm) measured vertically from a line connecting the leading edges of the treads.
4. In areas with ceiling heights of 7 feet (2134 mm) or less in lofts constructed in accordance with Section 420.14, guards shall not be less than 36 inches (914 mm) in height or one-half of the clear height from the loft floor to the loft ceiling, whichever is less.
5. The guard height in assembly seating areas shall comply with Section 1030.17 as applicable.
6. Along alternating tread devices and ships ladders, guards where the top rail serves as a handrail shall have height not less than 30 inches (762 mm) and not more than 34 inches (864 mm), measured vertically from the leading edge of the device tread nosing.
7. In Group F occupancies where exit access stairways serve fewer than three stories and such stairways are not open to the public, and where the top of the guard also serves as a handrail, the top of the guard shall be not less than 34 inches (864 mm) and not more than 38 inches (965 mm) measured vertically from a line connecting the leading edges of the treads.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-1015, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-1015, filed 12/19/06, effective 7/1/07.]

NEW SECTION

WAC 51-50-10170 Section 1017—Exit access travel distance.

Table 1017.2

Exit Access Travel Distance^a

Occupancy	Without Sprinkler System (feet)	With Sprinkler System (feet)
A, E, F-1, M, R, S-1	200 ^e	250 ^b
I-1	Not Permitted	250 ^b
B	200	300 ^c
F-Z, S-Z, U	300	400 ^c
H-1	Not Permitted	75 ^d
H-Z	Not Permitted	100 ^d
H-3	Not Permitted	150 ^d
H-4	Not Permitted	175 ^d
H-5	Not Permitted	200 ^c
I-Z, I-3	Not Permitted	200 ^c
I-4	150	200 ^c

For SI: 1 foot = 304.8 mm.

^a See the following sections for modifications to exit access travel distance requirements:

- Section 402.8: For the distance limitation in malls.
- Section 407.4: For the distance limitation in Group I-2.
- Sections 408.6.1 and 408.8.1: For the distance limitations in Group I-3.
- Section 411.2: For the distance limitation in special amusement areas.
- Section 412.6: For the distance limitations in aircraft manufacturing facilities.
- Section 1006.2.2.2: For the distance limitation in refrigeration machinery rooms.
- Section 1006.2.2.3: For the distance limitation in refrigerated rooms and spaces.
- Section 1006.3.4: For buildings with one exit.
- Section 1017.2.2: For increased distance limitation in Groups F-1 and S-1.
- Section 1030.7: For increased limitation in assembly seating.
- Section 3103.4: For temporary structures.
- Section 3104.9: For pedestrian walkways.
- Section 3116: For fixed guideway and passenger rail stations.

^b Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2. See Section 903 for occupancies where automatic sprinkler systems are permitted in accordance with Section 903.3.1.2.

^c Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

^d Group H occupancies equipped throughout with an automatic sprinkler system in accordance with Section 903.2.5.1.

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AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-1019 Section 1019—Exit access stairways and ramps.

1019.3 Occupancies other than Groups I-2 and I-3. In other than Groups I-2 and I-3 occupancies, floor openings containing *exit access stairways* or ramps shall be enclosed with a shaft enclosure constructed in accordance with Section 713.

EXCEPTIONS:

1. Exit access stairways and ramps that serve or atmospherically communicate between only two adjacent stories. Such interconnected stories shall not be open to other stories.
2. In Group R-1, R-2 or R-3 occupancies, exit access stairways and ramps connecting four stories or less serving and contained within an individual dwelling unit or sleeping unit or live/work unit.
3. Exit access stairways serving and contained within a Group R-3 congregate residence are not required to be enclosed.
4. *Exit access stairways and ramps* in buildings equipped throughout with an *automatic sprinkler system* in accordance with Section 903.3.1.1, where the area of the vertical opening between stories does not exceed twice the horizontal projected area of the stairway or ramp and the opening is protected by a draft curtain and closely spaced sprinklers in accordance with NFPA 13. In other than Group B and M occupancies, this provision is limited to openings that do not connect more than four stories.
5. *Exit access stairways and ramps* within an atrium complying with the provisions of Section 404.
6. *Exit access stairways and ramps* in open parking garages that serve only the parking garage.
7. *Exit access stairways and ramps* serving smoke-protected or open-air assembly seating complying with the exit access travel distance requirements of Section ((1029.7)) 1030.7.
8. *Exit access stairways and ramps* between the balcony, gallery or press box and the main assembly floor in occupancies such as theaters, places of religious worship, auditoriums, and sports facilities.
9. Exterior exit access stairways or ramps between occupied roofs.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-1019, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-1019, filed 12/12/19, effective 7/1/20; WSR 10-03-097, § 51-50-1019, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-1019, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-1020 Section 1020—Corridors.

~~((1020.4 Dead ends. Where more than one exit or exit access doorway is required, the exit access shall be arranged such that dead-end corridors do not exceed 20 feet (6096 mm) in length.~~

EXCEPTIONS:

1. In Group I-3, Condition 2, 3 or 4, occupancies, the dead end in a corridor shall not exceed 50 feet (15,240 mm);
2. In occupancies in Groups B, E, F, I-1, M, R-1, R-2, S and U, where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1, the length of the dead-end corridors shall not exceed 50 feet (15,240 mm);
3. A dead-end corridor shall not be limited in length where the length of the dead-end corridor is less than 2.5 times the least width of the dead-end corridor;
4. In Group I-2, Condition 2 occupancies, the length of dead-end corridors that do not serve patient rooms or patient treatment spaces shall not exceed 30 feet (9144 mm);

~~1020.5) 1020.6 Air movement in corridors. Corridors shall not serve as supply, return, exhaust, relief, or ventilation air ducts.~~

EXCEPTIONS:

1. Use of a corridor as a source of makeup air for exhaust systems in rooms that open directly onto such corridors, including toilet rooms, bathrooms, dressing rooms, smoking lounges and janitor closets, shall be permitted provided that each such corridor is directly supplied with outdoor air at a rate greater than the rate of makeup air taken from the corridor.
2. Where located within a dwelling unit, the use of corridors for conveying return air shall not be prohibited.
3. Where located within tenant spaces of ~~((one thousand))~~ 1,000 square feet (93 m²) or less in area, utilization of corridors for conveying return air is permitted.
4. ~~((Incidental air movement from pressurized rooms within health care facilities, provided that a corridor is not the primary source of supply or return to the room.))~~ Transfer air movement required to maintain the pressurization difference within health care facilities in accordance with ASHRAE 170.
5. Where such air is part of an engineered smoke control system.
6. Air supplied to corridors serving residential occupancies shall not be considered as providing ventilation air to the dwelling units and sleeping units subject to the following:
 - 6.1 The air supplied to the corridor is ~~((one hundred))~~ 100 percent outside air; and
 - 6.2 The units served by the corridor have conforming ventilation air independent of the air supplied to the corridor; and
 - 6.3 For other than high-rise buildings, the supply fan will automatically shut off upon activation of corridor smoke detectors which shall be spaced at no more than ~~((thirty))~~ 30 feet (9,144 mm) on center along the corridor; or
 - 6.4 For high-rise buildings, corridor smoke detector activation will close required smoke/fire dampers at the supply inlet to the corridor at the floor receiving the alarm.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-1020, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-1020, filed 1/19/16, effective 7/1/16.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-1023 Section 1023—Interior exit stairways and ramps.

~~((1023.2 Construction. Enclosures for interior exit stairways and ramps shall be constructed as fire barriers in accordance with Section 707 or horizontal assemblies constructed in accordance with Section 711, or both. Interior exit stairway and ramp enclosures shall have a fire-resistance rating of not less than 2 hours where connecting four stories or more and not less than 1 hour where connecting less than four stories. The number of stories connected by the interior exit~~

~~stairways or ramps shall include any basements, but not any mezzanines. Interior exit stairways and ramps shall have a fire-resistance rating not less than the floor assembly penetrated, but need not exceed 2 hours.~~

EXCEPTIONS: 1. Interior exit stairways and ramps in Group I-3 occupancies in accordance with the provisions of Section 408.3.8.
2. Interior exit stairways within an atrium enclosed in accordance with Section 404.6.
3. Interior exit stairway in accordance with Section 510.2.

~~**1023.5 Penetrations.** Penetrations into or through interior exit stairways and ramps are prohibited except for the following:~~

- ~~1. Equipment and ductwork necessary for independent ventilation or pressurization;~~
- ~~2. Fire protection systems;~~
- ~~3. Security systems;~~
- ~~4. Two-way communication systems;~~
- ~~5. Electrical raceway for fire department communication systems;~~
- ~~6. Electrical raceway serving the interior exit stairway and ramp and terminating at a steel box not exceeding 16 square inches (0.010 m²);~~
- ~~7. Structural elements supporting the interior exit stairway or ramp or enclosure, such as beams or joists.~~

~~**1023.11)) 1023.12 Smokeproof enclosures.** Where required by Section 403.5.4, 405.7.2 or 412.2.2.1, interior exit stairways and ramps shall be smokeproof enclosures in accordance with Section 909.20. Where interior exit stairways and ramps are pressurized in accordance with Section 909.20.5, the smoke control pressurization system shall comply with the requirements specified in Section 909.6.3.~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-1023, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-10240 ((Section 1024 Exit passageways.)) Reserved.

~~((**1024.9 Exit passageway exterior walls.** Exterior walls of the exit passageway shall comply with Section 705. Where nonrated walls or unprotected openings enclose the exterior of the exit passageway and the walls or openings are exposed by other parts of the building at an angle of less than 180 degrees (3.14 rad), the building exterior walls within 10 feet (3048 mm) horizontally of a nonrated wall or unprotected opening shall have a fire-resistance rating of not less than 1 hour. Openings within such exterior walls shall be protected by opening protectives having a fire-protection rating of not less than 3/4 hour. This construction shall extend vertically from the ground to a point 10 feet (3048 mm) above the floor of the exit passageway, or to the roof line, whichever is lower.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-10240, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-10240, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

**WAC 51-50-1030 ((Section 1030—Emergency escape and rescue.))
Reserved.**

~~((1030.6 Drainage. Window wells shall be designed for proper drainage by connecting to the building's foundation drainage system required by Section 1805.4.2 or by an approved alternative method.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-10300, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 17-23-182, filed 11/21/17, effective 7/1/18)

WAC 51-50-1101 Section 1101—General.

1101.2 Design. Buildings and facilities shall be designed and constructed to be accessible in accordance with this code and ICC A117.1, except those portions of ICC A117.1 amended by this section.

~~((1101.2.1 (ICC A117.1 Section 403.5) Clear width of accessible route. Clear width of an accessible route shall comply with ICC A117.1 Section 403.5. For exterior routes of travel, the minimum clear width shall be 44 inches (1118 mm).))~~

1101.2.2 (ICC A117.1 Section 404.2.8) Door-opening force. ~~((Fire doors shall have the minimum opening force allowable by the appropriate administrative authority. The force for pushing or pulling open doors other than fire doors shall be as follows:))~~ Fire doors and doors or gates required to be equipped with panic hardware, break away features or other factors requiring higher opening force for safety reasons shall have the minimum opening force allowable in scoping provisions adopted by the appropriate administrative authority. For other doors or gates, the force for pushing or pulling open doors or gates shall be as follows:

1. Interior hinged door: 5.0 pounds (22.2 N) maximum
2. Interior sliding or folding doors: 5.0 pounds (22.2 N) maximum
3. Exterior hinged, sliding or folding door: 10 pounds (44.4 N)

maximum.

~~((EXCEPTION: Interior or exterior automatic doors complying with Section 404.3 of ICC ANSI A117.1.~~

~~These forces do not apply to the force required to retract latch bolts or disengage other devices that hold the door in a closed position.~~

~~**1101.2.3 (ICC A117.1 Section 407.4.6.2.2) Arrangement of elevator car buttons.** Buttons shall be arranged with numbers in ascending order. When two or more columns of buttons are provided they shall read from left to right.))~~

~~EXCEPTION: The force required to retract latch bolts or disengage other devices that hold the door or gate in a closed position shall not apply to panic hardware, delayed egress devices or fire-rated hardware.~~

1101.2.4 (ICC ANSI A117.1 ((606.7)) 603.6) Operable parts. Operable parts on drying equipment, towel or cleansing product dispensers, and disposal fixtures shall comply with Table 603.6.

1101.2.5 (ICC A117.1 Section 604.6) Flush controls. Flush controls shall be hand operated or automatic. Hand operated flush controls shall comply with Section 309, except the maximum height above the floor shall be 44 inches. Flush controls shall be located on the open side of the water closet.

EXCEPTION: In ambulatory accessible compartments complying with Section 604.10, flush controls shall be permitted to be located on either side of the water closet.

1101.2.6 (ICC A117.1 Section 703.6.3.1) International Symbol of Accessibility. Where the International Symbol of Accessibility is required, it shall be proportioned complying with ICC A117.1 Figure 703.6.3.1. All interior and exterior signs depicting the International Symbol of Accessibility shall be white on a blue background.

1101.2.7 (ICC A117.1 Section 502.2) Vehicle space size. Car and van parking spaces shall be 96 inches (2440 mm) minimum in width.

1101.2.8 (ICC A117.1 Section 502.4.2) Access aisle width. Access aisles serving car parking spaces shall be 60 inches (1525 mm) minimum in width. Access aisles serving van parking spaces shall be 96 inches (2440 mm) minimum in width.

1101.2.9 (ICC A117.1 Section 502.7) Identification. Accessible parking spaces shall be indicated by a vertical sign. The signs shall include the International Symbol of Accessibility complying with section 703.6.3.1. Such symbol shall be white on a blue background. Signs identifying van parking spaces shall contain the designation "van accessible." The sign may include additional language such as, but not limited to, an indication of the amount of the monetary penalty defined in RCW 46.19.050 for parking in the space without a valid permit. A vertical "no parking" sign shall be erected at the head of each access aisle located adjacent to an accessible parking space. The sign may include additional language such as, but not limited to, an indication of any penalty for parking in an access aisle. Such signs shall be 60 inches (1525 mm) minimum above the floor of the parking space, measured to the bottom of the sign.

[Statutory Authority: RCW 19.27.074 and 19.27.550. WSR 17-23-182, § 51-50-1101, filed 11/21/17, effective 7/1/18. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-1101, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1101, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-1101, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074, and chapters 19.27 and 34.05 RCW. WSR 05-24-070, § 51-50-1101, filed 12/5/05, effective 7/1/06; WSR 05-01-014, § 51-50-1101, filed 12/2/04, effective 7/1/05. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-1101, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-11050 ((Section 1105—Accessible entrances.)) Re-served.

~~((1105.1.8 Automatic doors. In facilities with the occupancies and building occupant loads indicated in Table 1105.1.8, all public entrances that are required to be accessible shall have one door be either a full power-operated door or a low-energy power-operated door. Where the public entrance includes a vestibule, at least one door into and one door out of the vestibule shall meet the requirements of this section.~~

~~Table 1105.1.8^a~~

~~PUBLIC ENTRANCE WITH POWER-OPERATED DOORS^a~~

Occupancy	Building Occupant Load Greater Than
A-1, A-2, A-3, A-4	300
B, M, R-1	500

~~^a In mixed-use facilities containing occupancies listed, when the total sum of the occupant load is greater than those listed, the most restrictive building occupant load shall apply.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-11050, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-1106 Section 1106—Parking and passenger loading facilities.

~~((1106.6))~~ **1106.7 Location.** Accessible parking spaces shall be located on the shortest accessible route of travel from adjacent parking to an accessible building entrance. In parking facilities that do not serve a particular building, accessible parking spaces shall be located on the shortest route to an accessible pedestrian entrance to the parking facility. Where buildings have multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located near the accessible entrances. Wherever practical, the accessible route shall not cross lanes of vehicular traffic. Where crossing traffic lanes is necessary, the route shall be designated and marked as a crosswalk.

EXCEPTION: 1. In multilevel parking structures, van accessible parking spaces are permitted on one level.
2. Accessible parking spaces shall be permitted to be located in different parking facilities if substantially equivalent or greater accessibility is provided in terms of distance from an accessible entrance or entrances, parking fee and user convenience.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1106, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-1106, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-1106, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-1106, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 21-06-035, filed 2/23/21, effective 3/26/21)

WAC 51-50-1107 Section 1107—(~~Dwelling units and sleeping units~~) Motor vehicle related facilities.

~~((1107.5 Group I. Accessible units and Type B units shall be provided in Group I occupancies in accordance with Sections 1107.5.1.1 through 1107.5.1.3.~~

~~**1107.5.1.1 Accessible units in Group I-1, Condition 1.** In Group I-1, Condition 1, at least 4 percent, but not less than one, of the dwelling units and sleeping units shall be accessible units.~~

EXCEPTIONS: ~~1. In not more than 50 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.4.
2. In not more than 50 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.5.~~

~~**1107.5.1.2 Accessible units in Group I-1, Condition 2.** In Group I-1, Condition 2, at least 10 percent, but not less than one, of the dwelling units and sleeping units shall be accessible units.~~

EXCEPTIONS: ~~1. In not more than 90 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.4.
2. In not more than 90 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.5.~~

~~**1107.5.4 Group I-2 rehabilitation facilities.** In hospitals and rehabilitation facilities of Group I-2 occupancies that specialize in treating conditions that affect mobility, or units within either that specialize in treating conditions that affect mobility, 100 percent of the dwelling units and sleeping units shall be accessible units.~~

EXCEPTIONS: ~~1. In not more than 50 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.4.
2. In not more than 50 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.5.~~

~~**1107.6.2.2.1 Type A units.** In Group R-2 Occupancies containing more than 10 dwelling units or sleeping units, at least 5 percent, but not less than one, of the units shall be a Type A unit. All units on a site shall be considered to determine the total number of units and the required number of Type A units. Type A units shall be dispersed among the various classes of units, as described in Section 1107.6. Bedrooms in monasteries and convents shall be counted as *sleeping units* for the purpose of determining the number of units. Where the *sleeping units* are grouped into suites, only one *sleeping unit* in each suite shall count towards the number of required *Type A units*.~~

EXCEPTIONS: ~~1. The number of Type A units is permitted to be reduced in accordance with Section 1107.7.
2. Existing structures on a site shall not contribute to the total number of units on a site.~~

~~**1107.5.1 Group I-1.** Accessible units and Type B units shall be provided in Group I-1 occupancies in accordance with Sections 1107.5.1.1 through 1107.5.1.3.~~

~~**1107.5.1.1 Accessible units in Group I-1, Condition 1.** In Group I-1, Condition 1, at least 4 percent, but not less than one, of the dwelling units and sleeping units shall be accessible units.~~

EXCEPTIONS: ~~1. In not more than 50 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.2.
2. In not more than 50 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.3.~~

~~**1107.5.1.2 Accessible units in Group I-1, Condition 2.** In Group I-1, Condition 2, at least 10 percent, but not less than one, of the dwelling units and sleeping units shall be accessible units.~~

EXCEPTIONS: ~~1. In not more than 50 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.2.
2. In not more than 50 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.3.~~

~~**1107.5.1.3 Type B units.** In structures with four or more dwelling units or sleeping units intended to be occupied as a residence, every dwelling unit and sleeping unit intended to be occupied as a residence shall be a Type B unit.~~

EXCEPTION: ~~The number of Type B units is permitted to be reduced in accordance with Section 1107.7.~~

~~**1107.5.2 Group I-2 nursing homes.** Accessible units and Type B units shall be provided in nursing homes of Group I-2, Condition 1 occupancies in accordance with Sections 1107.5.2.1 and 1107.5.2.2.~~

~~**1107.5.2.1 Accessible units.** At least 50 percent but not less than one of each type of the dwelling units and sleeping units shall be accessible units.~~

EXCEPTIONS: ~~1. In not more than 90 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.2.
2. In not more than 90 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.3.~~

~~**1107.5.4 Group I-2 rehabilitation facilities.** In hospitals and rehabilitation facilities of Group I-2 occupancies that specialize in treating conditions that affect mobility, or units within either that specialize in treating conditions that affect mobility, 100 percent of the dwelling units and sleeping units shall be accessible units.~~

EXCEPTIONS: ~~1. In not more than 50 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.2.
2. In not more than 50 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.3.~~

~~**1107.6.2.3 Group R-2 other than live/work units, apartment houses, monasteries and convents.** In Group R-2 Occupancies, other than live/work units, apartment houses, monasteries and convents falling within the scope of Sections 1107.6.2.1 and 1107.6.2.2, accessible units and Type B units shall be provided in accordance with Sections 1107.6.2.3.1 and 1107.6.2.3.2. Bedrooms within congregate living facilities shall be counted as sleeping units for the purpose of determining the number of units. Where the sleeping units are grouped into suites, only one sleeping unit in each suite shall be permitted to count towards the number of required accessible units. Accessible units shall be dispersed among the various classes of units, as described in Section 1107.6.)~~

~~**1107.2 Electrical vehicle charging stations.** Electrical vehicle charging stations shall comply with Sections 1107.2.1 and 1107.2.2.~~

EXCEPTION: ~~Electrical vehicle charging stations provided to serve Group R-3 occupancies are not required to comply with this section.~~

~~**1107.2.1 Number of accessible vehicle spaces.** See Section 429.4.~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-06-035, § 51-50-1107, filed 2/23/21, effective 3/26/21; WSR 20-21-021, § 51-50-1107, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-1107, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-1107, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, §

51-50-1107, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-1107, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-1107, filed 12/17/03, effective 7/1/04.]

NEW SECTION

WAC 51-50-1108 Section 1108—Dwelling units and sleeping units.

1108.6.2.2.1 Type A units. In Group R-2 Occupancies containing more than 10 dwelling units or sleeping units, at least 5 percent, but not less than one, of the units shall be a Type A unit. All units on a site shall be considered to determine the total number of units and the required number of Type A units. Type A units shall be dispersed among the various classes of units, as described in Section 1108.6. Bedrooms in monasteries and convents shall be counted as *sleeping units* for the purpose of determining the number of units. Where the *sleeping units* are grouped into suites, only one *sleeping unit* in each suite shall count towards the number of required *Type A units*.

EXCEPTIONS: 1. The number of Type A units is permitted to be reduced in accordance with Section 1107.7.
2. Existing structures on a site shall not contribute to the total number of units on a site.

[]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

**WAC 51-50-11090 ((Section 1109—Other features and facilities.))
Reserved.**

~~((1109.2 Toilet and bathing facilities. Each toilet room and bathing room shall be accessible. Where a floor level is not required to be connected by an accessible route, the only toilet rooms or bathing rooms provided within the facility shall not be located on the inaccessible floor. Except as provided for in Sections 1109.2 and 1109.2.3 at least one of each type of fixture, element, control or dispenser in each accessible toilet room and bathing room shall be accessible.~~

EXCEPTIONS: 1. Toilet rooms or bathing rooms accessed only through a private office, not for common or public use and intended for use by a single occupant, shall be permitted to comply with the specific exceptions in ICC A117.1.
2. This section is not applicable to toilet and bathing rooms that serve dwelling units or sleeping units that are not required to be accessible by Section 1107.
3. Where multiple single-user toilet rooms or bathing rooms are clustered at a single location, at least 50 percent but not less than one room for each use at each cluster shall be accessible. Where these rooms are designated as gender-neutral, the total number of accessible toilet or bathing rooms shall not be less than the sum of required accessible separate male plus female rooms.
4. Where no more than one urinal is provided in a toilet room or bathing room, the urinal is not required to be accessible.
5. Toilet rooms or bathing rooms that are part of critical care or intensive care patient sleeping rooms serving accessible units are not required to be accessible.
6. Toilet rooms or bathing rooms designed for bariatrics patients are not required to comply with the toilet room and bathing room requirement in ICC A117.1. The sleeping units served by bariatrics toilet or bathing rooms shall not count toward the required number of accessible sleeping units.
7. Where permitted in Section 1107, in toilet rooms or bathrooms serving accessible units, water closets designed for assisted toileting shall be permitted to comply with Section 1109.2.4.
8. Where permitted in Section 1107, in bathrooms serving accessible units, showers designed for assisted toileting shall be permitted to comply with Section 1109.2.5.
9. Where toilet facilities are primarily for children's use, required accessible water closets, toilet compartments and lavatories shall be permitted to comply with children's provision of ICC A117.1.

~~**1109.2.4 Water closets designed for assisted toileting.** Water closets designed for assisted toileting shall comply with Sections 1109.2.4.1 through 1109.2.4.6.~~

~~**1109.2.4.1 Location.** The centerline of the water closet shall be 24 inches (610 mm) minimum and 26 inches (660 mm) maximum from one side of the required clearance.~~

~~**1109.2.4.2 Clearance.** Clearance around the water closet shall comply with Sections 1109.2.4.2.1 through 1109.2.4.2.3.~~

~~**1109.2.4.2.1 Clearance width.** Clearance around a water closet shall be 66 inches (1675 mm) minimum in width, measured perpendicular from the side of the clearance that is 24 inches (610 mm) minimum and 26 inches (660 mm) maximum from the water closet centerline.~~

~~**1109.2.4.2.2 Clearance depth.** Clearance around the water closet shall be 78 inches (1980 mm) minimum in depth, measured perpendicular from the rear wall.~~

~~**1109.2.4.2.3 Clearance overlap.** The required clearance around the water closet shall be permitted overlaps in accordance with ICC A117.1 Section 604.3.3.~~

~~**1109.2.4.3 Height.** The height of the water closet seats shall comply with ICC A117.1 Section 604.4.~~

~~**1109.2.4.4 Swing-up grab bars.** The swing-up grab bars shall comply with ICC A117.1 Sections 609.2 and 609.8. Swing-up grab bars shall be provided on both sides of the water closet and shall comply with all of the following:~~

~~1. The centerline of the grab bar shall be 14 inches minimum to 16 inches (356 mm to 405 mm) maximum from the centerline of the water closet.~~

~~2. The length of the grab bar is 36 inches (915 mm) minimum in length, measured from the rear wall to the end of the grab bar.~~

~~3. The top of the grab bar in the down position is 30 inches (760 mm) minimum and 34 inches (865 mm) maximum above the floor.~~

~~**1109.2.4.5 Flush controls.** Flush controls shall comply with ICC A117.1 Section 604.6.~~

~~**1109.2.4.6 Dispensers.** Toilet paper dispensers shall be mounted on at least one of the swing-up grab bars and the outlet of the dispenser shall be located at 24 inches (610 mm) minimum to 36 inches (915 mm) maximum from the rear wall.~~

~~**1109.2.5 Standard roll-in-type shower compartment designed for assisted bathing.** Standard roll-in-type shower compartments designed for assisted bathing shall comply with Sections 1109.2.5.1 through 1109.2.5.8.~~

~~**1109.2.5.1 Size.** Standard roll-in-type shower compartments shall have a clear inside dimension of 60 inches (1525 mm) minimum in width and 30 inches (760 mm) minimum in depth, measured at the center point of opposing sides. An entry 60 inches (1525 mm) minimum in width shall be provided.~~

~~**1109.2.5.2 Clearance.** A clearance of 60 inches (1525 mm) minimum in length adjacent to the 60 inch (1525 mm) width of the open face of the shower compartment, and 30 inches (760 mm) minimum in depth, shall be provided.~~

EXCEPTIONS: 1. A lavatory complying with Section 606 shall be permitted at one end of the clearance.
2. Where the shower compartment exceeds minimum sizes, the clear floor space shall be placed adjacent to the grab bars and 30 inches minimum from the back wall.

~~**1109.2.5.3 Grab bars.** Grab bars shall comply with ICC A117.1 Section 609 and shall be provided in accordance with Sections 1109.2.5.3.1 and 1109.2.5.3.2. In standard roll-in-type shower compartments, grab bars shall be provided on three walls. Where multiple grab bars are used, required horizontal grab bars shall be installed at the same height above the floor. Grab bars can be separate bars or one continuous bar.~~

~~**1109.2.5.3.1 Back-wall grab bar.** The back-wall grab bar shall extend the length of the back wall and extend within 6 inches (150 mm) maximum from the two adjacent side walls.~~

EXCEPTION: The back wall grab bar shall not be required to exceed 48 inches (1220 mm) in length. The rear grab bar shall be located with one end within 6 inches maximum of a side wall with a grab bar complying with Section 1109.2.5.3.2.

~~**1109.2.5.3.2 Side-wall grab bars.** The side-wall grab bars shall extend the length of the wall and extend within 6 inches (150 mm) maximum from the adjacent back wall.~~

EXCEPTIONS: 1. The side-wall grab bar shall not be required to exceed 30 inches (760 mm) in length. The side grab bar shall be located with one end within 6 inches maximum of the back wall with a grab bar complying with Section 1109.2.5.3.1.
2. Where the side walls are located 72 inches (1830 mm) or greater apart, a grab bar is not required on one of the side walls.

~~**1109.2.5.4 Seats.** Wall-mounted folding seats shall not be installed.~~

~~**1109.2.5.5 Controls and hand showers.** In standard roll-in-type showers, the controls and hand shower shall be located 38 inches (965 mm) minimum and 48 inches (1220 mm) maximum above the shower floor. Controls shall be located to facilitate caregiver access.~~

~~**1109.2.5.6 Hand showers.** Hand showers shall comply with ICC A117.1 Section 608.5.~~

~~**1109.2.5.7 Thresholds.** Thresholds shall comply with ICC A117.1 Section 608.6.~~

~~**1109.2.5.8 Shower enclosures.** Shower compartment enclosures for shower compartments shall comply with ICC A117.1 Section 608.7.~~

~~**1109.2.5.9 Water temperature.** Water temperature shall comply with ICC A117.1 Section 608.8.~~

~~**1109.5.1 Minimum number.** Not fewer than two drinking fountains shall be provided. One drinking fountain shall comply with the requirements for people who use a wheelchair and one drinking fountain shall comply with the requirements for standing persons.~~

EXCEPTIONS: 1. A single drinking fountain with two separate spouts that complies with the requirements for people who use a wheelchair and standing persons shall be permitted to be substituted for two separate drinking fountains.
2. Where drinking fountains are primarily for children's use, drinking fountains for people using wheelchairs shall be permitted to comply with the children's provisions in ICC A117.1 and drinking fountains for standing children shall be permitted to provide the spout at 30 inches (762 mm) minimum above the floor.
3. In all occupancies that require more than two drinking fountains per floor or secured area, bottle filling stations shall be allowed to be substituted in accordance with Section 2902.5.))

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-11090, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-11090, filed 12/12/19, effective 7/1/20.]

NEW SECTION

WAC 51-50-1110 Section 1110—Other features and facilities.

1110.2 Toilet and bathing facilities. Each toilet room and bathing room shall be accessible. Where a floor level is not required to be connected by an accessible route, the only toilet rooms or bathing rooms provided within the facility shall not be located on the inaccessible floor. Except as provided for in Sections 1110.2.4 and 1110.2.5 at least one of each type of fixture, element, control or dispenser in each accessible toilet room and bathing room shall be accessible.

EXCEPTIONS:

1. Toilet rooms or bathing rooms accessed only through a private office, not for common or public use and intended for use by a single occupant, shall be permitted to comply with the specific exceptions in ICC A117.1.
2. This section is not applicable to toilet and bathing rooms that serve dwelling units or sleeping units that are not required to be accessible by Section 1108.
3. Where multiple single-user all-gender toilet rooms or bathing rooms are clustered at a single location, at least 50 percent shall be accessible.
4. Where no more than one urinal is provided in a toilet room or bathing room, the urinal is not required to be accessible.
5. Toilet rooms or bathing rooms that are part of critical care or intensive care patient sleeping rooms serving accessible units are not required to be accessible.
6. Toilet rooms or bathing rooms designed for bariatrics patients are not required to comply with the toilet room and bathing room requirement in ICC A117.1. The sleeping units served by bariatrics toilet or bathing rooms shall not count toward the required number of accessible sleeping units.
7. Where permitted in Section 1107, in toilet rooms or bathrooms serving accessible units, water closets designed for assisted toileting shall be permitted to comply with Section 1109.2.4.
8. Where permitted in Section 1107, in bathrooms serving accessible units, showers designed for assisted toileting shall be permitted to comply with Section 1109.2.5.
9. Where toilet facilities are primarily for children's use, required accessible water closets, toilet compartments and lavatories shall be permitted to comply with children's provision of ICC A117.1.

1110.5.1 Minimum number. Not fewer than two drinking fountains shall be provided. One drinking fountain shall comply with the requirements for people who use a wheelchair and one drinking fountain shall comply with the requirements for standing persons.

EXCEPTIONS:

1. A single drinking fountain with two separate spouts that complies with the requirements for people who use a wheelchair and standing persons shall be permitted to be substituted for two separate drinking fountains.
2. Where drinking fountains are primarily for children's use, drinking fountains for people using wheelchairs shall be permitted to comply with the children's provisions in ICC A117.1 and drinking fountains for standing children shall be permitted to provide the spout at 30 inches (762 mm) minimum above the floor.
3. In all occupancies that require more than two drinking fountains per floor or secured area, bottle filling stations shall be allowed to be substituted in accordance with Section 2902.5.

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AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-1202 Section 1202—Ventilation.

1202.1 General. Buildings shall be provided with natural ventilation in accordance with Section (~~(1203.5)~~) 1202.5, or mechanical ventilation in accordance with the *International Mechanical Code*. *Ambulatory care facilities* and Group I-2 occupancies shall be ventilated by mechanical means in accordance with Section 407 of the *International Mechanical Code*.

~~((1202.2 Attic spaces.))~~ **1202.2.1 Ventilated attics and rafter spaces.** Enclosed *attics* and enclosed rafter spaces formed where ceilings are applied directly to the underside of roof framing members shall have cross ventilation for each separate space by ventilation openings protected against the entrance of rain and snow. Blocking and bridging shall be arranged so as not to interfere with the movement of air. An airspace of not less than 1 inch (25 mm) shall be provided between the insulation and the roof sheathing. The net free ventilating area shall not be less than 1/150th of the area of the space ventilated. Ventila-

tors shall be installed in accordance with the manufacturer's installation instructions.

EXCEPTION:

The net free cross-ventilation area shall be permitted to be reduced to 1/300 provided both of the following conditions are met:

1. A Class I or II vapor retarder is installed on the warm-in-winter side of the ceiling.
2. At least 40 percent and not more than 50 percent of the required venting area is provided by ventilators located in the upper portion of the attic or rafter space. Upper ventilators shall be located not more than 3 feet (914 mm) below the ridge or highest point of the space, measured vertically, with the balance of the ventilation provided by eave or cornice vents. Where the location of wall or roof framing members conflicts with the installation of upper ventilators, installation more than 3 feet (914 mm) below the ridge or highest point of the space shall be permitted.

1202.4 Under-floor ventilation. The space between the bottom of the floor joists and the earth under any building except spaces occupied by basements or cellars shall be provided with ventilation openings through foundation walls or *exterior walls*. Such openings shall be placed so as to provide cross ventilation of the under-floor space. A ground cover of six mil (0.006 inch thick) black polyethylene or approved equal shall be laid over the ground within crawl spaces. The ground cover shall be overlapped six inches minimum at the joints and shall extend to the foundation wall.

EXCEPTION: The ground cover may be omitted in crawl spaces if the crawl space has a concrete slab floor with a minimum thickness of two inches.

1202.5 Natural ventilation. For other than Group R Occupancies, natural ventilation of an occupied space shall be through windows, doors, louvers or other openings to the outdoors. The operating mechanism for such openings shall be provided with ready access so that the openings are readily controllable by the building occupants. Group R Occupancies shall comply with the *International Mechanical Code*.

1202.7 Radon resistive construction standards. The criteria of this section establishes minimum radon resistive construction requirements for Group R Occupancies.

1202.7.1 Application. The requirements of Section (~~(1202.6)~~) 1202.7 shall be adopted and enforced by all jurisdictions of the state according to the following subsections.

1202.7.1.1 All jurisdictions of the state shall comply with Section (~~(1202.6.2)~~) 1202.7.2.

1202.7.1.2 Clark, Ferry, Okanogan, Pend Oreille, Skamania, Spokane, and Stevens counties shall also comply with Section (~~(1203.6.3)~~) 1202.7.3.

1202.7.2 State wide radon requirements.

1202.7.2.1 Crawlspace. All crawlspaces shall comply with the requirements of this section.

1202.7.2.2 Ventilation. All crawlspaces shall be ventilated as specified in Section (~~(1203.3)~~) 1202.4.

If the installed ventilation in a crawlspace is less than one square foot for each 300 square feet of crawlspace area, or if the crawlspace vents are equipped with operable louvers, a radon vent shall be installed to originate from a point between the ground cover and soil. The radon vent shall be installed in accordance with Sections (~~(1203.6.3.2.6 and 1203.6.3.2.7)~~) 1202.7.3.2.6 and 1202.7.3.2.7.

1202.7.2.3 Crawlspace plenum systems. In crawlspace plenum systems used for providing supply air for an HVAC system, aggregate, a permanently sealed soil gas retarder membrane and a radon vent pipe shall be installed in accordance with Section (~~(1203.6.3.2)~~) 1202.7.3.2. Crawlspaces shall not be used for return air plenums.

In addition, an operable radon vent fan shall be installed and activated. The fan shall be located as specified in Section ~~((1203.6.3.2.7))~~ 1202.7.3.2.7. The fan shall be capable of providing at least 100 cfm at 1-inch water column static pressure. The fan shall be controlled by a readily accessible manual switch. The switch shall be labeled "RADON VENT FAN."

1202.7.3 Radon prescriptive requirements.

1202.7.3.1 Scope. This section applies to those counties specified in Section ~~((1203.6.1.2))~~ 1202.7.1.2. This section establishes prescriptive construction requirements for reducing the potential for radon entry into all Group R Occupancies, and for preparing the building for future mitigation if desired.

In all crawlspaces, except crawlspace plenums used for providing supply air for an HVAC system, a continuous air barrier shall be installed between the crawlspace area and the occupied area to limit air transport between the areas. If a wood sheet subfloor or other material is utilized as an air barrier, in addition to the requirements of Section 502.1.6.2 of the Washington State Energy Code, all joints between sheets shall be sealed.

1202.7.3.2 Floors in contact with the earth.

1202.7.3.2.1 General. Concrete slabs that are in direct contact with the building envelope shall comply with the requirements of this section.

EXCEPTION: Concrete slabs located under garages or other than Group R Occupancies need not comply with this chapter.

1202.7.3.2.2 Aggregate. A layer of aggregate of 4-inch minimum thickness shall be placed beneath concrete slabs. The aggregate shall be continuous to the extent practical.

1202.7.3.2.3 Gradation. Aggregate shall:

1. Comply with ASTM Standard C-33 Standard Specification for Concrete Aggregate and shall be size No. 8 or larger size aggregate as listed in Table 2, Grading Requirements for Course Aggregate; or
2. Meet the 1988 Washington State Department of Transportation Specification 9-03.1 (3) "Coarse Aggregate for Portland Cement Concrete," or any equivalent successor standards. Aggregate size shall be of Grade 8 or larger as listed in Section 9-03.1 (3) C, "Grading"; or
3. Be screened, washed pea gravel free of deleterious substances in a manner consistent with ASTM Standard C-33 with 100 percent passing a 1/2-inch sieve and less than 5 percent passing a No. 16 sieve. Sieve characteristics shall conform to those acceptable under ASTM Standard C-33.

EXCEPTION: Aggregate shall not be required if a substitute material or system, with sufficient load bearing characteristics, and having approved capability to provide equal or superior air flow, is installed.

1202.7.3.2.4 Soil-gas retarder membrane. A soil-gas retarder membrane, consisting of at least one layer of virgin polyethylene with a thickness of at least 6 mil, or equivalent flexible sheet material, shall be either placed directly under all concrete slabs so that the slab is in direct contact with the membrane, or on top of the aggregate with 2 inches minimum of fine sand or pea gravel installed between the concrete slab and membrane. The flexible sheet shall extend to the foundation wall or to the outside edge of the monolithic slab. Seams shall overlap at least 12 inches. The membrane shall also be fitted tightly to all pipes, wires, and other penetrations of the membrane and sealed with an approved sealant or tape. All punctures or tears shall be re-

paired with the same or approved material and similarly lapped and sealed.

1202.7.3.2.5 Sealing of penetrations and joints. All penetrations and joints in concrete slabs or other floor systems and walls below grade shall be sealed by an approved sealant to create an air barrier to limit the movement of soil-gas into the indoor air.

Sealants shall be approved by the manufacturer for the intended purpose. Sealant joints shall conform to manufacturer's specifications. The sealant shall be placed and tooled in accordance with manufacturer's specifications. There shall be no gaps or voids after the sealant has cured.

1202.7.3.2.6 Radon vent. One continuous sealed pipe shall run from a point within the aggregate under each concrete slab to a point outside the building. Joints and connections shall be permanently gas tight. The continuous sealed pipe shall interface with the aggregate in the following manner, or by other approved equal method. The pipe shall be permanently connected to a "T" within the aggregate area so that the two end openings of the "T" lie within the aggregate area. A minimum of 5 feet of perforated drain pipe of 3 inches minimum diameter shall join to and extend from the "T." The perforated pipe shall remain in the aggregate area and shall not be capped at the ends. The "T" and its perforated pipe extensions shall be located at least 5 feet horizontally from the exterior perimeter of the aggregate area.

The continuous sealed pipe shall terminate no less than 12 inches above the eave, and more than 10 horizontal feet from a woodstove or fireplace chimney, or operable window. The continuous sealed pipe shall be labeled "radon vent." The label shall be placed so as to remain visible to an occupant.

The minimum pipe diameter shall be 3 inches unless otherwise approved. Acceptable sealed plastic pipe shall be smooth walled, and may include either PVC schedule 40 or ABS schedule of equivalent wall thickness.

The entire sealed pipe system shall be sloped to drain to the subslab aggregate.

The sealed pipe system may pass through an unconditioned attic before exiting the building; but to the extent practicable, the sealed pipe shall be located inside the thermal envelope of the building in order to enhance passive stack venting.

EXCEPTION:

A fan for subslab depressurization system includes the following:

1. Soil-gas retarder membrane as specified in Section ((4203.6.3.2.4)) 1202.7.3.2.4;
2. Sealing of penetrations and joints as specified in Section ((4203.6.3.2.5)) 1202.7.3.2.5;
3. A 3-inch continuous sealed radon pipe shall run from a point within the aggregate under each concrete slab to a point outside the building;
4. Joints and connections shall be gas tight, and may be of either PVC schedule 40 or ABS schedule of equivalent in wall thickness;
5. A label of "radon vent" shall be placed on the pipe so as to remain visible to an occupant;
6. Fan circuit and wiring as specified in Section ((4203.6.3.2.7)) 1202.7.3.2.7 and a fan.

If the subslab depressurization system is exhausted through the concrete foundation wall or rim joist, the exhaust terminus shall be a minimum of 6 feet from operable windows or outdoor air intake vents and shall be directed away from operable windows and outdoor air intake vents to prevent radon reentrainment.

1202.7.3.2.7 Fan circuit and wiring and location. An area for location of an in-line fan shall be provided. The location shall be as close as practicable to the radon vent pipe's point of exit from the building, or shall be outside the building shell; and shall be located so that the fan and all downstream piping is isolated from the indoor air.

Provisions shall be made to allow future activation of an in-line fan on the radon vent pipe without the need to place new wiring. A 110 volt power supply shall be provided at a junction box near the fan location.

1202.7.3.2.8 Separate aggregate areas. If the 4-inch aggregate area underneath the concrete slab is not continuous, but is separated into distinct isolated aggregate areas by a footing or other barrier, a minimum of one radon vent pipe shall be installed into each separate aggregate area.

EXCEPTION: Separate aggregate areas may be considered a single area if a minimum 3-inch diameter connection joining the separate areas is provided for every 30 feet of barrier separating those areas.

1202.7.3.2.9 Concrete block walls. Concrete block walls connected to below grade areas shall be considered unsealed surfaces. All openings in concrete block walls that will not remain accessible upon completion of the building shall be sealed at both vertical and horizontal surfaces, in order to create a continuous air barrier to limit the transport of soil-gas into the indoor air.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-1202, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-1202, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-1204 ((Section 1204—Temperature control.)) Reserved.

~~((1204.1 Equipment and systems. Interior spaces intended for human occupancy shall be provided with active or passive space-heating systems capable of maintaining an indoor temperature of not less than 68°F (20°C) at a point 3 feet (914 mm) above the floor on the design heating day.~~

EXCEPTION: ~~1. Interior spaces where the primary purpose of the space is not associated with human comfort.
2. Group F, H, S, or U occupancies.
3. Group R-1 Occupancies not more than 500 square feet.~~

~~**1204.2.1 Definitions.** For the purposes of this section only, the following definitions apply.~~

~~**DESIGNATED AREAS** are those areas designated by a county to be an urban growth area in chapter 36.70A RCW and those areas designated by the U.S. Environmental Protection Agency as being in nonattainment for particulate matter.~~

~~**SUBSTANTIALLY REMODELED** means any alteration or restoration of a building exceeding 60 percent of the appraised value of such building within a 12-month period. For the purpose of this section, the appraised value is the estimated cost to replace the building and structure in-kind, based on current replacement costs.~~

~~**1204.2.2 Primary heating source.** Primary heating sources in all new and substantially remodeled buildings in designated areas shall not be dependent upon wood stoves.~~

~~**1204.2.3 Solid fuel burning devices.** No new or used solid fuel burning device shall be installed in new or existing buildings unless such device is United States Environmental Protection Agency certified or ex-~~

~~empt from certification by the United States Environmental Protection Agency and conforms with RCW 70.94.011, 70.94.450, 70.94.453 and 70.94.457.~~

EXCEPTION: ~~1. Wood cook stoves.
2. Antique wood heaters manufactured prior to 1940.)~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-1204, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1204, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-1204, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-1204, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-1206 ((Section 1206—Sound transmission.)) Reserved.

~~((1206.1 Scope. This section shall apply to common interior walls, partitions and floor/ceiling assemblies between adjacent dwelling units and sleeping units or between dwelling units and sleeping units and adjacent public areas.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-1206, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-1207 ((Section 1207—Interior space dimensions.)) Reserved.

~~((1207.4 Efficiency dwelling units. Efficiency dwelling units shall conform to the requirements of the code except as modified herein:
1. The unit shall have a living room of not less than 190 square feet (17.7 m) of floor area.
2. The unit shall be provided with a separate closet.
3. The unit shall be provided with a kitchen sink, cooking appliance and refrigeration facilities, each having a clear working space of not less than 30 inches (762 mm) in front. Light and ventilation conforming to this code shall be provided.
4. The unit shall be provided with a separate bathroom containing a water closet, lavatory and bathtub or shower.))~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-1207, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-1208 ((Reserved-)) Section 1208—Dwelling unit size.

1208.3 Dwelling unit size. Dwelling units shall have a minimum of 190 square feet (17.7 m²) of habitable space.

1208.4 Room area. Every dwelling unit shall have not less than one room that shall have not less than 120 square feet (11.2 m²) of net floor area. Sleeping units and other habitable rooms of a dwelling unit shall have a net floor area of not less than 70 square feet (6.5 m²).

EXCEPTION: Kitchens are not required to be of a minimum floor area.

1208.5 Efficiency dwelling units. Efficiency dwelling units shall conform to the requirements of the code except as modified herein:

1. The unit's habitable space shall comply with Sections 1208.1 through 1208.4.

2. The unit shall be provided with a separate closet.

3. For other than accessible, Type A and Type B dwelling units, the unit shall be provided with a kitchen sink, cooking appliance and refrigerator, each having a clear working space of not less than 30 inches (762 mm) in front. Light and ventilation conforming to this code shall be provided.

4. The unit shall be provided with a separate bathroom containing a water closet, lavatory, and bathtub or shower.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-1208, filed 12/12/19, effective 7/1/20; WSR 16-03-064, § 51-50-1208, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1208, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-1208, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 05-01-014, § 51-50-1208, filed 12/2/04, effective 7/1/05. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-1208, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-1209 ((Section 1209—Toilet and bathroom requirements-)) Reserved.

~~((1209.3.1 Water closet compartment. Each water closet utilized by the public or employees shall occupy a separate compartment with walls or partitions and a door enclosing the fixtures to ensure privacy. Gender-neutral toilet room water closet compartments shall be in accordance with Section 2902.2.2.~~

EXCEPTIONS:

1. Water closet compartments shall not be required in a single-occupant toilet room with a lockable door.

2. Toilet rooms located in child day care facilities and containing two or more water closets shall be permitted to have one water closet without an enclosing compartment.

3. This provision is not applicable to toilet areas located within Group I-3 occupancy housing areas.

1209.3.2 Urinal partitions. Each urinal utilized by the public or employees shall occupy a separate area with walls or partitions to provide privacy. The walls or partitions shall begin at a height not more than 12 inches (305 mm) from and extend not less than 60 inches (1524 mm) above the finished floor surface. The walls or partitions shall extend from the wall surface at each side of the urinal not less than 18 inches (457 mm) or to a point not less than 6 inches (152 mm) beyond the outermost front lip of the urinal measured from the finished back wall surface, whichever is greater.

EXCEPTIONS: 1. Urinal partitions shall not be required in a single occupant or family or assisted-use toilet room with a lockable door.
2. Toilet rooms located in child day care facilities and containing two or more urinals shall be permitted to have one urinal without partitions.
3. Urinals located in gender-neutral toilet facilities shall be in accordance with Section 2902.2.2.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-1209, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-1210 Section 1210—((Reserved)) Toilet and bathroom requirements.

1210.3.1 Water closet compartment. Each water closet utilized by the public or employees shall occupy a separate compartment with walls or partitions and a door enclosing the fixtures to ensure privacy. Gender-neutral toilet room water closet compartments shall be in accordance with Section 2902.2.2.

EXCEPTIONS: 1. Water closet compartments shall not be required in a single-occupant toilet room with a lockable door.
2. Toilet rooms located in child day care facilities and containing two or more water closets shall be permitted to have one water closet without an enclosing compartment.
3. This provision is not applicable to toilet areas located within Group I-3 occupancy housing areas.

1210.3.2 Urinal partitions. Each urinal utilized by the public or employees shall occupy a separate area with walls or partitions to provide privacy. The walls or partitions shall begin at a height not more than 12 inches (305 mm) from and extend not less than 60 inches (1524 mm) above the finished floor surface. The walls or partitions shall extend from the wall surface at each side of the urinal not less than 18 inches (457 mm) or to a point not less than 6 inches (152 mm) beyond the outermost front lip of the urinal measured from the finished back wall surface, whichever is greater.

EXCEPTIONS: 1. Urinal partitions shall not be required in a single occupant or family or assisted-use toilet room with a lockable door.
2. Toilet rooms located in child day care facilities and containing two or more urinals shall be permitted to have one urinal without partitions.
3. Urinals located in gender-neutral toilet facilities shall be in accordance with Section 2902.2.2.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-1210, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1210, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 05-01-014, § 51-50-1210, filed 12/2/04, effective 7/1/05.]

NEW SECTION**WAC 51-50-1402 Section 1402—Performance requirements.**

1402.2 Weather protection. Exterior walls shall provide the building with a weather-resistant exterior wall envelope. The exterior wall envelope shall include flashing as described in Section 1404.4. The exterior wall envelope shall be designed and constructed in such a manner as to prevent the accumulation of water within the wall assembly by providing a water-resistant barrier behind the exterior veneer, as described in Section 1403.2, and a means for draining water that enters the assembly to the exterior. An air space cavity is not required under the exterior cladding for an exterior wall clad with lapped or panel siding made of plywood, engineered wood, hardboard, or fiber cement. Protection against condensation in the exterior wall assembly shall be provided in accordance with Section 1404.3.

- EXCEPTIONS:
1. A weather-resistant exterior wall envelope shall not be required over concrete or masonry walls designed in accordance with Chapters 19 and 21, respectively.
 2. Compliance with the requirements for a means of drainage, and the requirements of Sections 1403.2 and 1404.4, shall not be required for an exterior wall envelope that has been demonstrated through testing to resist wind-driven rain, including joints, penetrations and intersections with dissimilar materials, in accordance with ASTM E 331 under the following conditions:
 - 2.1 Exterior wall envelope test assemblies shall include not fewer than one opening, one control joint, one wall/eave interface and one wall sill. All tested openings and penetrations shall be representative of the intended end-use configuration.
 - 2.2 Exterior wall envelope test assemblies shall be not less than 4 feet by 8 feet (1219 mm by 2438 mm) in size.
 - 2.3 Exterior wall envelope assemblies shall be tested at a minimum differential pressure of 6.24 pounds per square foot (psf) (0.297 kN/m²).
 - 2.4 Exterior wall envelope assemblies shall be subjected to a minimum test exposure duration of 2 hours. The exterior wall envelope design shall be considered to resist wind-driven rain where the results of testing indicate that water did not penetrate control joints in the exterior wall envelope, joints at the perimeter of openings or intersections of terminations with dissimilar materials.
 3. Exterior insulation and finish systems (EIFS) complying with Section 1407.4.1.

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AMENDATORY SECTION (Amending WSR 21-06-035, filed 2/23/21, effective 3/26/21)

WAC 51-50-1403 ((Section 1403—Performance requirements.)) Reserved.

~~((1402.2 Weather protection. Exterior walls shall provide the building with a weather-resistant exterior wall envelope. The exterior wall envelope shall include flashing as described in Section 1404.4. The exterior wall envelope shall be designed and constructed in such a manner as to prevent the accumulation of water within the wall assembly by providing a water-resistant barrier behind the exterior veneer, as described in Section 1403.2, and a means for draining water that enters the assembly to the exterior. An air space cavity is not required under the exterior cladding for an exterior wall clad with lapped or panel siding made of plywood, engineered wood, hardboard, or fiber cement. Protection against condensation in the exterior wall assembly shall be provided in accordance with Section 1404.3.~~

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 - 2.1 Exterior wall envelope test assemblies shall include at least one opening, one control joint, one wall/eave interface and one wall sill. All tested openings and penetrations shall be representative of the intended end-use configuration.
 - 2.2 Exterior wall envelope test assemblies shall be at least 4 feet by 8 feet (1219 mm by 2438 mm) in size.
 - 2.3 Exterior wall envelope assemblies shall be tested at a minimum differential pressure of 6.24 pounds per square foot (psf) (0.297 kN/m²).
 - 2.4 Exterior wall envelope assemblies shall be subjected to a minimum test exposure duration of 2 hours.

The exterior wall envelope design shall be considered to resist wind-driven rain where the results of testing indicate that water did not penetrate control joints in the exterior wall envelope, joints at the perimeter of openings or intersections of terminations with dissimilar materials.

3. Exterior insulation and finish systems (EIFS) complying with Section 1408.4.1.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-06-035, § 51-50-1403, filed 2/23/21, effective 3/26/21; WSR 16-03-064, § 51-50-1403, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1403, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-1403, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 08-01-110, § 51-50-1403, filed 12/18/07, effective 4/1/08.]

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-1405 ((Section 1405—) Reserved.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-1405, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-1405, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-1405, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 05-01-014, § 51-50-1405, filed 12/2/04, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 21-06-035, filed 2/23/21, effective 3/26/21)

WAC 51-50-2900 ((Chapter 29—Plumbing systems—) Reserved.

(~~SECTION 2901—GENERAL.~~

~~**2901.1 Scope.** The provisions of this chapter and the state plumbing code shall govern the erection, installation, alteration, repairs, re-location, replacement, addition to, use or maintenance of plumbing equipment and systems. Toilet and bathing rooms shall be constructed in accordance with Section 1210. Plumbing systems and equipment shall be constructed, installed and maintained in accordance with the state plumbing code.~~

~~**2901.2 Health codes.** In food preparation, serving and related storage areas, additional fixture requirements may be dictated by health codes.~~

~~**2901.3 Fixed guideway transit and passenger rail systems.** In construction of a fixed guideway and passenger rail system, subject to Section 3114, public plumbing fixtures are not required.~~

~~SECTION 2902—MINIMUM PLUMBING FACILITIES.~~

~~**2902.1 Minimum number of fixtures.** Plumbing fixtures shall be provided in the minimum number shown in Table 2902.1. Uses not shown in Table~~

~~2902.1 shall be determined individually by the building official based on the occupancy which most nearly resembles the proposed occupancy. The number of occupants shall be determined by this code. Plumbing fixtures need not be provided for unoccupied buildings or facilities.~~

~~**2902.1.1 Fixture calculations.** To determine the occupant load of each sex, the total occupant load shall be divided in half. To determine the required number of fixtures, the fixture ratio or ratios for each fixture type shall be applied to the occupant load of each sex in accordance with Table 2902.1. Fractional numbers resulting from applying the fixture ratios of Table 2902.1 shall be rounded up to the next whole number. For calculations involving multiple occupancies, such fractional numbers for each occupancy shall first be summed and then rounded up to the next whole number.~~

~~EXCEPTION: The total occupant load shall not be required to be divided in half where approved statistical data indicate a distribution of the sexes of other than 50 percent of each sex.~~

~~**2902.1.1.1 Private offices.** Fixtures only accessible to private offices shall not be counted to determine compliance with this section.~~

~~**2902.1.1.2 Urinals in men's facilities.** Where urinals in men's facilities are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced to less than one quarter (25%) of the minimum specified. For men's facilities serving 26 or more persons, not less than one urinal shall be provided.~~

~~**2902.1.1.3 Urinals.** Where urinals are provided in gender-neutral facilities, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced less than one quarter (25 percent) of the minimum specified. Facilities serving 26 or more persons, not less than one urinal shall be provided.~~

~~**2902.1.4 Family or assisted-use toilet and bath fixtures.** Fixtures located within family or assisted-use toilet and bathing rooms required by Section 1109.2.1 are permitted to be included in the number of required fixtures for either the male or female occupants in assembly and mercantile occupancies.~~

~~**2902.2 Separate facilities.** Where plumbing fixtures are required, separate facilities shall be provided for each sex.~~

~~EXCEPTIONS:~~

- ~~1. Separate facilities shall not be required for dwelling units and sleeping units.~~
- ~~2. Separate facilities shall not be required in structures or tenant spaces with a total occupant load, including both employees and customers, of 15 or less.~~
- ~~3. Separate facilities shall not be required in mercantile occupancies in which the maximum occupant load is 100 or less.~~
- ~~4. Separate facilities shall not be required in spaces primarily used for drinking or dining with a total occupant load, including both employees and customers, of 30 or fewer.~~
- ~~5. Separate facilities shall not be required when gender-neutral facilities are provided in accordance with Section 2902.2.2.~~

~~**2902.2.1 Family or assisted-use toilet facilities serving as separate facilities.** Where a building or tenant space requires a separate toilet facility for each sex and each toilet facility is required to have only one water closet, two family or assisted-use toilet facilities shall be permitted to serve as the required separate facilities. Family or assisted-use toilet facilities shall not be required to be identified for exclusive use by either sex as required by Section 2902.4.~~

~~**2902.2.2 Gender-neutral facilities.** Gender-neutral toilet facilities, when provided, shall be in accordance with the following:~~

~~1. There is no reduction in the number of fixtures required to be provided for male and female in the type of occupancy and in the minimum number shown in Table 2902.1.~~

~~2. Gender-neutral multiuser toilet rooms shall have water closets and urinals located in toilet compartments in accordance with ICC A117.1.~~

~~3. Gender-neutral multiuser toilet room water closet and urinal compartments shall have full-height walls and a door enclosing the fixture to ensure privacy.~~

~~4. Gender-neutral toilet room water closet and urinal compartment doors shall be securable from within the compartment.~~

~~5. Gender-neutral toilet rooms provided for the use of multiple occupants, the egress door from the room shall not be lockable from the inside of the room.~~

~~6. Compartments shall not be required in a single-occupant toilet room with a lockable door.~~

~~**2902.3 Employee and public toilet facilities.** Customers, patrons and visitors shall be provided with public toilet facilities in structures and tenant spaces intended for public utilization. The number of plumbing fixtures located within the required toilet facilities shall be provided in accordance with Section 2902.1 for all users. Employees shall be provided with toilet facilities in all occupancies. Employee toilet facilities shall either be separate or combined employee and public toilet facilities.~~

EXCEPTION:

Public toilet facilities shall not be required in:

1. Open or enclosed parking garages where there are no parking attendants.
2. Structures and tenant spaces intended for quick transactions, including takeout, pickup and drop-off, having a public access area less than or equal to 300 square feet (28 m²).
3. Fixed guideway transit and passenger rail systems constructed in accordance with Section 3112.

~~**2902.3.3 Location of toilet facilities in occupancies other than**~~

~~**malls.** In occupancies other than covered and open mall buildings, the required *public* and employee toilet facilities shall be located in each building not more than one story above or below the space required to be provided with toilet facilities, or conveniently in a building adjacent thereto on the same property, and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).~~

EXCEPTION:

The location and maximum distances of travel to required employee facilities in factory and industrial occupancies are permitted to exceed that required by this section, provided that the location and maximum distance of travel are *approved*.

~~**2902.5 Drinking fountain location.** Drinking fountains shall not be required to be located in individual tenant spaces provided that public drinking fountains are located within a distance of travel of 500 feet of the most remote location in the tenant space and not more than one story above or below the tenant space. Where the tenant space is in a covered or open mall, such distance shall not exceed 300 feet. Drinking fountains shall be located on an accessible route. Drinking fountains shall not be located in toilet rooms.~~

~~**2902.5.1 Drinking fountain number.** Occupant loads over 30 shall have one drinking fountain for the first 150 occupants, then one per each additional 500 occupants.~~

EXCEPTIONS:

1. Sporting facilities with concessions serving drinks shall have one drinking fountain for each 1000 occupants.
2. A drinking fountain need not be provided in a drinking or dining establishment.

~~**2902.5.2 Multistory buildings.** Drinking fountains shall be provided on each floor having more than 30 occupants in schools, dormitories, auditoriums, theaters, offices and public buildings.~~

~~**2902.5.3 Penal institutions.** Penal institutions shall have one drinking fountain on each cell block floor and one on each exercise floor.~~

~~2902.5.4 Bottle filling stations.~~ Bottle filling stations shall be provided in accordance with Sections 2902.5.4.1 through 2902.5.4.3.

~~2902.5.4.1 Group E occupancies.~~ In Group E occupancies with an occupant load over 30, a minimum of one bottle filling station shall be provided on each floor. This bottle filling station may be integral to a drinking fountain.

~~2902.5.4.2 Substitution.~~ In all occupancies that require more than two drinking fountains per floor or secured area, bottle filling stations shall be permitted to be substituted for up to 50 percent of the required number of drinking fountains.

~~2902.5.4.3 Accessibility.~~ At least one of the required bottle filling stations shall be located in accordance with Section 309 ICC A117.1.

~~2902.7 Dwelling units.~~ Dwelling units shall be provided with a kitchen sink.

~~2902.8 Water.~~ Each required sink, lavatory, bathtub and shower stall shall be equipped with hot and cold running water necessary for its normal operation.

~~SECTION 2903—RESERVED.~~

~~SECTION 2904—RESERVED.~~

Table 2902.1
Minimum Number of Required Plumbing Fixtures^a

(See Sections 2902.2 and 2902.3)

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathubs/ Showers
				Male	Female	Male	Female	
1	Assembly	A-1 ^d	Theaters and other buildings for the performing arts and motion pictures	1 per 125	1 per 65	1 per 200		—
		A-2 ^d	Nightclubs, bars, taverns, dance halls and buildings for similar purposes	1 per 40	1 per 40	1 per 75		—
			Restaurants, banquet halls and food courts	1 per 75	1 per 75	1 per 200		—
		A-3 ^d	Auditoriums without permanent seating, art galleries, exhibition halls, museums, lecture halls, libraries, arcades and gymnasiums	1 per 125	1 per 65	1 per 200		—
			Passenger terminals and transportation facilities	1 per 500	1 per 500	1 per 750		—
			Places of worship and other religious services	1 per 150	1 per 75	1 per 200		—
		A-4	Coliseums, arenas, skating rinks, pools, and tennis courts for indoor sporting events and activities	1 per 75 for first 1,500 and 1 per 120 for remainder exceeding 1,500	1 per 40 for first 1,520 and 1 per 60 for remainder exceeding 1,520	1 per 200	1 per 150	—
		A-5	Stadiums amusement parks, bleachers and grandstands for outdoor sporting events and activities	1 per 75 for first 1,500 and 1 per 120 for remainder exceeding 1,500	1 per 40 for first 1,520 and 1 per 60 for remainder exceeding 1,520	1 per 200	1 per 150	—

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathubs/ Showers
				Male	Female	Male	Female	
2	Business	B	Buildings for the transaction of business; professional services; other services involving merchandise, office buildings, banks, light industrial and similar uses	1 per 25 for first 50 and 1 per 50 for the remainder exceeding 50		1 per 40 for first 80 and 1 per 80 for remainder exceeding 80		—
3	Educational	E ^a	Educational facilities	1 per 35	1 per 25	1 per 85	1 per 50	—
4	Factory and industrial	F-1 and F-2	Structures in which occupants are engaged in work fabricating, assembly or processing of products or materials	1 per 100		1 per 100		Check State (UPC)
5	Institutional	I-1	Residential care	1 per 10		1 per 10		1 per 8
		I-2	Hospitals, ambulatory nursing home care recipient ^b	1 per room ^c		1 per room ^c		1 per 15
			Employees, other than residential care ^b	1 per 25		1 per 35		—
			Visitors other than residential care	1 per 75		1 per 100		—
		I-3	Prisons ^b	1 per cell		1 per cell		1 per 15
			Reformatories, detention centers and correctional centers ^b	1 per 15		1 per 15		1 per 15
			Employees ^b	1 per 25		1 per 35		—
I-4	Adult day care and child day care	1 per 15		1 per 15		1		
6	Mercantile	M	Retail stores, service stations, shops, salesrooms, markets and shopping centers	1 per 500		1 per 750		—
7	Residential	R-1	Hotels, motels, boarding houses (transient)	1 per sleeping unit		1 per sleeping unit		1 per sleeping unit
		R-2	Dormitories, fraternities, sororities and boarding houses (not transient)	1 per 10		1 per 10		1 per 8
			Apartment house	1 per dwelling unit		1 per dwelling unit		1 per dwelling unit
		R-3	One- and two-family dwellings	1 per dwelling unit		1 per 10		1 per dwelling unit
			Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8
R-4	Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8		
8	Storage	S-1 S-2	Structures for the storage of goods, warehouses, storehouses and freight depots, low and moderate hazard	1 per 100		1 per 100		Check State (UPC)

- a. The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by this code, except with respect to Group E occupancies the provisions of note "e" shall apply.
- b. Toilet facilities for employees shall be separate from facilities for inmates or care recipients.
- c. A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient sleeping units shall be permitted where such room is provided with direct access from each patient sleeping unit and with provisions for privacy.
- d. The occupant load for seasonal outdoor seating and entertainment areas shall be included when determining the minimum number of facilities required.
- e. For Group E occupancies: The number of occupants shall be determined by using a calculation of 100 square feet gross building area per student for the minimum number of plumbing fixtures.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-06-035, § 51-50-2900, filed 2/23/21, effective 3/26/21; WSR 20-21-021, §

51-50-2900, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-2900, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-2900, filed 12/26/18, effective 7/1/19; WSR 16-03-064, § 51-50-2900, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-087, § 51-50-2900, filed 12/1/14, effective 5/1/15. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-2900, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-2900, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-2900, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.020, 19.27.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 05-01-014, § 51-50-2900, filed 12/2/04, effective 7/1/05. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-2900, filed 12/17/03, effective 7/1/04.]

NEW SECTION

WAC 51-50-2901 Section 2901—General.

2901.1 Scope. The provisions of this chapter and the state plumbing code shall govern the design, construction, erection, and installation of plumbing components, appliances, equipment and systems used in buildings and structures covered by this code. Toilet and bathing rooms shall be constructed in accordance with Section 1210. The *International Fire Code* and the state plumbing code shall govern the use and maintenance of plumbing components, appliances, equipment and systems. The International Existing Building Code and the state plumbing code shall govern the alteration, repair, relocation, replacement and addition of plumbing components, appliances, equipment and systems.

2901.2 Health codes. In food preparation, serving and related storage areas, additional fixture requirements may be dictated by health codes.

2901.3 Fixed guideway transit and passenger rail systems. In construction of a fixed guideway and passenger rail system, subject to Section 3116, public plumbing fixtures are not required.

[]

NEW SECTION

WAC 51-50-2902 Section 2902—Minimum plumbing facilities.

2902.1 Minimum number of fixtures. Plumbing fixtures shall be provided in the minimum number shown in Table 2902.1. Uses not shown in Table 2902.1 shall be determined individually by the *building official* based on the occupancy which most nearly resembles the proposed occupancy. The number of occupants shall be determined by this code. Plumbing fixtures need not be provided for unoccupied buildings or facilities.

2902.1.1.1 Private offices. Fixtures only accessible to private offices shall not be counted to determine compliance with this section.

2902.1.1.2 Urinals in men's facilities. Where urinals in men's facilities are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced to less than one quarter (25 percent) of the minimum specified.

2902.1.1.3 Urinals in all-gender facilities. Where urinals are provided in all-gender facilities, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced less than one quarter (25 percent) of the minimum specified.

2902.2 Separate facilities. Where plumbing fixtures are required, separate facilities shall be provided for each sex.

EXCEPTIONS:

1. Separate facilities shall not be required for *dwelling units* and *sleeping units*.
2. Separate facilities shall not be required in structures or tenant spaces with a total *occupant load*, including both employees and customers, of 15 or fewer.
3. Separate facilities shall not be required in mercantile occupancies in which the maximum occupant load is 100 or fewer.
4. Separate facilities shall not be required in business occupancies in which the maximum occupant load is 25 or fewer.
5. Separate facilities shall not be required in spaces primarily used for drinking or dining with a total occupant load, including both employees and customers, of 30 or fewer.
6. Separate facilities shall not be required when all-gender facilities are provided in accordance with Section 2902.2.2.
7. Separate facilities shall not be required where rooms having both water closets and lavatory fixtures are designed for use by both sexes and privacy for water closets are installed in accordance with Section 1210.3.1. Urinals shall be located in an area visually separated from the remainder of the facility or each urinal that is provided shall be located in a stall.

2902.2.2 All-gender facilities. All-gender toilet facilities, when provided, shall be in accordance with the following:

1. There is no reduction in the number of fixtures required to be provided for male and female in the type of occupancy and in the minimum number shown in Table 2902.1.
2. All-gender multiuser toilet rooms shall have water closets and urinals located in toilet compartments in accordance with ICC A117.1.
3. All-gender multiuser toilet room water closet and urinal compartments shall have full-height walls and a door enclosing the fixture to ensure privacy.
4. All-gender toilet room water closet and urinal compartment doors shall be securable from within the compartment.
5. All-gender toilet rooms provided for the use of multiple occupants, the egress door from the room shall not be lockable from the inside of the room.
6. Compartments shall not be required in a single-occupant toilet room with a lockable door.

2902.3 Employee and public toilet facilities. For structures and tenant spaces intended for public utilization, customers, patrons and visitors shall be provided with public toilet facilities. Employees associated with structures and tenant spaces shall be provided with toilet facilities. The number of plumbing fixtures located within the required toilet facilities shall be provided in accordance with Section 2902 for all users. Employee toilet facilities shall be either separate or combined employee and public toilet facilities.

EXCEPTION:

- Public toilet facilities shall not be required for:
1. Parking garages where operated without parking attendants.
 2. Structures and tenant spaces intended for quick transactions, including takeout, pickup and drop-off, having a public access area less than or equal to 300 square feet (28 m²).
 3. Fixed guideway transit and passenger rail systems constructed in accordance with Section 3112.

2902.3.3 Location of toilet facilities in occupancies other than malls. In occupancies other than covered and open mall buildings, the required *public* and employee toilet facilities shall be located in each building not more than one story above or below the space re-

quired to be provided with toilet facilities, or conveniently in a building adjacent thereto on the same property, and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).

EXCEPTIONS: 1. The location and maximum distances of travel to required employee facilities in factory and industrial occupancies shall be permitted to exceed that required by this section, provided that the location and maximum distance of travel are *approved*.
2. The location and maximum distances of travel to required public and employee facilities in Group S occupancies shall be permitted to exceed that required by this section, provided that the location and maximum distances of travel are approved.

2902.5 Drinking fountain location. Drinking fountains shall not be required to be located in individual tenant spaces provided that public drinking fountains are located within a distance of travel of 500 feet of the most remote location in the tenant space and not more than one story above or below the tenant space. Where the tenant space is in a covered or open mall, such distance shall not exceed 300 feet. Drinking fountains shall be located on an accessible route. Drinking fountains shall not be located in toilet rooms.

2902.5.1 Drinking fountain number. Occupant loads over 30 shall have one drinking fountain for the first 150 occupants, then one per each additional 500 occupants.

EXCEPTIONS: 1. Sporting facilities with concessions serving drinks shall have one drinking fountain for each 1000 occupants.
2. A drinking fountain need not be provided in a drinking or dining establishment.

2902.5.2 Multistory buildings. Drinking fountains shall be provided on each floor having more than 30 occupants in schools, dormitories, auditoriums, theaters, offices and public buildings.

2902.5.3 Penal institutions. Penal institutions shall have one drinking fountain on each cell block floor and one on each exercise floor.

2902.5.4 Bottle filling stations. Bottle filling stations shall be provided in accordance with Sections 2902.5.4.1 through 2902.5.4.3.

2902.5.4.1 Group E occupancies. In Group E occupancies with an occupant load over 30, a minimum of one bottle filling station shall be provided on each floor. This bottle filling station may be integral to a drinking fountain.

2902.5.4.2 Substitution. In all occupancies that require more than two drinking fountains per floor or secured area, *bottle filling stations* shall be permitted to be substituted for up to 50 percent of the required number of drinking fountains.

2902.5.4.3 Accessibility. At least one of the required bottle filling stations shall be located in accordance with Section 309 ICC A117.1.

2902.6 Small occupancies. This section is not adopted.

2902.8 Dwelling units. Dwelling units shall be provided with a kitchen sink.

2902.9 Water. Each required sink, lavatory, bathtub and shower stall shall be equipped with hot and cold running water necessary for its normal operation.

SECTION 2903—RESERVED.

SECTION 2904—RESERVED.

Table 2902.1
Minimum Number of Required Plumbing Fixtures^a

(See Sections 2902.2 and 2902.3)

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathubs/ Showers	
				Male	Female	Male	Female		
1	Assembly	A-1 ^d	Theaters and other buildings for the performing arts and motion pictures	1 per 125	1 per 65	1 per 200		—	
		A-2 ^d	Nightclubs, bars, taverns, dance halls and buildings for similar purposes	1 per 40	1 per 40	1 per 75		—	
			Restaurants, banquet halls and food courts	1 per 75	1 per 75	1 per 200		—	
		A-3 ^d	Auditoriums without permanent seating, art galleries, exhibition halls, museums, lecture halls, libraries, arcades and gymnasiums	1 per 125	1 per 65	1 per 200		—	
			Passenger terminals and transportation facilities	1 per 500	1 per 500	1 per 750		—	
			Places of worship and other religious services	1 per 150	1 per 75	1 per 200		—	
		A-4	Coliseums, arenas, skating rinks, pools, and tennis courts for indoor sporting events and activities	1 per 75 for first 1,500 and 1 per 120 for remainder exceeding 1,500	1 per 40 for first 1,520 and 1 per 60 for remainder exceeding 1,520	1 per 200	1 per 150		—
		A-5	Stadiums, amusement parks, bleachers and grandstands for outdoor sporting events and activities	1 per 75 for first 1,500 and 1 per 120 for remainder exceeding 1,500	1 per 40 for first 1,520 and 1 per 60 for remainder exceeding 1,520	1 per 200	1 per 150		—
2	Business	B	Buildings for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses	1 per 25 for first 50 and 1 per 50 for the remainder exceeding 50		1 per 40 for first 80 and 1 per 80 for remainder exceeding 80		—	
3	Educational	E ^e	Educational facilities	1 per 35	1 per 25	1 per 85	1 per 50	—	
4	Factory and industrial	F-1 and F-2	Structures in which occupants are engaged in work fabricating, assembling or processing of products or materials	1 per 100		1 per 100		Check State (UPC)	
5	Institutional	I-1	Residential care	1 per 10		1 per 10		1 per 8	
		I-2	Hospitals, ambulatory nursing home care recipient ^b	1 per room ^c		1 per room ^c		1 per 15	
			Employees, other than residential care ^b	1 per 25		1 per 35		—	
			Visitors other than residential care	1 per 75		1 per 100		—	
		I-3	Prisons ^b	1 per cell		1 per cell		1 per 15	
			Reformatories, detention centers and correctional centers ^b	1 per 15		1 per 15		1 per 15	
			Employees ^b	1 per 25		1 per 35		—	
I-4	Adult day care and child day care	1 per 15		1 per 15		1			
6	Mercantile	M	Retail stores, service stations, shops, salesrooms, markets and shopping centers	1 per 500		1 per 750		—	
7	Residential	R-1	Hotels, motels, boarding houses (transient)	1 per sleeping unit		1 per sleeping unit		1 per sleeping unit	

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathubs/ Showers
				Male	Female	Male	Female	
		R-2	Dormitories, fraternities, sororities and boarding houses (not transient)	1 per 10		1 per 10		1 per 8
			Apartment house	1 per dwelling unit		1 per dwelling unit		1 per dwelling unit
		R-3	One- and two-family dwellings	1 per dwelling unit		1 per 10		1 per dwelling unit
			Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8
		R-4	Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8
8	Storage	S-1 S-2	Structures for the storage of goods, warehouses, storehouses and freight depots, low and moderate hazard	1 per 100		1 per 100		Check State (UPC)

- a. The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by this code, except with respect to Group E occupancies the provisions of note "e" shall apply.
- b. Toilet facilities for employees shall be separate from facilities for inmates or care recipients.
- c. A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient sleeping units shall be permitted where such room is provided with direct access from each patient sleeping unit and with provisions for privacy.
- d. The occupant load for seasonal outdoor seating and entertainment areas shall be included when determining the minimum number of facilities required.
- e. For Group E occupancies: The number of occupants shall be determined by using a calculation of 100 square feet gross building area per student for the minimum number of plumbing fixtures.

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AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-3004 ((Section 3004—) Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-3004, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-3004, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-3004, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-3101 Section 3101—General.

3101.1 Scope. The provisions of this chapter shall govern special building construction including membrane structures, temporary structures, pedestrian walkways and tunnels, automatic vehicular gates, awnings and canopies, marquees, signs, towers ((and)), antennas, relocatable buildings, swimming pool enclosures and safety devices, ((and)) solar energy systems and fixed guideway transit and passenger

rail systems, public use restroom buildings on publicly owned lands in flood hazard areas, intermodal shipping containers.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-3101, filed 12/12/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

WAC 51-50-3102 ((Section 3102—Membrane structures.)) Reserved.

~~((3102.3 Type of construction. Noncombustible membrane structures shall be classified as Type II-B construction. Noncombustible frame or cable-supported structures covered by an approved membrane in accordance with Section 3102.3.1 shall be classified as Type II-B construction. Heavy timber frame-supported structures covered by an approved membrane in accordance with Section 3102.3.1 shall be classified as Type IV-HT construction. Other membrane structures shall be classified as Type V construction.~~

EXCEPTION: Plastic less than 30 feet (9144 mm) above any floor used in greenhouses, where occupancy by the general public is not authorized, and for aquaculture pond covers is not required to meet the fire propagation performance criteria of Test Method 1 or 2, as appropriate, of NFPA 701.

~~**3102.6.1.1 Membrane.** A membrane meeting the fire propagation performance criteria of Test Method 1 or 2, as appropriate, of NFPA 701 shall be permitted to be used as the roof or as a skylight on buildings of Type II-B, III, IV-HT and V construction, provided that the membrane is not less than 20 feet (6096 mm) above any floor, balcony or gallery.)~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-02-038, § 51-50-3102, filed 12/26/18, effective 7/1/19.]

AMENDATORY SECTION (Amending WSR 07-01-091, filed 12/19/06, effective 7/1/07)

WAC 51-50-3103 Temporary structures.

3103.1 General. The provisions of this section shall apply to structures erected for a period of less than ~~((one hundred eighty))~~ 180 days. ~~((Tents))~~ Special event structures, tents, umbrella structures and other membrane structures erected for a period of less than ~~((one hundred eighty))~~ 180 days shall also comply with the *International Fire Code*. Those erected for a longer period of time shall comply with applicable sections of this code.

EXCEPTION: The building official may authorize unheated tents and yurts under ~~((five hundred))~~ 500 square feet accommodating an R-1 Occupancy for recreational use as a temporary structure and allow them to be used indefinitely.

[Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-3103, filed 12/19/06, effective 7/1/07.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-3114 (~~(Section 3114—Fixed guideway transit and passenger rail systems.)~~) **Reserved.** ((Construction of fixed guideway transit and passenger rail systems shall be in accordance with NFPA 130, standard for fixed guideway transit and passenger rail systems.

~~**3114.1 Means of egress.** The means of egress for fixed guideway transit and passenger rail systems shall be in accordance with NFPA 130-17.)~~

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-3114, filed 12/12/19, effective 7/1/20.]

NEW SECTION

WAC 51-50-3116 **Section 3116—Fixed guideway transit and passenger rail systems.**

3116.1 Construction. Construction of fixed guideway transit and passenger rail systems shall be in accordance with NFPA 130-2020, standard for fixed guideway transit and passenger rail systems, as modified in Section 3116.2.

3116.2 Modifications to NFPA 130.

5.2.2.1 Building construction for stations shall be in accordance with Table 5.2.2.1 based upon station configuration.

5.2.2.2 Construction types shall conform to the requirements in IBC Chapter 6, unless otherwise exempted in this section.

**Table 5.2.2.1
Minimum Construction Requirements
for New Station Structures**

Station Configuration	Construction Type†
Stations erected entirely above grade and in a separate building:	
Open stations	Type IIB
Enclosed stations	Type IIA
Stations erected entirely or partially below grade:	
Open above grade portions of below grade structures*	Type IIA
Below grade portions of structures	Type IB
Below grade structures with occupant loads exceeding 1000	Type IA

* Roofs not supporting an occupancy above are not required to have a fire resistance rating.

† Construction types are in accordance with the IBC.

5.2.4.3 Ancillary spaces. Fire resistance ratings of separations between ancillary occupancies shall be established as required for ac-

cessory occupancies and incidental uses by the IBC and in accordance with ASTM E119 and ANSI/UL 263.

5.2.5.4 Materials used as interior finish in open stations shall comply with the requirements of IBC, Chapter 8.

5.3.1* General.

5.3.1.1 The provisions for means of egress for a station shall comply with IBC, Chapter 10, except as herein modified.

5.3.2 Occupant load.

5.3.2.1 The occupant load for a station shall be based on the train load of trains simultaneously entering the station on all tracks in normal traffic direction plus the simultaneous entraining load awaiting trains.

1. The train load shall consider only one train at any one track, inside a station.

2. The basis for calculating train and entraining loads shall be the peak period ridership figures as projected for design of a new system or as updated for an operating system.

5.3.2.2* For station(s) servicing areas such as civic centers, sports complexes, and convention centers, the peak ridership figures shall consider events that establish occupant loads not included in normal passenger loads.

5.3.2.2.1 Where station occupancy is anticipated to be greater than design capacity during a major event the operating agency shall initiate approved measures to restrict access to the station, when required by the fire code official, to ensure existing means of egress are adequate as an alternate to account for peak ridership associated with major events.

5.3.2.3 At multilevel, multiline, or multiplatform stations, occupant loads shall be determined as follows:

1. The maximum occupant load for each platform shall be considered separately for the purpose of sizing the means of egress from that platform.

2.* Simultaneous loads shall be considered for all egress routes passing through each level of that station.

5.3.2.4 Where an area within a station is intended for use by other than passengers or employees, the following parameters shall apply:

1. The occupant load for that area shall be determined in accordance with the provisions of the IBC NFPA 101 as appropriate for the use.

2. The additional occupant load shall be included in determining the required egress from that area.

3. The additional occupant load shall be permitted to be omitted from the station occupant load where the area has independent means of egress of sufficient number and capacity.

5.3.3.4 Travel distance. For open stations the maximum travel distance on the platform to a point at which a means of egress route leaves the platform shall not exceed 100 m (325 ft). For enclosed stations the travel distance to an exit shall not exceed 76 m (250 ft).

5.3.5 Stairs and escalators.

5.3.5.1 Stairs and escalators permitted by Section 5.2.4.1 to be unenclosed shall be permitted to be counted as contributing to the egress capacity in stations as detailed in Sections 5.2.2 and 5.3.3.

5.3.5.2 Stairs in the means of egress shall be a minimum of 1120 mm (44 in.) wide.

5.3.5.3* Capacity and travel speed for stairs and escalators shall be computed as follows:

1. Capacity - 0.0555 p/mm-min (1.41 p/in.-min)
- 2.* Travel speed - 14.6 m/min (48 ft/min) (indicates vertical component of travel speed)

5.3.5.4 Escalators shall not account for more than one-half of the egress capacity at any one level.

5.3.5.6* In calculating the egress capacity of escalators, the following criteria shall be met:

1. One escalator at each level shall be considered as being out of service.
2. The escalator chosen shall be the one having the most adverse effect upon egress capacity.

5.3.5.7 Where escalators are permitted as a means of egress in stations, the following criteria shall be met:

- 1.* The escalators shall be constructed of noncombustible materials.
- 2.* Escalators running in the direction of egress shall be permitted to remain operating.
3. Escalators running reverse to the direction of egress shall be capable of being stopped locally and remotely as follows:
 - a. Locally by a manual stopping device at the escalator.
 - b. Remotely by one of the following:
 - i. A manual stopping device at a remote location.
 - ii. As part of a preplanned evacuation response.
- 4.* Where provision is made for remote stopping of escalators counted as means of egress, one of the following shall apply:
 - a. The stop shall be delayed until it is preceded by a minimum 15-second audible signal or warning message sounded at the escalator.
 - b. Where escalators are equipped with the necessary controls to decelerate in a controlled manner under the full rated load, the stop shall be delayed for at least 5 seconds before beginning deceleration, and the deceleration rate shall be no greater than 0.052 m/sec² (0.17 ft/sec²).
5. Where an audible signal or warning message is used, the following shall apply:
 - a. The signal or message shall have a sound intensity that is at least 15 dBA above the average ambient sound level for the entire length of the escalator.
 - b. The signal shall be distinct from the fire alarm signal.
 - c. The warning message shall meet audibility and intelligibility requirements.

5.3.7* Doors, gates, security grilles, and exit hatches.

5.3.7.1 The egress capacity for doors and gates in a means of egress serving public areas shall be computed as follows:

1. Sixty people per minute (p/min) for single leaf doors and gates.

2.* 0.0819 p/mm-min (2.08 p/in.-min) for bi-parting multileaf doors and gates measured for the clear width dimension.

5.3.7.2 Gates in a means of egress shall be designed in accordance with the requirements for doors serving as a means of egress.

5.3.7.2.1 Security grilles are allowed when designed and operated in accordance with the IBC.

5.3.7.3 Where used, exit hatches shall comply with the requirements of Sections 6.3.3.15 through 6.3.3.17.

5.3.9* Horizontal exits. Horizontal exits shall comply with IBC Section 1026.

5.3.11 Means of egress lighting.

5.3.11.1 Illumination of the means of egress in stations, including escalators that are considered a means of egress, shall be in accordance with IBC Section 1008.

5.3.11.2 Means of egress, including escalators considered as means of egress, shall be provided with a system of emergency lighting in accordance with IBC Section 1008

5.3.11.3 In addition to the requirements of Sections 5.3.11.1 and 5.3.11.2:

1. Lighting for stairs and escalators shall be designed to emphasize illumination on the top and bottom steps and landings.
2. Where newel- and comb-lighting is provided for escalator steps, such lighting shall be on emergency power circuits.

[]

AMENDATORY SECTION (Amending WSR 21-06-035, filed 2/23/21, effective 3/26/21)

WAC 51-50-3304 ((Section 3304—Site work.)) Reserved.

~~((3304.2 Fire watch during construction. Where required by the fire code official, a fire watch shall be provided during nonworking hours for new construction that exceeds 40 feet (12,192 mm) in height above the lowest adjacent grade.~~

EXCEPTIONS: 1. New construction that is built under the IRC.
2. New construction less than 5 stories and 50,000 square feet per story.)

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 21-06-035, § 51-50-3304, filed 2/23/21, effective 3/26/21; WSR 20-01-090, § 51-50-3304, filed 12/12/19, effective 7/1/20.]

NEW SECTION

WAC 51-50-3314 Section 3314—Fire watch during construction.

3314.1 Fire watch during construction. Where required by the fire code official, a fire watch shall be provided during nonworking hours for

new construction that exceeds 40 feet (12,192 mm) in height above the lowest adjacent grade.

EXCEPTIONS: 1. New construction that is built under the IRC.
2. New construction less than 5 stories and 50,000 square feet per story.

[]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-3401 ((Section 3401—) Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-3401, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-3401, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, § 51-50-3401, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-3404 ((Section 3404—) Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-3404, filed 1/19/16, effective 7/1/16; WSR 10-03-097, § 51-50-3404, filed 1/20/10, effective 7/1/10.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-3410 ((Section 3410—) Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-3410, filed 1/19/16, effective 7/1/16; WSR 10-03-097, amended and recodified as § 51-50-3410, filed 1/20/10, effective 7/1/10; WSR 04-01-108, § 51-50-3408, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-3411 ((Section 3411—) Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-064, § 51-50-3411, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-3411, filed 2/1/13, effective 7/1/13. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 10-03-097, amended and recodified as §

51-50-3411, filed 1/20/10, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 70.92, 19.27, and 34.05 RCW. WSR 07-01-091, § 51-50-3409, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-108, § 51-50-3409, filed 12/17/03, effective 7/1/04.]

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-3500 Chapter 35—Referenced standards. Add the reference standards as follows:

Standard reference number	Title	Referenced in code section number
((ANSI/APA PRG-320-18	Standard for Performance-Rated Cross-Laminated Timber (revised 2018)	602.4, 2303.1.4))
NFPA ((130-17)) <u>130-20</u>	Standard for Fixed Guideway Transit and Passenger Rail Systems	3101.1, ((3114)) <u>3116</u>

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-21-021, § 51-50-3500, filed 10/9/20, effective 11/9/20; WSR 20-01-090, § 51-50-3500, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-3500, filed 12/26/18, effective 7/1/19; WSR 16-03-064, § 51-50-3500, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-067, § 51-50-3500, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-4700 (~~Appendix D—Fire districts.~~) Appendix P—Construction and demolition material management.

~~(D102.2.5 Structural fire rating. Walls, floors, roofs and their supporting structural members shall be not less than 1 hour fire-resistance-rated construction.~~

- EXCEPTIONS:
1. Buildings of Type IV-HT construction.
 2. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.
 3. Automobile parking structures.
 4. Buildings surrounded on all sides by a permanently open space of not less than 30 feet (9144 mm).
 5. Partitions complying with Section 603.1, Item 11.)

P101 General

P101.1 Purpose. The purpose of this code is to increase the reuse and recycling of construction and demolition materials.

P101.2 Scope. This code applies to new building construction, alterations to existing buildings and the demolition of existing buildings having a work area greater than 750 square feet or a project value greater than \$75,000, whichever is more restrictive.

EXCEPTION: Projects determined to be unsafe pursuant to Section 116.

P102 General definitions.

Demolition. The process of razing, relocating, or removing an existing building or structure, or a portion thereof.

Divert, diverted, or diversion. The reuse, recycling, or beneficial use of construction and demolition materials.

Recycling. The process of transforming or remanufacturing waste materials into useable or marketable materials for use other than landfill disposal, combustion, or incineration.

Reuse. The return of a material into the economic stream for use.

Salvage. The recovery of construction and demolition building material and components from a building or site in order to increase the reuse or repurpose potential of these materials and decrease the amount of material being sent to the landfill. Salvaged material may be sold, donated, or reused on site.

P103 Construction and demolition material management.

P103.1 Collection containers. All sites where recyclable construction and demolition materials are generated and transported for recycling must provide a separate container for nonrecyclable materials pursuant to WAC 173-345-040.

P103.2 Salvage assessment. A salvage assessment shall be submitted prior to permit issuance. The salvage assessment shall identify the building components of an existing building that, if removed, have the potential to be reused. This assessment shall be signed by the owner and serve as an affidavit stating that the project shall be executed in compliance with the requirements of this code.

EXCEPTION: Projects that include only new construction.

P103.3 Waste diversion report. A waste diversion report shall be submitted prior to issuance of the Certificate of Occupancy. The waste diversion report shall identify the following:

1. Weight or volume of project-generated construction and demolition material;
2. Whether the material was disposed in a landfill or diverted;
3. The hauler of the material;
4. The receiving facility or location; and
5. The date materials were accepted by the receiving facility or location.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-090, § 51-50-4700, filed 12/12/19, effective 7/1/20; WSR 19-02-038, § 51-50-4700, filed 12/26/18, effective 7/1/19.]

WSR 22-13-095
PERMANENT RULES
SECRETARY OF STATE

[Filed June 14, 2022, 11:05 a.m., effective July 15, 2022]

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

Purpose: Permanent adoption of WAC changes related to voter secrecy on ballot return envelopes, ballot oath declarations, and other ballot return forms.

Citation of Rules Affected by this Order: New WAC 434-250-380.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 22-10-069 on May 3, 2022.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 1, 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 14, 2022.

Randy Bolerjack
Deputy Secretary of State

OTS-3424.4

NEW SECTION

WAC 434-250-380 Disclosure of voter signatures. (1) In-person inspection of unredacted ballot return envelopes, ballot declarations, and signature correction forms is authorized, so long as photocopying, photographs, and other types of image reproduction of voter signatures, phone numbers, and email addresses are prohibited.

(2) Upon receiving a public records request for ballot return envelopes, ballot declarations, or signature correction forms, an agency should offer the requestor the option of receiving redacted copies or inspecting unredacted versions in-person.

(3) For purposes of this regulation, "signature correction form" means any form submitted by a voter for the purpose of curing a missing or mismatched signature on a ballot declaration or otherwise updating the voter signature.

(4) For purposes of this section, "voter signature" means any original handwritten signature or image of the voter's signature.

[]

WSR 22-13-100

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed June 14, 2022, 4:17 p.m., effective July 15, 2022]

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

Purpose: To modify requirements in WAC 51-11R-40310 to temporarily rescind the prohibition for gas fireplaces with continuously burning pilot lights.

Citation of Rules Affected by this Order: Amending WAC 51-11R-40310.

Statutory Authority for Adoption: RCW 19.27A.045.

Other Authority: RCW 19.27A.020.

Adopted under notice filed as WSR 22-04-089 on January 31, 2022.

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 Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: April 22, 2022.

Tony Doan
Council Chair

OTS-3597.1

AMENDATORY SECTION (Amending WSR 20-01-047, filed 12/9/19, effective 7/1/20)

WAC 51-11R-40310 Section R403.1—Controls.

R403.1 Controls. At least one thermostat shall be provided for each separate heating and cooling system.

R403.1.1 Programmable or connected thermostat. Where the primary heating system is a forced-air furnace, at least one thermostat per dwelling unit shall be Energy Star certified and capable of controlling the heating and cooling system on a daily schedule to maintain different temperature set points at different times of the day. The thermostat shall allow for, at a minimum, a 5-2 programmable schedule (weekdays/weekends) and be capable of providing at least two programmable set-back/setup periods per day. This thermostat shall include the capability to set back, set up or temporarily operate the system to maintain zone temperatures down to 55°F (13°C) or up to 85°F (29°C). The thermostat shall initially be programmed by the manufacturer with a heating temperature set point no higher than 70°F (21°C) and a cooling temperature set point no lower than 78°F (26°C). The thermostat and/or

control system shall have an adjustable deadband of not less than 10°F.

- EXCEPTIONS:
1. Systems controlled by an occupant sensor that is capable of shutting the system off when no occupant is sensed for a period of up to 30 minutes.
 2. Systems controlled solely by a manually operated timer capable of operating the system for no more than two hours.
 3. Ductless mini-split heat pump systems that have an integral proprietary thermostat.

R403.1.2 Heat pump supplementary heat. Unitary air cooled heat pumps shall include controls that minimize supplemental heat usage during start-up, set-up, and defrost conditions. These controls shall anticipate need for heat and use compression heating as the first stage of heat. Controls shall indicate when supplemental heating is being used through visual means (e.g., LED indicators). Heat pumps equipped with supplementary heaters shall be installed with controls that prevent supplemental heater operation above 40°F. At final inspection the auxiliary heat lock out control shall be set to 35°F or less.

R403.1.3 Continuously burning pilot lights. The natural gas systems and equipment listed below are not permitted to be equipped with continuously burning pilot lights.

1. Fan-type central furnaces.
2. Household cooking appliances.

EXCEPTION: Household cooking appliances without electrical supply voltage connections and in which each pilot light consumes less than 150 Btu/hr.

3. Pool heaters.
4. Spa heaters.
5. Beginning September 1, 2022, fireplaces.

EXCEPTION: Any fireplace with on-demand, intermittent or interrupted ignition (as defined in ANSI Z21.20) is not considered continuous.

[Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160 and chapter 19.27 RCW. WSR 20-01-047, § 51-11R-40310, filed 12/9/19, effective 7/1/20. Statutory Authority: RCW 19.27A.020, 19.27A.045, 19.27A.160, and 19.27.074. WSR 16-02-127, § 51-11R-40310, filed 1/6/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.045 and chapters 19.27 and 34.05 RCW. WSR 13-04-055, § 51-11R-40310, filed 2/1/13, effective 7/1/13.]

WSR 22-13-102
PERMANENT RULES
HIGHLINE COLLEGE

[Filed June 15, 2022, 9:52 a.m., effective July 16, 2022]

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

Purpose: To update provisions to the supplemental discipline procedure for cases involving Title IX sexual harassment: "Order of precedence" section, enabling the college to contract with administrative law judges or other persons to act as the presiding officer; update the Title IX appeals provision; and update the "evidence" section to remove the provision regarding cross examination.

Citation of Rules Affected by this Order: Amending WAC 132I-126-505, 132I-126-565, and 132I-126-585.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. United States Department of Education Office of Civil Rights, Letter to Students, Educators, and Other Stakeholders, *Victims Rights Law Center et al. v. Cardona*, <https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VRLC.pdf>.

Adopted under notice filed as WSR 22-07-065 on March 17, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 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 14, 2022.

Ay Saechao
 Dean of Student Support
 and Funding Services

OTS-3561.1

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-505 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132I-126-010 through 132I-126-300, these supplemental procedures shall take precedence. Highline College may, at its discretion, contract with an administrative law judge or other

person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-14-003, § 132I-126-505, filed 6/23/21, effective 7/24/21.]

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-565 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

~~(4) ((Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.~~

~~(5))~~ No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

~~((6))~~ (5) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-14-003, § 132I-126-565, filed 6/23/21, effective 7/24/21.]

AMENDATORY SECTION (Amending WSR 21-14-003, filed 6/23/21, effective 7/24/21)

WAC 132I-126-585 Appeals. (~~((1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132I-126-300.~~

~~(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).~~

~~(3) President's office shall serve the final decision on the parties simultaneously.)~~ (1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) Upon receiving a timely appeal, the president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the president's office shall serve copies of the responses to the other parties.

(3) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the president's office.

(4) The president or their delegate, based on their review of parties' submissions and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

(5) The president's office shall serve the final decision on the parties simultaneously.

(6) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. WSR 21-14-003, § 132I-126-585, filed 6/23/21, effective 7/24/21.]

WSR 22-13-103

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Hearing and Speech)

[Filed June 15, 2022, 10:00 a.m., effective August 1, 2022]

Effective Date of Rule: August 1, 2022.

Purpose: WAC 246-828-025, 246-828-075, 246-828-300 and 246-828-990. The board of hearing and speech (board) and the department of health (department) adopted rule amendments to clarify definitions, supervision of students' requirements, and expired license requirements. The adopted rule amendments to WAC 246-828-990 established fees for the hearing aid specialist practical examinations and amends verification and duplicate credential fees.

The board adopted rule amendments to clarify requirements for hearing and speech professions and make the rules consistent with nationally accepted standards. The adopted rule amendments increase clarity for supervision of students and reduce license barriers for practitioners with expired licenses to reactivate their licenses.

The department adopted rule amendments to establish a fee for the practical exam required for a hearing aid specialist license. The board and the department have tracked costs of this exam since it became a legislative requirement in July 2015 and determined a fee is necessary to support the cost of the program. All other applicants under this chapter pay for their examination through their college tuition. Additional fee changes include updating verification and duplicate credential fees for consistency with other health profession programs.

Citation of Rules Affected by this Order: Amending WAC 246-828-025, 246-828-075, 246-828-300, and 246-828-990.

Statutory Authority for Adoption: RCW 18.35.161 and 43.70.250.

Adopted under notice filed as WSR 22-07-092 on March 22, 2022.

A final cost-benefit analysis is available by contacting Kim-Boi Shadduck, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2912, fax 360-236-2901, TTY 711, email kimboi.shadduck@doh.wa.gov, website www.doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

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

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

Date Adopted: June 13, 2022.

Ray Parker and Kristen Peterson, JD
Board of Hearing and Speech Chairperson
and Deputy Secretary for Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

OTS-2080.8

AMENDATORY SECTION (Amending WSR 21-06-011, filed 2/18/21, effective 3/21/21)

WAC 246-828-025 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Board-approved institution of higher education" means:

(a) An institution offering a program in audiology or speech-language pathology leading to a master's degree or its equivalent, or a doctorate degree or its equivalent, that has been accredited by the council on academic accreditation in audiology and speech-language pathology, or an equivalent program.

(b) An institution offering a speech-language pathology assistant program or a speech, language, and hearing program approved by the state board for community and technical colleges, the higher education coordinating board, or an equivalent body from another state or province.

(c) An institution (~~(s where education was obtained)~~) outside of the United States or Canada offering a speech-language pathology assistant program or a speech, language, and hearing program which has an equivalency determination completed by the board. ~~((This))~~ The program must lead to an associate of arts or sciences degree, certificate of proficiency, or bachelor of arts or sciences degree.

~~((e))~~ (d) A board-approved institution must integrate instruction in multicultural health as part of its basic education preparation curriculum under RCW 43.70.615.

(2) "Direct supervision" means the supervisor is on-site and in view during the procedures or tasks.

(3) "Hearing assistive technologies" means assistive listening systems or devices, and other technologies that increase the intelligibility, improves sound quality, or clarity of speech or sounds with or without the presence of background noise where hearing instruments alone may not provide optimal comprehension including, but not limited to, telecoil and Bluetooth.

(4) "Indirect supervision" means the procedures or tasks are performed under the supervising speech-language pathologist's, audiologist's, or hearing aid specialist's overall direction and control and the supervisor is accessible, but the supervisor's presence is not required during the performance of procedures or tasks.

(5) "Place or places of business" means a permanent address open to the public, which may include an "establishment" as defined in RCW 18.35.010(6), where a licensee engages in the fitting and dispensing of hearing instruments.

(6) "Postgraduate professional work experience" means a supervised full-time professional experience, or the part-time equivalent, as defined in these rules, involving direct patient or client contact, consultations, recordkeeping, and administrative duties relevant to a bona fide program of clinical work. Applicants who obtain an Au.D. at a board-approved institution of higher education are considered to have met the postgraduate professional work experience requirement.

(7) "Purchaser" or "buyer" means a patient, client, or legally authorized representative.

[Statutory Authority: RCW 18.35.310. WSR 21-06-011, § 246-828-025, filed 2/18/21, effective 3/21/21. Statutory Authority: RCW 18.35.161. WSR 19-13-041, § 246-828-025, filed 6/12/19, effective 7/13/19. Statutory Authority: 2014 c 189, RCW 18.35.161, 18.130.062, and 18.130.020. WSR 15-14-092, § 246-828-025, filed 6/29/15, effective 7/1/15. Statutory Authority: RCW 18.35.161, 43.70.250. WSR 10-15-093, § 246-828-025, filed 7/20/10, effective 7/26/10. Statutory Authority: RCW 18.35.161. WSR 06-19-109, § 246-828-025, filed 9/20/06, effective 10/21/06. Statutory Authority: RCW 18.35.040(2) and 18.35.161. WSR 98-13-109, § 246-828-025, filed 6/17/98, effective 7/18/98.]

AMENDATORY SECTION (Amending WSR 15-14-092, filed 6/29/15, effective 7/1/15)

WAC 246-828-075 ((Supervisors of students.)) Requirements when students perform duties of their profession while under supervision.

(1) A student((s)) enrolled in a board approved program may perform hearing aid specialist, audiologist, speech-language pathologist, or speech-language pathology assistant duties in the course of their educational training, while under supervision according to this section. For speech-language pathology applicants, supervised experience acquired during an educational program may not be applied towards the hours of postgraduate professional work experience required in WAC 246-828-04503.

(2) Supervisors of students must meet the following licensure requirements:

(a) A speech-language pathology or speech-language pathology assistant student must be supervised by a speech-language pathologist licensed and in good standing under chapter 18.35 RCW.

(b) An audiology student must be supervised by an audiologist licensed in good standing under chapter 18.35 RCW.

(c) A hearing aid specialist student must be supervised by a hearing aid specialist or an audiologist licensed and in good standing under chapter 18.35 RCW who has practiced for at least ((thirty-six)) 36 of the last ((forty-eight)) 48 months immediately preceding the beginning of supervision.

((+2)) (3) A student((s)) may only perform those activities within the scope of practice for which they are adequately trained.

((+3)) (4) The student must at all times wear an identification badge readily visible to the public that identifies ((him or her)) them as a student.

((+4)) (5) The licensee who is supervising hearing aid specialist students must cosign all purchase agreements for the sale of hearing instruments. A supervisor may only ((be in a supervisor/supervisee relationship with)) supervise a maximum of three students at a time.

((+5)) (6) The licensee who is supervising speech-language pathology or audiology students may include simultaneous observations with the student or the submission of written reports or summaries by the student for supervisor monitoring, review and approval. At least ((fifty)) 50 percent of each student's time in each diagnostic evaluation, including screening and identification, must be observed directly by a supervisor. The observations may take place on site or by ((closed-circuit television)) an audio/visual technology system that is HIPAA compliant.

[Statutory Authority: 2014 c 189, RCW 18.35.161, 18.130.062, and 18.130.020. WSR 15-14-092, § 246-828-075, filed 6/29/15, effective 7/1/15. Statutory Authority: RCW 18.35.161, 43.70.250. WSR 10-15-093, § 246-828-075, filed 7/20/10, effective 7/26/10. Statutory Authority: RCW 18.35.161. WSR 06-19-109, § 246-828-075, filed 9/20/06, effective 10/21/06; WSR 04-02-068, § 246-828-075, filed 1/7/04, effective 2/7/04; WSR 98-06-079, § 246-828-075, filed 3/3/98, effective 4/3/98. Statutory Authority: RCW 18.35.161 (1) and (3). WSR 95-19-017 § 246-828-075, filed 9/7/95, effective 10/8/95.]

AMENDATORY SECTION (Amending WSR 10-15-093, filed 7/20/10, effective 7/26/10)

WAC 246-828-300 Expired license or certification. (1) If the license or certification has expired for three years or less, the practitioner must meet the requirements (~~(of chapter 246-12 WAC, Part 2)~~) for renewal credentialing of practitioners in WAC 246-12-020 through 246-12-051.

(2) If the license or certification has expired for over three years, and the practitioner has been in active practice in another United States jurisdiction, the practitioner must:

(a) Submit verification of active practice from any other United States jurisdiction; and

(b) Meet the requirements (~~(of chapter 246-12 WAC, Part 2)~~) for renewal credentialing of practitioners in WAC 246-12-020 through 246-12-051.

(3) If the license (~~(or certification)~~) for a hearing aid specialist has expired for over three years, and the practitioner has not been in active practice in another United States jurisdiction, the practitioner must:

(a) Successfully pass the examination as provided in ((RCW 18.35.050)) WAC 246-828-020; and

(b) Meet the requirements (~~(of chapter 246-12 WAC, Part 2)~~) for renewal credentialing of practitioners in WAC 246-12-020 through 246-12-051.

(4) If the license for an audiologist or speech language pathologist has expired for over three years, and the practitioner has not been in active practice in another United States jurisdiction, the practitioner must:

(a) (i) Successfully pass the examination as provided in WAC 246-828-020; or

(ii) Provide verification of maintenance of Certificate of Clinical Competence (CCC) from the American Speech-Language Hearing Association (ASHA) or be board certified in audiology by the American Board of Audiology; and

(b) Meet the requirements for renewal credentialing of practitioners in WAC 246-12-020 through 246-12-051.

[Statutory Authority: RCW 18.35.161, 43.70.250. WSR 10-15-093, § 246-828-300, filed 7/20/10, effective 7/26/10. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-828-300, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.35.161 (1) and (3). WSR 95-19-017, § 246-828-300, filed 9/7/95, effective 10/8/95. Statutory Authority: RCW 18.35.161. WSR 91-11-031 (Order 165B), recodified as §

246-828-300, filed 5/8/91, effective 6/8/91; WSR 89-04-017 (Order PM 818), § 308-50-350, filed 1/23/89. Statutory Authority: 1983 c 39 § 7. WSR 83-23-056 (Order PL 447), § 308-50-350, filed 11/15/83.]

AMENDATORY SECTION (Amending WSR 16-07-087, filed 3/17/16, effective 7/1/16)

WAC 246-828-990 Hearing aid specialist, audiologist, speech-language pathologist, and speech-language pathology assistant fees and renewal cycle. (1) Credentials must be renewed every year on the practitioner's birthday as provided in (~~chapter 246-12 WAC, Part 2~~) WAC 246-12-030.

(2) Practitioners must pay the following nonrefundable fees:

Audiologist or Speech-Language Pathologist	
Fee Type:	Fee
Interim permit	
Application	\$165.00
Permit	140.00
Initial license	
Application	110.00
License	95.00
HEAL-WA* surcharge	16.00
Active license renewal	
Renewal	75.00
Late renewal penalty	50.00
HEAL-WA* surcharge	16.00
Expired license reissuance	140.00
Inactive license	
Renewal	60.00
Expired license reissuance	90.00
Verification of license	((30.00)) <u>25.00</u>
Duplicate license	((30.00)) <u>10.00</u>

* Surcharge applies to speech-language pathologists only. HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

Hearing Aid Specialist	
Fee Type:	Fee
Initial license	
Application	\$110.00
License	95.00
<u>Hearing aid specialist practical exam for Washington hearing society applicants</u>	<u>\$350.00</u>
Active license renewal	
Renewal	75.00
Late renewal penalty	50.00
Expired license reissuance	136.00

Hearing Aid Specialist

Fee Type:	Fee
Inactive license renewal	
Renewal	56.00
Expired license reissuance	86.00
Verification of license	((30.00)) <u>25.00</u>
Duplicate license	((30.00)) <u>10.00</u>

Speech-Language Pathology Assistant

Fee Type:	Fee
Initial credential	
Application	\$85.00
Active credential renewal	
Renewal	45.00
Late renewal penalty	45.00
Expired credential reissuance	50.00
Inactive credential renewal	
Renewal	50.00
Expired credential reissuance	50.00
Verification of credential	((15.00)) <u>25.00</u>
Duplicate credential	((15.00)) <u>10.00</u>

[Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 16-07-087, § 246-828-990, filed 3/17/16, effective 7/1/16. Statutory Authority: RCW 43.70.250, 43.70.280 and 2014 c 189. WSR 15-16-020, § 246-828-990, filed 7/24/15, effective 8/24/15. Statutory Authority: RCW 43.70.280 and 2013 c 249. WSR 13-21-077, § 246-828-990, filed 10/17/13, effective 1/1/14. Statutory Authority: RCW 43.70.110, 43.70.250, and 2011 1st sp.s. c 50. WSR 11-20-092, § 246-828-990, filed 10/4/11, effective 12/1/11. Statutory Authority: RCW 18.35.161, 43.70.250. WSR 10-15-093, § 246-828-990, filed 7/20/10, effective 7/26/10. Statutory Authority: RCW 43.70.110, 43.70.250, 2008 c 329. WSR 08-15-014, § 246-828-990, filed 7/7/08, effective 7/7/08. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-828-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 18.35.161. WSR 04-02-068, § 246-828-990, filed 1/7/04, effective 2/7/04. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-828-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.35.090 and 43.70.250. WSR 97-04-043, § 246-828-990, filed 1/31/97, effective 1/31/97. Statutory Authority: RCW 18.35.161 (1) and (3). WSR 95-19-017, § 246-828-990, filed 9/7/95, effective 10/8/95. Statutory Authority: RCW 43.70.250. WSR 94-08-038, § 246-828-990, filed 3/31/94, effective 5/1/94; WSR 93-14-011, § 246-828-990, filed 6/24/93, effective 7/25/93; WSR 91-13-002 (Order 173), § 246-828-990, filed 6/6/91, effective 7/7/91. Statutory Authority: RCW 43.70.040. WSR 91-11-030 (Order 139), recodified as § 246-828-990, filed 5/8/91, effective 6/8/91. Statutory Authority: RCW 43.70.250. WSR 90-04-094 (Order 029), §

308-50-440, filed 2/7/90, effective 3/10/90. Statutory Authority: RCW 43.24.086. WSR 87-18-031 (Order PM 667), § 308-50-440, filed 8/27/87.]

WSR 22-13-108
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-69—Filed June 15, 2022, 1:59 p.m., effective July 16, 2022]

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

Purpose: The purpose of this rule is to limit the exposure of deer, elk, moose, and caribou in Washington state to a fatal disease that can spread through ungulate carcasses. The approved amendments add caribou to the list of species with restricted importation rules and will broaden the restriction on importing or possessing deer, elk, moose, and caribou carcasses or parts that originate from outside Washington to prevent the introduction of chronic wasting disease, a fatal neurologic disease of cervids. This adopted change will restrict the importation and possession of caribou, deer, elk, or moose carcasses or parts from any out-of-state origin, except when specific criteria for processing of carcasses or parts are met.

Citation of Rules Affected by this Order: Amending WAC 220-413-030 Importation and retention of dead nonresident wildlife.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

Other Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

Adopted under notice filed as WSR 22-04-104 on February 1, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 8, 2022.

Barbara Baker, Chair
Fish and Wildlife Commission

OTS-3576.2

AMENDATORY SECTION (Amending WSR 21-23-037, filed 11/8/21, effective 12/9/21)

WAC 220-413-030 Importation and retention of dead nonresident wildlife. (1) It is unlawful:

(a) To import or possess dead wildlife, taken in another state or country, into Washington unless such wildlife was acquired lawfully. Proof of legal acquisition must be retained during the period of retention of the carcass or edible parts.

(b) For a person who imports a dead bighorn sheep, mountain goat, cougar or bear to fail to report such importation to the department in writing within (~~ten~~) 10 days of the importation. The report must contain the name and address of the importer, the location where the dead wildlife is being stored, and general information describing where and how the wildlife was obtained.

(c) To import or possess deer, elk, (~~or~~) moose, or caribou, or parts thereof, harvested (~~in Alberta, Arkansas, Colorado, Illinois, Iowa, Kansas, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Saskatchewan, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming~~) outside Washington state, with the following exceptions:

(i) Meat that has been deboned in the state or province where it was harvested and is imported as boned-out meat;

(ii) Skulls and antlers, antlers attached to the skull plate, or upper canine teeth (buglers, whistlers, ivories) from which all soft tissue has been removed;

(iii) Hides or capes without heads attached;

(iv) Tissue imported for use by a diagnostic or research laboratory; and

(v) Finished taxidermy mounts.

(2) Violation of subsection (1) of this section is punishable under RCW 77.15.290 Unlawful transportation of fish or wildlife—Penalty.

(3) It is unlawful for an importer or receiver of deer or elk to fail to notify the department within (~~twenty-four~~) 24 hours if a state or province alerts the importer or receiver that a harvested animal has tested positive for chronic wasting disease. Violation of this subsection is an infraction punishable under RCW 77.15.160 Infractions.

[Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240. WSR 21-23-037 (Order 21-247), § 220-413-030, filed 11/8/21, effective 12/9/21. Statutory Authority: RCW 77.04.090, 77.04.130, 77.15.568, 77.08.010, 77.65.510, 77.65.515, and 77.65.520. WSR 19-10-011 (Order 19-79), § 220-413-030, filed 4/19/19, effective 5/20/19. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.020, 77.12.040, 77.12.047, 77.12.150, 77.12.210, 77.12.240, 77.12.320, 77.12.570, 77.12.800, 77.15.245, 77.32.007, 77.32.050, 77.32.070, 77.32.090, 77.32.370, and 77.32.530. WSR 18-11-061 (Order 18-76), § 220-413-030, filed 5/11/18, effective 6/11/18. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.150, 77.12.240, 77.12.800, 77.32.090. WSR 17-10-076 (Order 17-10), recodified as § 220-413-030, filed 5/3/17, effective 6/3/17. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.150, 77.12.240, 77.12.800, 77.32.090, and 77.32.155. WSR 16-12-087, § 232-12-021, filed 5/31/16, effective 7/1/16. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.150, and 77.12.240. WSR 15-10-035 (Order 15-97), § 232-12-021, filed 4/28/15, effective 5/29/15. Statutory Authority: RCW 77.12.047, 77.12.240, and 77.32.070. WSR 13-11-078 (Order 13-94), § 232-12-021, filed 5/16/13, effective 6/16/13. Statutory Authority: RCW 77.12.047. WSR 11-23-083 (Order 11-299), § 232-12-021, filed 11/16/11, effective 12/17/11. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.210, and C.F.R. Title 50, Part 21, Subpart C, Section 21.29; Mi-

gratory Bird Treaty Act. WSR 10-18-012 (Order 10-214), § 232-12-021, filed 8/20/10, effective 9/20/10. Statutory Authority: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210. WSR 07-11-017 (Order 07-62), § 232-12-021, filed 5/3/07, effective 6/3/07. Statutory Authority: RCW 77.12.047. WSR 06-02-063 (Order 05-271), § 232-12-021, filed 1/3/06, effective 2/3/06; WSR 05-02-046 (Order 04-327), § 232-12-021, filed 1/3/05, effective 2/3/05. Statutory Authority: RCW 77.12.030. WSR 93-04-040 (Order 583), § 232-12-021, filed 1/27/93, effective 2/13/93. Statutory Authority: RCW 77.12.040. WSR 82-04-034 (Order 177), § 232-12-021, filed 1/28/82; WSR 81-12-029 (Order 165), § 232-12-021, filed 6/1/81. Formerly WAC 232-12-060.]

WSR 22-13-110
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-70—Filed June 15, 2022, 2:06 p.m., effective July 16, 2022]

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

Purpose: **WAC 220-413-060 Hunting restrictions.** The purpose of this rule change is to clarify it is unlawful to hunt any wildlife at night and that it is unlawful to hunt wild animals, except rabbits and hares, with hounds during established modern firearm general deer and elk seasons during the months of October and November.

Also, to allow hunters to use one dog controlled by leash during lawful hunting hours and within 72 hours of shooting a big game animal, except bear and cougar, to assist with recovering wounded big game. The rule change will help reduce the number of big game animals that are mortally wounded, but not recovered.

WAC 220-413-090 Field identification of wildlife—Evidence of sex—Definitions. This rule change is to clarify that game birds must be transported with a feathered wing or head attached to the carcass until the carcass is processed and or stored for consumption with exceptions stated as follows:

- a. Falconry-caught birds, no evidence of sex;
- b. Canada and crackling geese harvested in Goose Management Area 2 - coast and inland: Fully feather head must be left attached;
- c. Turkeys: The head and, if present at harvest, the beard must be left attached.

Also, we changed the last statement of the existing rule into subsection (6) to state that failure to comply with the rule (section) is unlawful possession of game animals under RCW 77.15.410. The change will direct hunters of specific requirements and allow for the sex of harvested animals to be identifiable.

WAC 220-414-010 Hunting equipment restrictions. This rule change will clarify that it is unlawful to hunt all big game, not just deer and elk, with the aid of infrared night vision equipment or with laser sights.

WAC 220-414-020 Unlawful methods for hunting—Firearms. This rule change will expand opportunity by allowing use of air rifles and handguns for hunting specific species. The specifics allowable for each weapon are identified within the amendments. These amendments will provide lighter weight weapons for hunting identified species and thereby provide opportunity to hunters who are not able to carry the heavier weight weapons.

WAC 220-414-040 Nontoxic shot requirements. The changes will:

1. Adjust wildlife area and unit naming conventions under subsection (2) to reflect current relationships to wildlife areas with significant wetlands occurring within boundaries; and
2. Remove sites listed under subsection three to accurately reflect pheasant release sites on non-WDFW managed lands.

WAC 220-414-050 Shotgun shell restriction areas. The changes will:

1. Technical adjustment under subsection (1)(d) Johnson/DeBay's Slough Hunt Unit area description fixing GPS coordinates to align intent with legal description;
2. Technical adjustment under subsection (1)(e) Dungeness Unit in Clallam County due to a change in a previous contract agreement;

3. Addition of subsection (1)(f) Samish River Unit of Skagit Wildlife Area in Skagit County as a technical adjustment required from differentiating from the Samish Unit; and

4. Addition of subsection (1)(g) South Padilla Bay Unit of Skagit Wildlife Area in Skagit County to align with current management of waterfowl, coot, and snipe hunting on this unit.

WAC 220-414-060 Muzzleloading firearms. The changes will clarify that the term "load" refers to the powder charge and projectile and that both must be loaded from the muzzle. Anticipated effects associated with this amendment would be hunters having a clearer understanding of the muzzleloading firearms that are legal to use during established muzzleloader seasons.

WAC 220-414-070 Archery requirements. Specific proposed amendments allow the use of verifiers for peep sights. We feel these changes will increase hunter participation, increase hunter retention, and ensure a clean and ethical kill.

WAC 220-414-090 Use of decoys and calls. The rule change to WAC 220-414-090(2) allows the limited use of electronic calls when hunting lesser snow geese and Ross' geese during season dates occurring after February 1 in Goose Management Area 1 and Goose Management Area 4, when lesser snow geese and Ross' geese are the only species open to harvest as specified by WAC 220-416-060. This brings state regulation in alignment with federal allowances (C.F.R. 20.21.g.1).

Citation of Rules Affected by this Order: Amending WAC 220-413-060, 220-413-090, 220-414-010, 220-414-020, 220-414-040, 220-414-050, 220-414-060, 220-414-070, and 220-414-090.

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

Other Authority: RCW 77.04.012, 77.04.055, and 77.12.047.

Adopted under notice filed as WSR 22-04-105 on February 1, 2022.

Changes Other than Editing from Proposed to Adopted Version: WAC 220-414-020 Unlawful methods for hunting—Firearms.

Under section (5)(b): Change subsection (iii) Legal modern handgun designed for hunting, shooting #4 or smaller shot, and not capable of holding more than three shells. Handgun barrel length must be a minimum of 10 inches, inclusive of choke tube. Modern handguns must shoot a minimum three-inch shotshell of ~~.140~~ .410 caliber or larger.

Rationale: Clerical error.

Change subsection (iv) Legal muzzleloading handgun designed for hunting, and shooting #4 or smaller shot, ~~and not capable of holding more than three shells~~. Handgun barrel length must be a minimum of 10 inches. Muzzleloading handguns must be .45 caliber or larger.

Rationale: Clerical error, muzzleloading handguns do not hold shells and only handle one shot at a time.

WAC 220-414-060 Muzzleloading firearms. The fish and wildlife commission decided against adopting the proposed text for what would created a new subsection (4)(b) (proposed text: "Sights must be open, peep, of other open sight design, or scopes not exceeding 1x magnification. Fiber optic sights are legal. Telescopic sights or sights containing glass are prohibited."), as well as new subsection (4)(c) (proposed text: "It is unlawful to have any electrical aiming device or equipment attached to a muzzleloading firearm while hunting except for red dot or other similar electronically powered scopes not exceeding 1x magnification. It is lawful to mount a video camera to your muzzleloader while hunting provided it cannot be used for aiming the firearm.").

WAC 220-414-070 Archery requirements. The fish and wildlife commission decided against adopting the proposed text for what would create new subsection (1)(b) (proposed text: "It is unlawful to have any electrical equipment or electric device(s) attached to the bow or arrow while hunting with the following exceptions: Illuminated nocks attached to the bow or arrow while hunting, Bluetooth enabled nocks also known as breadcrumb nocks, range finding bow sights, and video camera provided the camera cannot be used for aiming the bow.").

Adopted text: It is unlawful to hunt wildlife with any bow equipped with a scope. A verifier peep sight that magnifies the sights is not considered a scope and is lawful.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 9, 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: April 8, 2022.

Barbara Baker, Chair
Fish and Wildlife Commission

OTS-3577.1

AMENDATORY SECTION (Amending WSR 20-19-115, filed 9/21/20, effective 10/22/20)

WAC 220-413-060 Hunting restrictions. (1) It is unlawful to hunt wildlife during any modern firearm deer or elk season with any firearm 240 caliber or larger, or containing slugs or buckshot, unless the hunter has a valid license, permits and tags for modern firearm deer or elk seasons are in his or her possession.

(a) This subsection does not apply to people hunting bear, cougar, mountain goat, mountain sheep, or turkey.

(b) A violation of this subsection is punishable under RCW 77.15.410 or 77.15.430, depending on the circumstances of the violation.

(2)(a) It is unlawful to hunt any wildlife at night (~~(@#)~~) and it is unlawful to hunt wild animals, except rabbits and hares, with dogs (hounds) during the month of October or November during the dates established for eastern and western Washington modern firearm deer or elk general seasons. During the modern firearm deer and elk general seasons the hunting hours are one-half hour before sunrise to one-half hour after sunset. A violation of this subsection is punishable under RCW 77.15.430(~~(#)~~) Unlawful hunting of wild animals—Penalty.

(b) It is unlawful to use hounds to hunt black bear, cougar (EXCEPT as pursuant to RCW 77.15.245), coyote, and bobcat year-round. A violation of this subsection is punishable under RCW 77.15.410((7)) Unlawful hunting of big game—Penalty, or RCW 77.15.430, depending on the circumstances of the violation.

(c) A person may not use the aid of a dog to take, chase, harm or harass big game. The use of one blood-trailing dog controlled by leash during lawful hunting hours within 72 hours of shooting a big game animal, except bear and cougar, is allowed to track wounded big game and aid in recovery.

(3) It is unlawful to participate in a hunting contest for which no permit has been issued by the department. A violation of this subsection is punishable as an infraction under RCW 77.15.160 (6) (b).

[Statutory Authority: RCW 77.04.012, 77.04.055, 71.12.047, 77.32.050, and 77.32.525. WSR 20-19-115 (Order 20-199), § 220-413-060, filed 9/21/20, effective 10/22/20. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-413-060, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.150, and 77.12.240. WSR 15-10-033 (Order 15-95), § 232-12-242, filed 4/28/15, effective 5/29/15. Statutory Authority: RCW 77.12.047, 77.12.240, and 77.32.070. WSR 14-10-019 (Order 14-95), § 232-12-242, filed 4/25/14, effective 5/26/14. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 13-02-043 (Order 12-290), § 232-12-242, filed 12/21/12, effective 1/21/13. Statutory Authority: RCW 77.12.040. WSR 93-04-074 (Order 593), § 232-12-242, filed 1/29/93, effective 3/1/93.]

OTS-2898.4

AMENDATORY SECTION (Amending WSR 19-10-011, filed 4/19/19, effective 5/20/19)

WAC 220-413-090 Field identification of wildlife—Evidence of sex—Definitions. (1) It is unlawful to possess or transport game birds ((unless)) without a feathered wing or head ((is left)) attached to each carcass until the carcass is processed and/or stored for consumption, except:

(a) Falconry-caught birds; which do not require evidence of sex.

(b) Canada and cackling geese harvested in Goose Management Area 2 - Coast and Inland: Where the fully feathered head must be left attached for subspecies determination((, and falconry-caught birds, until the carcass is processed and/or stored for consumption)).

(c) Turkeys: Where the fully feathered head and the beard, if present at harvest, must be left attached.

(2) It is unlawful to possess or transport big game animals unless evidence of the sex of the animal remains naturally attached to the carcass until the carcass is processed and/or stored for consumption.

(a) Evidence of sex means the head with antlers or horns attached or penis or testes of male big game animals or the head or udder of

female big game animals any of which must be naturally attached to at least one quarter of the carcass or to the largest portion of meat.

(b) For the purpose of this rule, "stored for consumption" means at the final point of storage prior to consumption of the meat.

(3) It is unlawful to possess or transport goat, sheep, moose, deer or elk taken in hunting areas which have horn or antler restrictions unless the head or skull plate, with both horns or both antlers naturally attached, accompanies the carcass.

(4) The possession of a taxidermist's receipt which includes the taxidermist's name, address, and telephone number, the hunter's name, address, telephone number, license, and tag number, the species and sex of the game bird or big game animal taken, as well as antler points or horn size and the date and GMU location or special deer/elk permit area where taken, shall be deemed to constitute compliance with this section.

For the purpose of this rule "accompanies the carcass" means to remain with the carcass until it has reached the point of processing or storage.

(5) It is lawful for persons who have complied with the department of fish and wildlife's chronic wasting disease sampling program to possess deer and elk without proof of sex under the following provisions:

(a) The head of the deer or elk must have been surrendered to an authorized department collection site.

(b) The hunter is in possession of an official department disease testing program identification card, completely filled out and signed and dated by a department employee or authorized agent.

(c) The carcass of the deer or elk is transported directly from where the head has been surrendered to the point of processing or storage.

~~(6)~~ Failure to comply with ~~((a) through (c) of)~~ this ~~((subse-~~
~~tion))~~ section constitutes unlawful possession of ~~((big))~~ game animals and is punishable under RCW 77.15.410.

[Statutory Authority: RCW 77.04.090, 77.04.130, 77.15.568, 77.08.010, 77.65.510, 77.65.515, and 77.65.520. WSR 19-10-011 (Order 19-79), § 220-413-090, filed 4/19/19, effective 5/20/19. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-413-090, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047. WSR 02-15-018 (Order 02-129), § 232-12-267, filed 7/8/02, effective 8/8/02. Statutory Authority: RCW 77.12.040. WSR 92-12-064 (Order 555), § 232-12-267, filed 6/1/92, effective 7/2/92. Statutory Authority: RCW 77.12.040 and 77.16.095. WSR 91-13-064 (Order 499), § 232-12-267, filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 77.12.030, 77.12.105 and 77.16.095. WSR 89-14-018 (Order 401), § 232-12-267, filed 6/26/89. Statutory Authority: RCW 77.12.040. WSR 81-12-029 (Order 165), § 232-12-267, filed 6/1/81.]

OTS-2864.1

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

WAC 220-414-010 Hunting equipment restrictions. (1) It is unlawful to hunt (~~deer or elk~~) all big game with the aid of infrared night vision equipment or with laser sights (not to include range finders) capable of projecting a beam onto the target, while in possession or control of a firearm, bow and arrow, or crossbow.

(2) It is unlawful to use radio-telemetry equipment to locate and hunt wildlife with transmitters attached to them.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-414-010, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210. WSR 08-09-090 (Order 08-78), § 232-12-045, filed 4/18/08, effective 5/19/08. Statutory Authority: RCW 77.12.047. WSR 03-13-047 (Order 03-129), § 232-12-045, filed 6/12/03, effective 7/13/03.]

OTS-2899.4

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

WAC 220-414-020 Unlawful methods for hunting—Firearms. (1) It is unlawful to hunt any big game with:

- (a) A fully automatic firearm.
- (b) A centerfire cartridge less than 22 caliber for cougar.
- (c) A centerfire cartridge less than 24 caliber for any other big game.
- (d) A shotgun, provided that it is a 20 gauge, or larger shotgun, using shells loaded with slugs or buckshot size #1 or larger, may be used to hunt deer, bear, and cougar.
- (e) A shotgun for any other big game, except that a 12 gauge or 10 gauge shotgun using slugs may be used.
- (f) A handgun during a modern firearm season that does not meet the following criteria: Have a minimum barrel length of four inches, per manufacturer's specification, and fire a centerfire cartridge.
- (g) Any rimfire cartridge.

(2) It is unlawful to hunt game birds with a shotgun capable of holding more than three shells.

(3) It is unlawful to hunt game birds or game animals (~~(, except bullfrogs,)~~) in a manner other than with a firearm, a bow and arrow, a crossbow, or by falconry, with the following exceptions:

(a) Bullfrogs may be hunted only by methods listed in WAC 220-416-120.

(b) Dusky grouse, sooty grouse, spruce grouse, ruffed grouse, snowshoe hare, and cottontail rabbit may be hunted with an air rifle no smaller than .22 caliber and no larger than .25 caliber.

(4) It is unlawful to hunt game animals or game birds with a shotgun larger than 10 gauge.

(5) It is unlawful to hunt game birds with a rifle or handgun, with the exception of ~~((blue))~~:

(a) Dusky grouse, sooty grouse, spruce grouse and ruffed grouse ~~((-~~

~~(6) It is unlawful to hunt~~); and

(b) Turkey, which it is unlawful to hunt with a weapon other than ~~((shotgun shooting #4 or smaller shot, bow and arrow, crossbow,))~~ the following:

(i) Crossbow or bow and arrow;

(ii) Shotgun shooting #4 or smaller shot, or muzzleloading shotgun shooting #4 or smaller shot;

(iii) Legal modern handgun designed for hunting, shooting #4 or smaller shot, and not capable of holding more than three shells. Handgun barrel length must be a minimum of 10 inches, inclusive of choke tube. Modern handguns must shoot a minimum three inch shotshell of .410 caliber or larger;

(iv) Legal muzzleloading handgun designed for hunting and shooting #4 or smaller shot. Handgun barrel length must be a minimum of 10 inches. Muzzleloading handguns must be .45 caliber or larger.

~~((7))~~ (6) A violation of this section is punishable under RCW 77.15.400, 77.15.410, or 77.15.430, depending on the species hunted.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-414-020, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.150, and 77.12.240. WSR 15-10-035 (Order 15-97), § 232-12-047, filed 4/28/15, effective 5/29/15. Statutory Authority: RCW 77.12.047, 77.12.240, and 77.32.070. WSR 14-10-019 (Order 14-95), § 232-12-047, filed 4/25/14, effective 5/26/14. Statutory Authority: RCW 77.12.047. WSR 12-11-005 (Order 12-70), § 232-12-047, filed 5/2/12, effective 6/2/12. Statutory Authority: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.150, 77.12.240, 77.32.070, 77.32.530. WSR 10-10-061 (Order 10-94), § 232-12-047, filed 4/30/10, effective 5/31/10. Statutory Authority: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.150, 77.12.240. WSR 09-09-083 (Order 09-53), § 232-12-047, filed 4/15/09, effective 5/16/09. Statutory Authority: RCW 77.12.047 and 77.12.020. WSR 04-11-036 (Order 04-98), § 232-12-047, filed 5/12/04, effective 6/12/04. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770, 77.12.780. WSR 00-11-137 (Order 00-50), § 232-12-047, filed 5/23/00, effective 6/23/00. Statutory Authority: RCW 77.12.040. WSR 98-10-006 (Order 98-53), § 232-12-047, filed 4/22/98, effective 5/23/98; WSR 90-14-108 (Order 449), § 232-12-047, filed 7/5/90, effective 8/5/90; WSR 83-01-006 (Order 198), § 232-12-047, filed 12/2/82; WSR 82-04-034 (Order 177), § 232-12-047, filed 1/28/82; WSR 81-22-002 (Order 174), § 232-12-047, filed 10/22/81; WSR 81-12-029 (Order 165), § 232-12-047, filed 6/1/81. Formerly WAC 232-12-130.]

OTS-2890.3

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

WAC 220-414-040 Nontoxic shot requirements. (1) It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading) other than nontoxic shot when hunting for waterfowl, coot, or snipe. Nontoxic shot includes the following approved types:

Approved Nontoxic Shot Type*	Percent Composition by Weight
bismuth-tin	97 bismuth, 3 tin
iron (steel)	iron and carbon
iron-tungsten	any proportion of tungsten, ≥ 1 iron
iron-tungsten-nickel	≥ 1 iron, any proportion of tungsten, up to 40 nickel
copper-clad iron	84 to 56.59 iron core, with copper cladding up to 44.1 of the shot mass
tungsten-bronze	51.1 tungsten, 44.4 copper, 3.9 tin, 0.6 iron; and 60 tungsten, 35.1 copper, 3.9 tin, 1 iron
tungsten-iron-copper-nickel	40-76 tungsten, 10-37 iron, 9-16 copper, 5-7 nickel
tungsten-matrix	95.9 tungsten, 4.1 polymer
tungsten-polymer	95.5 tungsten, 4.5 nylon 6 or 11
tungsten-tin-iron	any proportions of tungsten and tin, ≥ 1 iron
tungsten-tin-bismuth	any proportions of tungsten, tin, and bismuth
tungsten-tin-iron-nickel	65 tungsten, 21.8 tin, 10.4 iron, 2.8 nickel
tungsten-iron-polymer	41.5-95.2 tungsten, 1.5-52.0 iron, and 3.5-8.0 fluoropolymer
*Coatings of copper, nickel, tin, zinc, zinc chloride, zinc chrome, and fluoropolymers on approved nontoxic shot types also are approved.	

The director may adopt additional nontoxic shot types consistent with federal regulations.

(2) It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading) other than nontoxic shot in the following areas:

- (a) Well's Wildlife Area (Bridgeport Bar Unit);
- (b) Cowlitz Wildlife Area (all units);
- (c) Whatcom Wildlife Area (all units);
- (d) Shillapoo Wildlife Area (all units);
- (e) Skagit Wildlife Area (all units);
- (f) Snoqualmie Wildlife Area (all units);
- (g) Sunnyside-Snake River Wildlife Area (Headquarters, Byron and Windmill Ranch units);
- (h) Sinlahekin Wildlife Area (Driscoll Island, Hegdahl, and Kline Parcel units);

(i) ~~((Olympic))~~ Johns River Wildlife Area (Chinook ~~((and)),~~ Chehalis, and Elk River units);

(j) South Puget Sound Wildlife Area ~~((Davis Creek (Koopman Unit))~~) (Big Beef Creek, Lake Koeneman, Nisqually, Skokomish, and Union River units);

(k) Scatter Creek Wildlife Area (all units);

(l) North Olympic Wildlife Area (all units).

(3) It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading), other than nontoxic shot, when hunting for upland game birds (pheasants, quail, chukar, or gray partridge), mourning doves, band-tailed pigeons, or game animals in the following areas:

(a) Chehalis River pheasant release site;

~~(b) ((Dungeness Recreation Area;~~

~~(c) Hoehn Road pheasant release site;~~

~~(d)) Hunter Farms pheasant release site;~~

~~((e) Raymond Airport pheasant release site;~~

~~(f))~~ (c) Two Rivers and Wallula Units of the U.S. Fish and Wildlife Service's McNary National Wildlife Refuge;

~~((g))~~ (d) All Whidbey Island pheasant release sites.

(4) It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading), other than nontoxic shot, when hunting for upland game birds (pheasant, quail, chukar, and gray partridge), mourning doves, and band-tailed pigeons on all WDFW designated pheasant release sites not listed in subsections (2) and (3) of this section.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-414-040, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.150, and 77.12.240. WSR 15-10-034 (Order 15-96), § 232-12-068, filed 4/28/15, effective 5/29/15. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.210, and C.F.R. Title 50, Part 21, Subpart C, Section 21.29; Migratory Bird Treaty Act. WSR 10-18-012 (Order 10-214), § 232-12-068, filed 8/20/10, effective 9/20/10. Statutory Authority: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.150, 77.12.240. WSR 09-09-083 (Order 09-53), § 232-12-068, filed 4/15/09, effective 5/16/09. Statutory Authority: RCW 77.12.047, 77.12.020. WSR 08-01-052 (Order 07-292), § 232-12-068, filed 12/13/07, effective 1/13/08. Statutory Authority: RCW 77.12.047. WSR 06-16-133 (Order 06-181), § 232-12-068, filed 8/2/06, effective 9/2/06; WSR 05-17-098 (Order 05-174), § 232-12-068, filed 8/15/05, effective 9/15/05; WSR 03-16-030 (Order 03-165), § 232-12-068, filed 7/29/03, effective 8/29/03; WSR 03-13-047 (Order 03-129), § 232-12-068, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 77.12.040. WSR 01-17-092 (Order 01-157), § 232-12-068, filed 8/20/01, effective 9/20/01. Statutory Authority: RCW 77.12.040, 77.12.020, 77.32.070, 77.32.530. WSR 01-10-048 (Order 01-69), § 232-12-068, filed 4/26/01, effective 5/27/01. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770, 77.12.780. WSR 00-11-137 (Order 00-50), § 232-12-068, filed 5/23/00, effective 6/23/00. Statutory Authority: RCW 77.12.040. WSR 99-17-034 (Order 99-118), § 232-12-068, filed 8/11/99, effective 9/11/99; WSR 98-17-044 (Order 98-152), § 232-12-068, filed 8/13/98, effective 9/13/98; WSR 97-18-026 (Order 97-164), § 232-12-068, filed 8/25/97, effective 9/25/97. Statutory Authority: RCW 77.12.040 and 77.12.010. WSR 96-18-009 (Order 96-127), § 232-12-068, filed 8/22/96, effective

9/22/96. Statutory Authority: RCW 77.12.040. WSR 95-18-072 (Order 95-126) § 232-12-068, filed 9/1/95, effective 10/2/95.]

OTS-2900.1

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

- WAC 220-414-050 Shotgun shell restriction areas.** (1) It is unlawful to have in possession more than 15 shotgun shells or to fire (shoot) more than 15 shells in one day on the following areas:
- (a) The Island Unit of the Skagit Wildlife Area in Skagit County.
 - (b) The Spencer Island Unit of the Snoqualmie Wildlife Area in Snohomish County.
 - (c) The Samish Unit of the Skagit Wildlife Area in Skagit County.
 - (d) The Johnson/DeBay's Slough Hunt Unit of the Skagit Wildlife Area in Skagit County: In Skagit County beginning at the intersection of Francis Road and DeBay Isle Road (N 48.467817 W -122.255143); then northeast approximately 125 feet to a white corner marker (N 48.46818 W -122.254977); then east approximately 250 feet along the parking area fence line to a white corner marker (N 48.468087 W -122.25392); then north along the fence line approximately 334 feet to corner of fence line (N 48.469067 W -122.253787); then east along the fence line approximately 250 feet to a white corner marker (N 48.469081 W -122.252834); then north approximately 2185 feet to orange corner marker (N 48.475024 W -122.252937); then west approximately 1421 feet to the white corner marker (~~(N 48.475072 W -122.26007)~~) (N 48.4750691 W -122.2582045); then south approximately 1170 feet to the west shoreline of DeBay Slough white corner marker (N 48.471872 W -122.258097); then move easterly and southerly along the west shoreline of DeBay Slough approximately 1850 feet to white corner marker on the south side of DeBay Isle Road (~~(N 48.468225 W -122.260139)~~) (N 48.4680860 W -122.2563066); then easterly along the south side of DeBay's Isle Road to the intersection of Francis Road and the point of beginning.
 - (e) (~~All lands managed by the department north of East Anderson Road and west of~~) The Dungeness ((River)) Unit of the North Olympic Wildlife Area in Clallam County.
 - (f) The Samish River Unit of the Skagit Wildlife Area in Skagit County.
 - (g) The South Padilla Bay Unit of the Skagit Wildlife Area in Skagit County.
- (2) It is unlawful to have in possession more than 25 shotgun shells or to fire (shoot) more than 25 shells in one day on the Nisqually Unit of the South Puget Sound Wildlife Area in Thurston County.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-414-050, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.150, and 77.12.240. WSR 15-10-034 (Order 15-96), § 232-16-770, filed 4/28/15, effective 5/29/15. Statutory Authority: RCW 77.12.040. WSR 98-17-042 (Order 98-153), § 232-16-770, filed 8/13/98, effective 9/13/98. Statutory Au-

thority: RCW 77.12.040 and 77.12.010. WSR 96-18-008 (Order 96-126), § 232-16-770, filed 8/22/96, effective 9/22/96.]

OTS-2865.2

AMENDATORY SECTION (Amending WSR 18-11-061, filed 5/11/18, effective 6/11/18)

WAC 220-414-060 Muzzleloading firearms. (1) Definitions.

(a) Muzzleloader: A firearm that is loaded from the muzzle and uses black powder or a black powder substitute as recommended by the manufacturer for use in all muzzleloading firearms. The term load refers to the powder charge and projectile and both must be loaded from the muzzle.

(b) A muzzleloading firearm shall be considered loaded if a powder charge and a projectile, either shot or single projectile are in the barrel and the barrel or breech is capped or primed.

(2) It is unlawful to hunt wildlife using a muzzleloading firearm that does not meet the following specifications:

(a) A muzzleloading shotgun or rifle must have a single or double barrel, rifled or smooth-bored.

(b) A muzzleloading shotgun or rifle used for deer must be .40 caliber or larger. Buckshot size #1 or larger may be used in a smooth-bore of .60 caliber or larger for deer.

(c) A muzzleloading shotgun, rifle, or handgun used for all other big game must be .45 caliber or larger.

(d) Persons lawfully hunting small game with a double barrel, muzzleloading shotgun may keep both barrels loaded.

(e) A muzzleloading handgun must have a single or double barrel of at least eight inches, must be rifled, and must be capable of being loaded with (~~forty-five~~) 45 grains or more of black powder or black powder substitute per the manufacturer's recommendations.

(f) A muzzleloading handgun used for big game must be .45 caliber or larger.

(g) A handgun designed to be used with black powder, including black powder percussion revolvers, can be used to hunt forest grouse, cottontail rabbits, and snowshoe hares.

(3) In addition to the above requirements, it is unlawful to participate (hunt) in a muzzleloading hunting season using a firearm that does not meet the following specifications for a muzzleloader. However, a modern handgun may be carried for personal protection. Modern handguns cannot be used to hunt big game or dispatch wounded big game during a big game hunting season for muzzleloading firearms.

(a) Ignition is to be wheel lock, matchlock, flintlock, or percussion. Primers designed to be used in modern cartridges are legal.

(b) Sights must be open, peep, or of other open sight design. Fiber optic sights are legal. Telescopic sights or sights containing glass are prohibited.

(c) It is unlawful to have any electrical device or equipment attached to a muzzleloading firearm while hunting.

(d) Those persons lawfully hunting big game with a double barrel muzzleloader may only keep one barrel loaded.

(4) Muzzleloading firearms used during a modern firearm season are not required to meet ignition, sight, or double barrel restrictions.

(5) A violation of this section is punishable under RCW 77.15.400, 77.15.410, or 77.15.430, depending on the species hunted.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.020, 77.12.040, 77.12.047, 77.12.150, 77.12.210, 77.12.240, 77.12.320, 77.12.570, 77.12.800, 77.15.245, 77.32.007, 77.32.050, 77.32.070, 77.32.090, 77.32.370, and 77.32.530. WSR 18-11-061 (Order 18-76), § 220-414-060, filed 5/11/18, effective 6/11/18. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-414-060, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047, 77.12.240, and 77.32.070. WSR 14-10-019 (Order 14-95), § 232-12-051, filed 4/25/14, effective 5/26/14. Statutory Authority: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.150, 77.12.240, 77.32.070, 77.32.530. WSR 10-10-061 (Order 10-94), § 232-12-051, filed 4/30/10, effective 5/31/10. Statutory Authority: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.150, 77.12.240. WSR 09-09-083 (Order 09-53), § 232-12-051, filed 4/15/09, effective 5/16/09. Statutory Authority: RCW 77.12.047. WSR 06-11-032 (Order 06-92), § 232-12-051, filed 5/8/06, effective 6/8/06; WSR 03-13-047 (Order 03-129), § 232-12-051, filed 6/12/03, effective 7/13/03. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770, 77.12.780. WSR 00-11-137 (Order 00-50), § 232-12-051, filed 5/23/00, effective 6/23/00. Statutory Authority: RCW 77.04.055 and 77.12.040. WSR 90-14-109 (Order 450), § 232-12-051, filed 7/5/90, effective 8/5/90; WSR 89-11-062 (Order 393), § 232-12-051, filed 5/18/89. Statutory Authority: RCW 77.12.040. WSR 84-18-013 (Order 234), § 232-12-051, filed 8/28/84; WSR 81-12-029 (Order 165), § 232-12-051, filed 6/1/81. Formerly WAC 232-12-135.]

OTS-2866.2

AMENDATORY SECTION (Amending WSR 19-10-011, filed 4/19/19, effective 5/20/19)

WAC 220-414-070 Archery requirements. (1) The following provisions apply to all archery hunting seasons:

(a) It is unlawful for any person to carry or have in his possession any firearm while archery hunting in the field during an archery season specified for that area, except for modern handguns carried for personal protection. Modern handguns cannot be used to hunt big game or dispatch wounded big game during an archery big game hunting season.

(b) It is unlawful to have any electrical equipment or electric device(s), except for illuminated nocks, attached to the bow or arrow while hunting.

(c) It is unlawful to discharge a bow from a vehicle or from, across, or along the maintained portion of a public highway.

(d) It is unlawful to use any device secured to or supported by the bow for the purpose of maintaining the bow at full draw or in a firing position.

(e) It is unlawful to hunt big game animals with any arrow or bolt that does not have a sharp broadhead, or with a broadhead blade or blades that are less than seven-eighths of an inch wide.

(f) It is unlawful to hunt wildlife with any bow equipped with a scope. A verifier peep sight that magnifies the sights is not considered a scope and is lawful.

(2) The following provisions apply to long bow, recurve bow and compound bow archery equipment:

(a) It is unlawful for any person to hunt big game animals with a bow that does not produce a minimum of 40 pounds of pull measured at (~~twenty-eight~~) 28 inches or at full draw.

(b) It is unlawful to hunt big game animals with any arrow measuring less than 20 inches in length.

(3) A violation of this section is punishable under RCW 77.15.400, 77.15.410, or 77.15.430, depending on the species hunted.

[Statutory Authority: RCW 77.04.090, 77.04.130, 77.15.568, 77.08.010, 77.65.510, 77.65.515, and 77.65.520. WSR 19-10-011 (Order 19-79), § 220-414-070, filed 4/19/19, effective 5/20/19. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-414-070, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.150, and 77.12.240. WSR 15-10-035 (Order 15-97), § 232-12-054, filed 4/28/15, effective 5/29/15. Statutory Authority: RCW 77.12.047, 77.12.240, and 77.32.070. WSR 14-10-019 (Order 14-95), § 232-12-054, filed 4/25/14, effective 5/26/14; WSR 13-11-078 (Order 13-94), § 232-12-054, filed 5/16/13, effective 6/16/13. Statutory Authority: RCW 77.12.047. WSR 12-11-005 (Order 12-70), § 232-12-054, filed 5/2/12, effective 6/2/12. Statutory Authority: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.150, 77.12.240, 77.32.070, 77.32.530. WSR 10-10-061 (Order 10-94), § 232-12-054, filed 4/30/10, effective 5/31/10. Statutory Authority: RCW 77.12.047, 77.12.020, 77.12.570, 77.12.210, 77.12.150, 77.12.240. WSR 09-09-083 (Order 09-53), § 232-12-054, filed 4/15/09, effective 5/16/09. Statutory Authority: RCW 77.12.047. WSR 06-11-032 (Order 06-92), § 232-12-054, filed 5/8/06, effective 6/8/06. Statutory Authority: RCW 77.12.047 and 77.12.020. WSR 04-11-036 (Order 04-98), § 232-12-054, filed 5/12/04, effective 6/12/04. Statutory Authority: RCW 77.12.047. WSR 03-13-047 (Order 03-129), § 232-12-054, filed 6/12/03, effective 7/13/03; WSR 01-17-068 (Order 01-167), § 232-12-054, filed 8/15/01, effective 9/15/01. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770, 77.12.780. WSR 00-11-137 (Order 00-50), § 232-12-054, filed 5/23/00, effective 6/23/00. Statutory Authority: RCW 77.12.040. WSR 90-03-092 (Order 427), § 232-12-054, filed 1/24/90, effective 2/24/90; WSR 88-13-012 (Order 310), § 232-12-054, filed 6/6/88; WSR 81-12-029 (Order 165), § 232-12-054, filed 6/1/81. Formerly WAC 232-12-140.]

OTS-3587.1

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

WAC 220-414-090 Use of decoys and calls. (1) It is unlawful to hunt waterfowl, wild turkeys, or deer with the use or aid of battery-powered or other electronic devices as decoys.

(2) It is unlawful to hunt waterfowl, wild turkeys, or deer with the use or aid of electronic calls, except electronic calls may be used for lesser snow geese and Ross' geese during season dates occurring after February 1st in Goose Management Area 1 and Goose Management Area 4, when lesser snow geese and Ross' geese are the only species open to harvest as specified in WAC 220-416-060.

(3) Except as otherwise authorized by rule of the commission or by contract or agreement with the department, any person placing waterfowl decoys on any area (including water, access areas, roads, and trails) under the ownership, management, lease, or control of the department, shall not:

- (a) Place waterfowl decoys prior to 4:00 a.m.;
 - (b) Allow or permit waterfowl decoys to be unattended or not in their immediate control for a period greater than one hour;
 - (c) Fail to remove waterfowl decoys within two hours after the close of established daily hunting hours; or
 - (d) Place waterfowl decoys on days closed to waterfowl hunting.
- (4) This regulation shall be enforced under RCW 77.15.400.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-414-090, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047. WSR 07-21-085 (Order 07-255), § 232-12-257, filed 10/17/07, effective 11/17/07; WSR 06-11-032 (Order 06-92), § 232-12-257, filed 5/8/06, effective 6/8/06. Statutory Authority: RCW 77.12.040. WSR 01-17-092 (Order 01-157), § 232-12-257, filed 8/20/01, effective 9/20/01. Statutory Authority: RCW 77.12.040, 77.12.010, 77.12.020, 77.12.770, 77.12.780. WSR 00-11-137 (Order 00-50), § 232-12-257, filed 5/23/00, effective 6/23/00. Statutory Authority: RCW 77.12.040. WSR 81-12-029 (Order 165), § 232-12-257, filed 6/1/81. Formerly WAC 232-12-630.]

WSR 22-13-111

PERMANENT RULES

BOARD OF TAX APPEALS

[Filed June 15, 2022, 3:23 p.m., effective July 16, 2022]

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

Purpose: The purpose of these changes is to clarify statutory language, simplify the calculation of deadlines, and streamline the hearings process.

Citation of Rules Affected by this Order: New WAC 456-10-365 and 456-10-415; repealing WAC 456-10-140, 456-10-150, 456-10-160, 456-10-215, 456-10-330, 456-10-507 and 456-10-970; and amending WAC 456-10-001, 456-10-010, 456-10-110, 456-10-120, 456-10-210, 456-10-220, 456-10-230, 456-10-300, 456-10-310, 456-10-315, 456-10-325, 456-10-335, 456-10-410, 456-10-500, 456-10-501, 456-10-503, 456-10-505, 456-10-510, 456-10-515, 456-10-520, 456-10-530, 456-10-540, 456-10-545, 456-10-547, 456-10-550, 456-10-555, 456-10-560, 456-10-565, 456-10-710, 456-10-715, 456-10-725, 456-10-730, and 456-10-755.

Statutory Authority for Adoption: RCW 82.03.170.

Adopted under notice filed as WSR 21-22-023 [22-08-106] on May 20, 2022 [April 6, 2022].

Changes Other than Editing from Proposed to Adopted Version: WAC 456-10-365 (2)(c) added to include a cost approach to valuation, subsection (3)(a) page limits increased to 75, subsection (3)(b) page limits increased to 125; WAC 456-10-505(1) increased to 38 calendar days, (2) increased to 31 calendar days, subsection (3) increased to at least 17 calendar days; WAC 456-10-510 (1)(d) motions for summary judgment arguments reduced to 10 minutes per side, subsection (1)(f) proposed order no longer required, subsection (4) responses no longer required; WAC 456-10-450(3) language added to allow redirect of witnesses; WAC 456-10-755(2) time for petition for reconsideration increased to 20 days from decision.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 33, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 33, Repealed 7.

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: May 20, 2022.

Andrea Vingo
Review Officer

OTS-3710.5

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-001 Purpose and application of chapter. (1) This chapter explains how informal hearings are conducted before the board of tax appeals (board). ~~((Although informal hearings are available to all parties,))~~ The informal process is helpful for ((persons)) those who are not represented by ((counsel. In the informal process a taxpayer does not need to possess)) an attorney or do not have legal expertise ((in order to pursue an appeal)). These rules of practice and procedure will be liberally construed to secure the just, speedy, and ~~((economical))~~ efficient determination of every ~~((action))~~ appeal.

(2) Where procedures are not ~~((covered))~~ addressed by this chapter, the board may, upon its own motion or upon written ~~((application by))~~ motion of any party, refer to and apply any rule provided for in chapter 456-09 WAC - Formal hearings—Practice and procedure, chapter 10-08 ~~((Washington Administrative Code ()))~~ WAC ~~((+))~~ - Model rules of procedure, or the superior court civil rules. This chapter ~~((augmentments))~~ adds but does not ~~((supplant))~~ replace the provisions of chapter 82.03 RCW.

(3) The superior court civil rules, rules of professional conduct, the Washington Administrative Code (WAC), and the Revised Code of Washington (RCW) referred to ~~((herein))~~ in this chapter are available in public libraries and online ~~((at various websites)).~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-001, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-010 ((Distinction)) Difference between formal and informal ((hearing and converting an appeal)) proceedings. (1) A party making an appeal may ~~((elect in writing, with))~~ choose either a formal or informal hearing in its written notice of appeal ~~((, either a formal or informal hearing)).~~ Informal hearings are conducted ~~((pursuant))~~ according to the rules of practice and procedure ~~((set forth))~~ outlined in this chapter. Formal hearings are conducted ~~((pursuant))~~ according to the Administrative Procedure Act, chapter 34.05 RCW, and the rules of practice and procedure of chapter 456-09 WAC. Failure to ~~((elect in writing a formal or informal hearing at the time of submitting the notice of appeal shall))~~ choose a type of hearing will result in the proceeding being conducted as informal.

(a) ~~((A formal decision of the board is subject to judicial review pursuant to RCW 34.05.570. Judicial review is limited to the record made of the proceedings before the board. The record made of the proceedings includes a verbatim account of the hearings together with the evidence, pleadings, and documents submitted to the board by the parties. In appeals from a decision of a board of equalization, the record includes the decision of that board together with the evidence submitted thereto.~~

~~((b))~~ Decisions entered in an informal appeal are not subject to judicial review ~~((as authorized))~~ under the Administrative Procedure Act, chapter 34.05 RCW like formal decisions. Proposed and initial de-

cisions in informal cases, however, can be internally appealed to the board by filing an exception as outlined in WAC 456-10-730.

(b) The informal appeal process is not designed for parties who intend to engage in more than a limited exchange of documents and information between the parties. This exchange process is known as discovery. In cases where a party anticipates discovery, a formal proceeding may be better suited as discovery is conducted according to the Washington state superior court civil rules.

(c) ((Aggrieved)) The parties may have ((avenues of further appeal)) additional avenues to challenge allowed by law ((which are not pertinent to the statutory authority granted to the board and)), but which the board does not have legal authority to grant, and therefore, are not discussed ((herein)) in this chapter.

(2) ((The)) An appeal may be converted from an informal to a formal proceeding as provided below((-)):

(a) ((The)) A respondent((, as a party to an appeal)) in an appeal from a decision by a board of equalization pursuant to RCW 84.08.130 ((appeal from a decision by a board of equalization) may, within twenty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of intention)) may submit a request that the hearing be ((a formal hearing)) formal, if made within 20 calendar days of the date the notice of appeal is served.

(b) ((In appeals under RCW 82.03.190,)) The department of revenue ((may, within thirty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board)), in appeals under RCW 82.03.130 (1)(a), may submit a notice of its intention that the hearing be ((a)) formal ((hearing)), if made within 30 calendar days of the date the notice of appeal is served.

(c) ((In appeals under RCW 82.03.130 (1)(e),)) The department of revenue ((may, within ten calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board)), in appeals under RCW 82.03.130 (1)(e), may submit a notice of its intention that ((the)) a hearing be ((a formal hearing)) formal, if made within 10 calendar days from the date the notice of appeal is served.

((d) At any time up to thirty days prior to the date of the hearing, the parties may submit to the clerk of the board a notice signed by all parties of intention to convert the proceedings to either a formal or informal hearing.))

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-010, filed 6/21/05, effective 8/1/05; WSR 94-07-043, § 456-10-010, filed 3/10/94, effective 4/10/94; WSR 89-10-057 (Order 89-03), § 456-10-010, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-110 Definitions. ((As used)) (1) In this chapter, the ((following terms shall)) subsequent terms have the following meanings:

((1)) (a) "Appellant" means a person or entity who appeals any order or decision.

(b) "Board" means the board of tax appeals ((as)) described in chapter 82.03 RCW and chapters 456-09 and 456-10 WAC. Where appropriate, the term "board" also refers to the designated hearing officers, tax referees, or agents of the board ((of tax appeals)).

~~((2))~~ (c) "Decision" means a written judgment or ruling issued by the board, designated hearing officers, tax referees or agents of the board.

(d) "File" means to present or to deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, by fax, or by electronic transmission as provided in these rules. The terms "to file" and "to submit" are used interchangeably.

(e) "Motion" means a written or oral request for the board to take action.

(f) "Order" means a written direction given by the board instructing that some act be done or that some act is prohibited. Orders are not appealable unless otherwise provided by law.

(g) "Party" means any person or entity who is an appellant, respondent, or intervenor.

(h) "Presiding officer" or "hearing officer" ((shall)) means any member of the board, tax referee, or any person who is assigned to conduct a conference or hearing by the board. The presiding officer ((shall have)) has the authority ((as provided by)) outlined in WAC 10-08-200 and chapter 34.05 RCW.

~~((3) "Appellant" means a person, natural or otherwise, who appeals any order or decision to the board of tax appeals.~~

~~(4))~~ (i) "Respondent" means a person ((, natural or otherwise,)) or entity who is ((named)) listed as a responding party in any appeal ((before the board of tax appeals)).

~~((5) "Formal hearing" means a proceeding conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW and chapter 456-09 WAC.~~

~~(6) "Informal hearing" means a proceeding governed by those rules specified in chapter 456-10 WAC.~~

~~(7) "Decision" means a written judgment or ruling, including orders, issued by the board of tax appeals or the designated hearing officers or agents of the board of tax appeals.~~

~~(8) "Party" means any person who in a proceeding before the board is an appellant or respondent.~~

~~(9) "To submit" means to present or to deliver. Submissions to the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to submit" and "to file" are used interchangeably.~~

~~(10) "To file" means to present or to deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to file" and "to submit" are used interchangeably.)~~ (j) "Submit" means to present or deliver to the board. Submissions may be delivered personally, by mail, by commercial delivery service, by fax, or by electronic transmission as provided in these rules. The terms "submit" and "file" are used interchangeably.

(k) "Transmit" means to deliver electronically.

(2) If a term has not been defined in this section, the board will interpret the term as having its ordinary meaning.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-110, filed 6/21/05, effective 8/1/05; WSR 95-05-032 (Order 95-02), §

456-10-110, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. WSR 90-11-106, § 456-10-110, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-110, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-120 Alternative procedures. The board may (~~(, from time to time,)~~) offer expedited or abbreviated procedures for certain informal hearings (~~(in order)~~) to resolve appeals in an (~~(economic and)~~) efficient manner.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-120, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-120, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-210 Appearance and practice before the board. Practice before the board in informal proceedings (~~(shall be)~~) is limited to (~~(the following)~~):

- (1) Taxpayers who are natural persons representing themselves;
- (2) Attorneys at law (~~(duly qualified and entitled to practice in the courts of the state of Washington)~~) authorized to practice in the highest court of any state;
- (3) Public officials (~~(in their official capacity)~~), county assessors, or their authorized representatives;
- (4) Certified public accountants (~~(licensed in the state of Washington)~~) currently licensed in any state;
- (5) (~~(A duly authorized director,)~~) An authorized officer, partner, trustee or full-time employee of an individual firm, association, partnership, or corporation who appears (~~(for)~~) with the permission of such firm, association, partnership, (~~(or)~~) corporation, or trust;
- (6) (~~(Partners, joint venturers, or trustees representing their respective partnerships, joint venturers, or trusts; and~~
- ~~(7))~~ Other persons designated by a taxpayer (~~(with approval of)~~) and approved by the board.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-210, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-210, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-220 Rules of professional conduct. (1) All persons appearing in proceedings before the board (~~(, whether on their own behalf or in a representative capacity, shall conform to the rules of professional conduct (RPC) required of attorneys before the courts of~~

Washington)) are required to follow the rules of professional conduct (RPC) required of attorneys before the courts of Washington. If any such person does not follow these rules, the hearing officer has the discretion, depending on the circumstances, to admonish or reprimand such person, exclude such person from further participation in the proceedings, adjourn the hearing, or report the matter to the board. Further, all persons are required to treat all parties, representatives, and the board's staff courteously and fairly both inside and outside the proceedings.

(2) The board in its discretion, either upon referral by a hearings officer or on its own motion, may consider information that establishes to the board a question regarding a person's ethical conduct and fitness to practice before the board. This information will be considered at a hearing after notice to all parties. If the person's conduct is found to be unethical or unfit, the board may take appropriate disciplinary action including, but not limited to, refusal to permit such person to appear or appear in a representative capacity in any proceeding before the board.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-220, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-220, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 89-10-057, filed 5/2/89)

WAC 456-10-230 Ex parte communication. ~~((No one may))~~ Neither the board nor any person will make or attempt to make any ex parte ((contact)) communications with a member of the board ((or)), presiding officer ((except upon notice and opportunity for all parties to be present or to the extent required for the disposition of ex parte matters as authorized by law)), or tax referee which are prohibited by the Administrative Procedure Act in RCW 34.05.455. Attempts ((by anyone)) to make such ((prohibited ex parte)) communications ((shall)) will be subject ((such person)) to the sanctions ((of)) in WAC 456-10-220 and 456-10-555.

[Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-230, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-300 ((Commencing the)) Initiating an appeal. (1) ~~((Persons wishing to make))~~ Those who wish to initiate an appeal must ((submit to the board an original)) file a notice of appeal and a copy of the order or determination that is being appealed. ((The board will transmit a copy of the notice of appeal and a copy of the order or determination that is being appealed to the respondent(s) within thirty days of its receipt by the board.))

(2) The board will acknowledge ((to the appellant in writing)) receipt of a notice of appeal in excise tax appeals and provide a copy to the department of revenue within 30 days of receipt. The board may acknowledge receipt of a notice of appeal in all other cases.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-300, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-310 Contents of a notice of appeal. (1) ~~((For informal appeals, an appellant may submit a notice of appeal using forms provided by the board.~~

~~(2) In the alternative,))~~ An appellant ((may)) must submit a notice of appeal that substantially contains the following:

(a) The appellant's name, mailing address, telephone number, email address, and that of the representative, if any.

(b) Name of the respondent together with respondent's mailing address, email address, and phone number if known.

~~((When the respondent is a government agency or agencies,))~~ The board may add additional respondents ((in order)) to ensure that all necessary ((persons)) entities are a party to the appeal.

(c) ~~((The date))~~ A copy of the order, decision, or determination ((from which the appeal is taken, together with a copy of the order, decision, or application)) appealed from.

(d) ~~The ((nature of the))~~ type of tax.

(i) In excise tax cases, the amount of the tax ((in controversy and)) that should be reduced or refunded and the reasons for it, as well as the period ((covered thereby)) of time at issue;

(ii) In property tax cases, the parcel number of the property ((under appeal)), the ((year for which the valuation has been determined)) assessment year(s) at issue, the ((full)) value ((as)) determined by the local board of equalization, and ((a declaration of true and fair value as alleged by the appellant)) the appellant's contended value; and

(iii) In property tax exemption cases, the parcel number of the property ((under appeal)), and the year(s) for which the exemption is at issue ((, the basis under which exempt status should be granted or denied, and the use of the property)).

(e) ~~((Specification of the issue to be decided by the board.~~

~~(f) A clear, separate, and concise assignment of each error alleged and a short statement of facts upon which the appellant relies to sustain each contention.~~

~~(g))~~ The relief sought.

~~((h) The))~~ (f) A signature ((of the appellant or the appellant's representative)) or acknowledgment, electronic or otherwise, by the appellant or the appellant's representative that all the information contained in the notice of appeal is true and correct to the best of his or her knowledge, and that he or she will comply with the rules of conduct in this chapter.

~~((3))~~ (2) The board may, upon motion of a party or upon its own motion, require ((a more complete statement of the claim or defense or)) additional information or explanation of any matter stated in ((any)) a notice of appeal.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-310, filed 6/21/05, effective 8/1/05; WSR 98-22-040, § 456-10-310, filed 10/29/98, effective 11/29/98. Statutory Authority: RCW 82.03.170,

82.03.140 and 82.03.150. WSR 90-11-106, § 456-10-310, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-310, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-315 Deadlines for submitting ~~((the))~~ a notice of appeal. (1) The jurisdiction of the board ~~((to hear an appeal))~~ is limited to those appeals ~~((submitted within))~~ that comply with and are filed by the deadlines stated in this section ~~((. Any appeal to the board shall be submitted within the time required))~~ or by the statute governing the respective agency or proceeding involved. ~~((All time periods set forth below are expressed in calendar days.))~~

(a) ~~((Appeals))~~ For appeals of a denial of petition or notice of determination for a reduction or refund taken by the department of revenue pursuant to RCW 82.03.190, ~~((thirty))~~ 30 days from the ~~((mailing of))~~ date the determination was mailed or transmitted.

(b) For appeals from a county board of equalization pursuant to RCW 84.08.130, ~~((thirty))~~ 30 days from the ~~((mailing of the decision))~~ date the determination was mailed or transmitted.

(c) For appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, ~~((thirty))~~ 30 days from the ~~((mailing of))~~ date the determination was mailed or transmitted.

(d) For appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and ~~((the))~~ its apportionment ~~((thereof to a county))~~ made pursuant to chapters 84.12 and 84.16 RCW, ~~((thirty))~~ 30 days from the ~~((mailing of the order))~~ date the determination was mailed or transmitted.

(e) For appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075, ~~((fifteen days after the mailing of the certification))~~ 15 days from the date the certification was mailed or transmitted.

(f) For appeals from the decisions of a sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to RCW 79.94.210, ~~((thirty))~~ 30 days from the ~~((mailing of the notification))~~ date the certification was mailed or transmitted.

(g) For appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060, ~~((thirty))~~ 30 days from the ~~((mailing of))~~ date the ordinance was mailed or transmitted.

(h) For appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065, ~~((thirty))~~ 30 days after ~~((the publication of))~~ the rate was published.

(i) For appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091, on or before the ~~((sixtieth))~~ 60th day after the date of final adoption.

(j) For appeals from the denial of a tax exemption application by the department of revenue pursuant to RCW 84.36.850, ~~((thirty))~~ 30 days from the ~~((mailing of))~~ date the determination was mailed or transmitted.

(2) All time periods set forth in this section are expressed in calendar days unless otherwise noted. If the last date for submitting the notice of appeal falls ~~((upon))~~ on a Saturday, Sunday, or legal holiday as defined in RCW 1.16.020, the submission ~~((shall))~~ will be considered timely if ~~((performed))~~ submitted on the next business day by 5:00 p.m. Pacific Time.

(3) Any party may ~~((, by motion,))~~ file a written motion to challenge the jurisdiction of the board ~~((in any appeal))~~. The board may, ~~((upon))~~ on its own motion, raise ~~((such jurisdictional issues))~~ a question about jurisdiction.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-315, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. WSR 90-11-106, § 456-10-315, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-315, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-325 Date and manner of submitting ~~((the))~~ a notice of appeal. (1) ~~((The date of submitting))~~ A notice of appeal ~~((shall be the))~~ is considered submitted on the date of ~~((actual))~~ receipt by the board at its Olympia office if the appeal is hand delivered. The board's date stamp ~~((placed thereon shall))~~ will be evidence of the date of receipt. If the notice of appeal is mailed, the postmark will ~~((control and shall))~~ be evidence of the date of submission.

(2) ~~((All documents may))~~ A notice of appeal may also be submitted to the board ~~((via fax or))~~ by fax, electronic mail ~~((transmission. However,))~~, or uploaded through the board's website. A submission will not be ~~((deemed complete and the board will not acknowledge receipt of the notice of appeal as provided in WAC 456-10-300 unless the following procedures are strictly observed:~~

(a) Documents received by fax or electronic mail will be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped "received" on the following business day. The date and time indicated by the board's fax or computer shall be evidence of the date and time of receipt of transmission.

(b) ~~The original notice of appeal must be mailed and postmarked or otherwise submitted to the board on or before the date of fax or electronic transmission.~~

(c) ~~All fax or electronic transmissions are sent at the risk of the sender)~~ considered complete unless received by 5:00 p.m. Pacific Time on the date due. The date and time indicated by the board's fax or computer will be evidence of the date and time of receipt.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-325, filed 6/21/05, effective 8/1/05; WSR 98-22-040, § 456-10-325, filed 10/29/98, effective 11/29/98; WSR 95-05-032 (Order 95-02), §

456-10-325, filed 2/8/95, effective 3/11/95; WSR 94-07-043, § 456-10-325, filed 3/10/94, effective 4/10/94. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. WSR 90-11-106, § 456-10-325, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-325, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-335 Response. The respondent may submit a response to the notice of appeal (~~((with the board))~~). The response, if any, must be submitted to the board (~~((at least ten business))~~) within 30 calendar days ((prior to hearing)) after the date the notice of appeal was served, unless otherwise ordered (~~((by the board))~~), together with proof of service pursuant to WAC 456-10-410.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-335, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-335, filed 5/2/89.]

NEW SECTION

WAC 456-10-365 Limits on exhibits and evidence. (1) Each party must indicate the specific pages of evidence it intends to rely on, if any, from the body from which the party appeals. For property tax appeals this includes the record at the county board. For excise tax appeals, this includes audit papers, refund reviews, and exemption applications. For other appeals, this includes documents submitted by both parties to the decision maker below. The actual decision appealed from (the county board ruling, department determination, or the equivalent) is not counted within the evidence limits. Failure to indicate specific page numbers will result in the presumption that the party does not intend to rely on the underlying record, and instead intends to submit and rely only on new evidence.

(2) For property tax appeals, each party is strongly encouraged to submit the following exhibits or evidence in the following instances:

(a) If the party intends to rely on comparable sales, a table of comparable sales. The table should list the sales in order of most similar to least similar to the subject property, and include each sale's age, size, sales price, date of sale, and location relative to the subject property. A suggested format is available on the board's website or by contacting the board's staff.

(b) If the party intends to rely on an income approach, an outline. The outline should at least include the subject property's square footage, contended price per square foot, vacancy rate, operating expenses, income, and capitalization rate.

(c) If the party intends to rely on a cost approach, a cost breakdown that includes the cost elements used and how the costs were determined.

(3) Each party may submit evidence and/or exhibits in support of its appeal; however, submissions are limited to the page limitations below. Excluded from these limits are the actual decisions appealed

from (the county board ruling, department determination, or the equivalent) and formal appraisals from a licensed appraiser:

(a) For residential property tax appeals, each party is limited to submitting a total of 75 pages per assessment-year appealed, including the record of the county board of equalization not excluded as outlined above that the party intends to rely on;

(b) For commercial property tax appeals, each party is limited to submitting a total of 125 pages per assessment-year appealed, excluding the subject's rent roll and income statements, but including the record of the county board of equalization not excluded as outlined above that the party intends to rely on;

(c) For excise tax appeals, each party is limited to submitting a total of 250 pages, including the record of the department of revenue not excluded as outlined above that the party intends to rely on;

(d) For all other appeals, each party is limited to submitting a total of 75 pages, including the record of the body from which a decision is appealed, and which the party intends to rely on.

(4) For property tax appeals, each party should submit no more than five comparable sales. If both unimproved and improved sales are necessary, no more than five of each type should be submitted.

(5) A party may file a motion with the board to submit evidence and/or exhibits beyond the page limits up to 500 pages, which the board will grant for good cause. Exceeding the page limits without the board's permission may result in the hearing being continued, or the exclusion of evidence beyond the limits.

(6) The board will not review the record of a county board of equalization or any other tribunal that is unduly large, disorganized, or not numbered.

[]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-410 Service (~~of papers on parties~~) and filing of documents and proof of service. (1) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers submitted to the board (~~shall~~) must be served (~~upon~~) on all counsel and representatives of record and (~~upon~~) on unrepresented parties or (~~upon~~) on their agents designated by them, or to other persons or entities as required by law.

(a) Service (~~shall~~) must be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax (~~and same-day mailing of copies; or~~); by commercial delivery company; or electronically.

(b) Service by mail (~~shall be regarded as completed upon deposit in the United States mail,~~) will be considered complete as evidenced by the postmark(~~, properly stamped and addressed~~). Service by fax (~~shall be regarded as completed upon production by the fax machine of~~) will be considered complete as evidenced by confirmation of transmission (~~and deposit on the same day in the United States mail~~). Service by commercial delivery (~~shall be regarded as~~) will be considered completed (~~upon~~) on delivery to the delivery company(~~, properly addressed with charges prepaid~~). Electronic service

will be considered completed as evidenced by a sent receipt or the equivalent.

(c) Service must be completed by 5:00 p.m. Pacific Time on the date due.

~~(2) Proof of service. ((Where proof of service is required by statute or rule,)) Receipt ((of the papers)) by the board, together with one of the following, ((shall constitute)) will serve as proof of service:~~

~~(a) ((An acknowledgement)) A written acknowledgment of service by all parties of record.~~

~~(b) A ((certificate that the person signing the certificate served the papers upon)) written declaration of service indicating service on all parties of record ((in the proceeding by delivering a copy thereof in person to (names)).~~

~~(c) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by:~~

~~(i) Mailing a copy thereof, properly addressed with postage pre-paid, to each party to the proceeding or his or her attorney or authorized agent; or~~

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

~~(iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial delivery company)) was made. The declaration must include language that:~~

~~(i) A copy was mailed to each party or his or her attorney or representative; or~~

~~(ii) A copy was faxed to each party to the proceeding or to his or her attorney or representative; or~~

~~(iii) A copy was delivered to a commercial delivery company; or~~

~~(iv) A copy was electronically transmitted to each party or his or her attorney or representative.~~

(3) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers are considered filed with the board:

(a) On the date of receipt by the board at its Olympia office if the document is hand-delivered, commercially delivered, or mailed. The board's date stamp will be evidence of the date of receipt; or

(b) On the date and time indicated by the board's fax or computer, if the document is submitted by fax, electronic mail, or uploaded through the board's website as long as the document shows it was received by 5:00 p.m. Pacific Time on the date due.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-410, filed 6/21/05, effective 8/1/05; WSR 98-22-040, § 456-10-410, filed 10/29/98, effective 11/29/98; WSR 89-10-057 (Order 89-03), § 456-10-410, filed 5/2/89.]

NEW SECTION

WAC 456-10-415 Requirements for briefs, motions, responses, replies, memorandum, and other documentary evidence. (1) All briefs, motions, responses, replies, and memorandum must:

(a) Be legibly printed on letter-size paper (8-1/2 x 11 inches). All margins must be a minimum of one inch. This rule also applies to

attachments unless the nature of the attachment makes compliance impractical.

(b) Be typed in 12-point or larger type in one of the following fonts or their equivalent: Times New Roman, Courier, CG Times, or Arial. They must also be double-spaced and printed only on one side of the page. Footnotes may be single spaced in 10-point or larger type. If it is not possible to type a document, it may be legibly handwritten in blue or black ink. This rule also applies to attachments unless the nature of the attachment makes compliance impractical.

(c) Include a signature block that the signer certifies the number of words in the brief, motion, or memorandum that substantially states: "I certify that this memorandum contains _____ words, in compliance with the board's rules."

(d) Refrain from including, or partially redact where inclusion is necessary, the following personal data identifiers from all documents filed or used as exhibits, unless otherwise ordered by the board:

(i) Dates of birth - Redact to the year of birth, unless deceased;

(ii) Social Security numbers and taxpayer identification numbers - Redact in their entirety;

(iii) Financial account number information - Redact to the last four digits; and

(iv) Driver license numbers - Redact in their entirety.

(2) In the absence of a prehearing order that says otherwise, the following word limits will apply:

(a) Trial briefs may not exceed 6,000 words (approximately 12 pages).

(b) Motions *in limine* and any brief in opposition may not exceed 4,500 words (approximately nine pages).

(c) Dispositive motions; including motions for summary judgment and motions to dismiss, must not exceed 6,000 words (approximately 12 pages). Responses must not exceed 6,000 words, and replies 3,000 words (approximately six pages).

(d) Exceptions and motions for reconsideration and any responses must not exceed 3,000 words (approximately six pages).

(e) All other motions must not exceed 3,000 words (approximately six pages), and responses 1,500 words (approximately three pages).

(3) The board may refuse to consider any text, including footnotes, which is beyond the word limit. Captions, tables of contents, tables of authorities, signature blocks, and certificates of service need not be included within the word limit.

(4) Motions to file over-length motions or briefs are disfavored but may be filed subject to the following:

(a) The motion must be no more than 1,000 words (approximately two pages) in length, and must request a specific number of additional words;

(b) The motion must clearly explain why the party requesting the over-length brief cannot comply with the board's word limit; and

(c) No opposition to the motion may be filed unless requested by the board.

If the board allows a party to file an over-length motion, the brief in opposition will automatically be allowed an equal number of additional words. In all cases, the reply brief cannot exceed one-half the total length of the brief filed in opposition.

[]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-500 Prehearing conference. ~~((The board, upon its own motion or upon request of a party, may conduct a prehearing conference or conferences. Such prehearing conference will be conducted in accordance with the provisions of WAC 456-09-540.))~~ (1) The board may conduct a prehearing conference to consider:

- (a) Whether pleadings or other documents need to be amended;
- (b) Whether the parties can agree to any facts or procedures;
- (c) Deadlines for exchanging evidence, witness lists, exhibit lists, and filing briefs;
- (d) How to label exhibits and attachments to briefs, motions, and other pleadings; and
- (e) Other matters that may help to clarify or streamline the proceeding.

(2) After the prehearing conference, the board or hearing officer will issue an order outlining what occurred at the prehearing conference, including any agreements made by the parties.

(3) Documents or evidence that are submitted after the deadlines or not in a manner outlined in the prehearing conference order will not be considered unless the party offering the evidence can make a clear showing that there was good cause for not following the order.

(4) Nothing in this rule will be interpreted to keep the parties from settling the appeal at any times.

(5) The board or a hearing officer can issue a prehearing order even if a prehearing conference has not been held.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-500, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-501 Limitation on discovery. ~~(1) ((Insofar as))~~ If applicable and not in conflict with this chapter, the statutes and court rules regarding pretrial procedures in civil cases in the superior courts of the state of Washington ((shall)) will be used. ~~((Such))~~ These statutes and rules ((shall)) include, but ((shall not be)) are not limited to, those rules ((pertaining to)) about the discovery of evidence ((by parties to civil actions)).

(2) The informal appeal process is not designed for parties who intend to engage in more than a limited exchange of documents and information between the parties. This exchange process is known as discovery. In cases where a party anticipates discovery, a formal proceeding may be better suited as discovery is conducted according to the Washington state superior court civil rules.

(3) The board may limit discovery ((upon motion by)) on its own motion, or by motion of any party. In doing so, the board will apply the criteria and considerations described in WAC 456-10-001 and other provisions in this chapter.

~~((3))~~ (4) The board may decide whether to ((permit the taking of depositions, the requesting of)) allow depositions, requests for admissions, and ((all other procedures authorized by rules 26 through 37 of the superior court civil rules)) any other discovery procedure.

The board may condition the use of discovery on a party showing (~~of necessity and unavailability of~~) that discovery is necessary and that other means of obtaining such information are not available. In exercising such discretion, the board will consider the criteria (~~set forth~~) outlined in RCW 34.05.446.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-501, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-503 Summary judgment. A motion for summary judgment may be granted (~~and an order issued~~) if the written record shows that, in viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue as to any material fact and (~~that the moving~~) a party is entitled to judgment as a matter of law. Motions for summary judgment must comply with WAC 456-10-510.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-503, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-505 Time (~~in which~~) for filing evidence, briefs, (and) replies (must be submitted), and documentary evidence. (~~In the absence of~~) If the board does not issue a prehearing order, evidence, briefs, and other documents must be submitted to the board (~~within the times stated below.~~) by the following due dates:

(1) Documentary evidence (~~which is to be introduced at hearing shall~~) must be submitted (to the board) at least 38 calendar days prior to hearing, together with proof of service (~~pursuant~~) according to WAC 456-10-410 (at least ten business days prior to hearing). Failure to comply may be grounds for exclusion of such evidence or dismissal (~~in accordance with~~) of the appeal as outlined in WAC 456-10-555.

(2) Briefs or other supporting statements, if any, (~~shall~~) must be submitted (to the board) at least 31 calendar days prior to the hearing, together with proof of service (~~pursuant~~) according to WAC 456-10-410 (at least fifteen calendar days prior to hearing).

(3) Reply briefs or other supporting statements, if any, (~~shall~~) must be submitted (to the board) at least 17 calendar days prior to the hearing, together with proof of service (~~pursuant~~) according to WAC 456-10-410 (at least ten calendar days prior to hearing).

(4) Documentary evidence submitted to a board of equalization and forwarded to this board is (~~excepted~~) exempted from (~~the~~) these requirements (of this provision).

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-505, filed 6/21/05, effective 8/1/05; WSR 95-05-032 (Order 95-02), §

456-10-505, filed 2/8/95, effective 3/11/95; WSR 89-10-057 (Order 89-03), § 456-10-505, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-510 Motions. (1) Any ~~((application))~~ request for an order ~~((or))~~, ruling, or a request for relief ~~((from any provision of this chapter))~~ is considered a motion. Every motion, unless made during a hearing, ~~((shall))~~ must be in writing and ~~((shall))~~ include the following:

- (a) A statement of the relief or order sought;
- (b) The ~~((reason))~~ basis for the relief or order;
- (c) A statement that the moving party has made a good faith effort to meet and confer with the other party or parties to resolve the subject matter of the motion;
- (d) ~~((The amount of time needed for argument))~~ A statement whether oral argument is requested, and if so, how much time is sought. Motions for summary judgment and motions to dismiss will receive approximately 10 minutes per side; and
- (e) ~~((Shall include))~~ Proof of service ~~((pursuant))~~ according to WAC 456-10-410.

(2) All motions ~~((shall))~~ must be properly captioned, contain the docket number assigned ~~((to the appeal))~~ by the board, and be signed by the party, their attorney or ~~((the))~~ their representative.

(3) At the discretion of the board, the hearing on a motion may be ~~((by teleconference or in person))~~ held in person, by phone, video, or by other electronic means.

(4) ~~((A))~~ Any response to the motion ~~((shall))~~ must be submitted to the board ~~((together with proof of service pursuant to WAC 456-10-410 within ten business days following the date of service of the motion))~~ and opposing parties within 14 calendar days of the date the motion was served on the responding party together with proof of service pursuant to WAC 456-10-410. Responses are strongly encouraged, but not required.

(5) Replies are not permitted, absent prior permission of the board. If permitted, the reply must be filed within five calendar days of the board's receipt of the response. A reply is limited to addressing the facts and arguments presented in the response.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-510, filed 6/21/05, effective 8/1/05; WSR 95-05-032 (Order 95-02), § 456-10-510, filed 2/8/95, effective 3/11/95; WSR 89-10-057 (Order 89-03), § 456-10-510, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-515 Postponements, continuances, and extensions of time. (1) Postponements, continuances, and extensions of time may be ordered by the board on its own motion.

(2) Requests to postpone, continue, extend the time, or reschedule the prehearing conference, if any, ~~((and the initially scheduled~~

hearing date of an appeal will be freely granted provided such request is made within the time specified in the board's letter setting the prehearing conference, if any, and the initial hearing date) must be made in writing and comply with WAC 456-10-510 and 456-10-410. The board will freely grant a party's first request. For second and subsequent requests, the moving party must show good cause as to why a new date and time is needed.

(3) Requests to postpone, continue, extend the time, or reschedule the hearing date must be made in writing, comply with WAC 456-10-510 and 456-10-410, and be filed 14 calendar days before the scheduled hearing. The board will freely grant a party's first request. For second and subsequent requests, the moving party must show good cause as to why a new date and time is needed. The presiding officer will decide whether to hear argument and will rule on the request.

~~((3))~~ (4) Other requests for a postponement, continuance, or extension of time must be timely, in writing, and comply with WAC 456-10-510 and 456-10-410. ((The board shall promptly schedule a conference to hear argument and to rule on the request. Requests for continuance will not be granted absent a showing of good cause.)) The presiding officer will decide whether to hear argument on the request.

~~((4))~~ (5) This section ((shall)) does not extend any ((applicable time for appeal to this board)) deadline to file an initial appeal.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-515, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-515, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 89-10-057, filed 5/2/89)

WAC 456-10-520 ((Teleconference proceeding.)) Telephonic, video, and electronic proceedings. ~~((1) At the discretion of the board, and where the rights of the parties will not be prejudiced thereby,)) All or part of the hearing, prehearing, or settlement conference may be conducted by ((telephone, television)) phone, video, or other electronic means. Each party and participant in the proceeding ((must)) will have an opportunity to ((participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.~~

~~(2) The board may require documentary evidence to be submitted sufficiently in advance of)) hear and effectively participate in the proceeding.~~

[Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-520, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-530 Requirements for a notice of hearing. (1) A notice of a hearing ((shall)) will be mailed or transmitted to all parties ((not less than twenty)) at least 20 calendar days before the

hearing date. The ~~((twenty-day))~~ 20-day notice provision may be waived ~~((by agreement of all))~~ if the parties agree.

(2) ~~((Contents-))~~ The notice ~~((shall))~~ must contain:

(a) The names and mailing and email addresses of the parties and their representatives, if any;

(b) The docket number or numbers and the name of the proceeding;

(c) ~~((The name, official title, mailing address, and telephone number of the presiding officer, if known;~~

~~(d-))~~ A statement of the ~~((time, place, date, and))~~ general nature of the proceeding (e.g., excise, property, etc.);

~~((e-))~~ (d) A statement that the hearing is held ~~((pursuant))~~ ac-
ording to this chapter and chapter 82.03 RCW;

~~((f-))~~ (e) A statement that ~~((, if a limited-English speaking or hearing-impaired party or witness needs an interpreter,))~~ a qualified interpreter will be appointed at no cost to the party or witness, if a limited-English speaking or hearing-impaired party or witness needs an interpreter. The notice ~~((shall))~~ must also state that persons with disabilities may request reasonable accommodations to allow their participation in the hearing. The notice ~~((shall))~~ must include a form for a party to indicate if an interpreter is needed and ~~((identification of the primary))~~ in what language, or if a participant is hearing impaired ~~((?))~~, or to describe the reasonable accommodations requested.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-530, filed 6/21/05, effective 8/1/05; WSR 95-05-032 (Order 95-02), § 456-10-530, filed 2/8/95, effective 3/11/95; WSR 89-10-057 (Order 89-03), § 456-10-530, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-540 Hearing procedure. ~~((Unless otherwise ordered by the board, hearings will be conducted in accordance with the following format:~~

~~(1) Administering of oath;~~

~~(2) Appellant's opening statement;~~

~~(3) Respondent's opening statement;~~

~~(4) Appellant's case in chief:~~

~~(a) Direct examination of witness;~~

~~(b) Cross-examination by respondent;~~

~~(c) Redirect examination by appellant;~~

~~(d) Recross examination;~~

~~(e) The above procedure is followed for each witness.~~

~~(5) Respondent's case in chief:~~

~~(a) Direct examination of witness;~~

~~(b) Cross-examination by appellant;~~

~~(c) Redirect examination by respondent;~~

~~(d) Recross examination;~~

~~(e) The above procedure is followed for each witness.~~

~~(6) Appellant's closing argument;~~

~~(7) Respondent's closing argument;~~

~~(8) Appellant's closing rebuttal;~~

~~(9) The board may pose questions to the parties, their representatives, and any witness at any time during the hearing.)~~ Informal hearings are structured similarly to formal hearings, although more

relaxed. As such, informal hearings will generally be organized as follows:

(1) All parties and witnesses will be sworn in by a hearing officer to tell the truth;

(2) Each party may then provide a short explanation of what the testimony of their witnesses and evidence will show;

(3) Next, each party may call witnesses to testify, beginning with the party that is appealing. The opposing party will have an opportunity to ask each witness questions, and the party calling the witness an opportunity to ask the witness questions to clarify the testimony; and

(4) Lastly, each party may summarize the testimony and evidence that supports their case, beginning with the party that appealed.

The board or hearing officer may ask a party, a representative, or a witness a question at any time during the hearing.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-540, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-540, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-545 Testimony under oath. (1) ~~((All testimony to be considered by the board shall be sworn, and each))~~ Every person ~~((shall))~~ testifying before the board must swear or affirm in any manner allowed in chapter 5.28 RCW that the person's testimony ~~((to be given shall be the truth, the whole truth, and nothing but the truth))~~ will be truthful.

(2) ~~Every interpreter ((shall, before beginning to interpret,))~~ will take an oath that he or she will make a true interpretation ~~((will be made to))~~ of the person being examined ~~((of all the proceedings))~~ in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined ~~((to the board, in the))~~ in English ~~((language,))~~ to the best of the interpreter's skill and judgment.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-545, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. WSR 90-11-106, § 456-10-545, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-545, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-547 Recording ((devices)) of hearings. (1) All hearings ~~((shall))~~ will be recorded by manual, electronic, or other ~~((type of))~~ recording device.

(2) Photographic and recording equipment ~~((shall))~~ will be permitted at hearings; however, the presiding officer may impose ~~((such))~~ conditions upon their use ~~((as deemed necessary))~~ to prevent disruption ~~((of the hearing)),~~ or when a statute or law limits such use.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-547, filed 6/21/05, effective 8/1/05; WSR 91-07-039 (Order 91-02), § 456-10-547, filed 3/15/91, effective 4/15/91.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-550 Failure to attend and hearings on the record.

(1) When a party (~~to these proceedings has, after notice,~~) has failed to attend a hearing (~~and has not notified the board and the opposing party of the intention to not attend,~~) after receiving timely notice, the board will consider a motion for default or dismissal (~~may be sought~~) brought by any party to the proceedings, or (~~raised by the board upon~~) on its own motion. (~~Any such order shall~~) An order for default or dismissal will include (~~a statement of the grounds~~) the reason for the order and (~~shall~~) will be served upon all parties (~~to the proceeding~~).

(2) Within (~~ten business days after~~) 14 calendar days of service of the (~~default order or dismissal under subsection (1) of this section~~) order, the party against whom the order was entered may submit (~~to the board together with proof of service pursuant to WAC 458-10-410 [456-10-410]~~) a written objection requesting that the order be vacated (~~and stating~~). The objection must state the specific (~~grounds relied upon~~) reasons why the order should be vacated, together with proof of service pursuant to WAC 458-10-410. The board may(~~, for good cause,~~) set aside (~~an entry of~~) a dismissal, default, or final order for good cause.

(~~(2) Upon stipulation by both parties~~) (3) If the parties agree in writing and the presiding officer approves, an appeal may be submitted to the board on the record and the attendance of (~~a party may be excused. However, the board in its discretion may require attendance for argument~~) one or more parties at the hearing will not be required.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-550, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-550, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-555 Dismissal, stipulations, and withdrawal of actions. (~~Any action~~) An appeal may be dismissed (~~by the board~~) for any of the following reasons.

(1) (~~When~~) All parties (~~so~~) stipulate. Stipulations (~~on the value of~~) that involve the value of real property (~~shall contain~~) must include the parcel number, assessment year(s), the agreed upon value (~~of the subject property~~), and a brief statement (~~supporting the agreed upon~~) that supports the value.

(2) (~~As a matter of right when~~) The appellant requests orally or in writing to withdraw the appeal (~~prior to~~) before the scheduled hearing.

(3) (~~Upon motion of~~) The appellant makes a motion at the hearing (prior to the presentation of the respondent's case) before the respondent presents his or her case.

(4) (~~Upon motion by the respondent alleging~~) The respondent alleges that the appellant has failed to prosecute the case, failed to comply with this chapter, or failed to follow any order of the board.

(5) (~~Upon the board's own motion for failure by the parties~~) Either party failed to comply with applicable rules or any order of the board.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-555, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-555, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-560 Rules of evidence and criteria for admissibility ((criteria)). (1) All relevant evidence, including hearsay (~~evidence~~), is admissible if, in the opinion of the board, (~~the offered evidence~~) it is the kind of evidence (on which) that a reasonably prudent person (s are) is accustomed to (rely) relying on in the conduct of (~~their~~) his or her business affairs. The board may exclude evidence (~~that is excludable on~~) for constitutional or statutory grounds, or (~~on the basis of~~) for evidentiary privilege recognized in the courts of this state. The board may also exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) The board's experience, technical knowledge, competency, and specialized knowledge may be used (~~in evaluation of~~) to evaluate evidence.

(3) Documentary evidence may be submitted in the form of copies or excerpts.

(4) If not inconsistent with subsection (1) of this section, the board may refer to, but (~~shall~~) is not (~~be~~) bound by, the Washington state court rules of evidence.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-560, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-560, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-565 Official notice. (1) The board may take official notice of (~~the following~~):

(a) Any judicially cognizable facts;

(b) Any matter of public record;

(c) Technical or scientific facts within the agency's specialized knowledge; and

(d) Codes or standards that have been adopted by (~~an agency of the United States, of this state or of another state,~~) any state or federal agency or by a nationally recognized organization or association.

(2) ~~((If any decision is stated to rest in whole or in part upon official notice of a fact to which the parties have not had a prior opportunity to controvert,))~~ Any party may ((controvert)) challenge such a fact by filing an exception to a proposed or initial decision pursuant to WAC 456-10-730 ((if such notice is taken in a proposed decision), or by a petition for reconsideration ((if notice of such fact is taken in)) of a final decision pursuant to WAC 456-10-755. Such ((controversion shall)) a challenge must concisely and clearly set forth the sources, authority, and other data relied ((upon)) on to show the existence or nonexistence of the fact assumed or denied in the decision.

(3) A party ~~((proposing that))~~ asking the board to take official notice ((be taken)) may be required to produce a copy of the material to be noticed.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-565, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-565, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-710 Assistance to the board. (1) The board may obtain assistance ~~((concerning the))~~ with an appeal ((of any case within the scope of)) from a county board of equalization as allowed by RCW 82.03.130 (1) (b) ((appeals from a county board of equalization)) or from ((the staff of)) the department of revenue as ((provided)) allowed by RCW 82.03.150. If the board intends to seek assistance, the board will notify the parties of its intent ((to seek such assistance and the matters sought to be investigated before contacting the department of revenue.)) and indicate the reasons for seeking assistance. Once notified, the parties may recommend an alternative to the board to achieve the same objectives ((without contacting the department of revenue)).

(2) If the department of revenue supplies the requested assistance, the parties will be apprised of any information provided ~~((by the department of revenue))~~ and ~~((will be))~~ given an opportunity to respond.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-710, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-710, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 89-10-057, filed 5/2/89)

WAC 456-10-715 Presentation of ((posthearing)) evidence after the hearing. ~~((No posthearing evidence will be accepted unless requested by the board.))~~ Unless requested, the board will not accept any evidence after a hearing unless it determines such evidence could not reasonably have been anticipated or discovered before the hearing. All parties ((shall)) will have an opportunity to respond to such evidence.

[Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-715, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-725 Proposed decision. (1) A proposed decision ~~((shall be prepared))~~ will be issued when:

- (a) An appeal has been heard by only one member of the board;
- (b) An appeal has been heard by ~~((only))~~ two members of the board ~~((and the two members))~~ who cannot agree on a conclusion;
- (c) An appeal has been heard by a hearing officer, tax referee, or other individual assigned by the board; or
- (d) The board ~~((shall otherwise))~~ elects to do so.

(2) If an exception ~~((as provided in WAC 456-10-730))~~ is not timely submitted to the board ~~((within twenty calendar days of the date of mailing of the proposed decision))~~ as provided in WAC 456-10-730, the proposed decision ~~((shall be deemed the))~~ will be considered the board's final decision ~~((of the board))~~, unless the decision specifies otherwise.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-725, filed 6/21/05, effective 8/1/05; WSR 89-10-057 (Order 89-03), § 456-10-725, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-730 Exceptions to proposed decisions ~~((, replies, and disposition))~~. (1) Any party may ~~((make, by mail or otherwise, a written exception with the board))~~ petition for review of a proposed decision. A petition for review of a proposed decision is referred to as an exception.

(2) An exception must be transmitted to the board and served on all parties within ~~((twenty))~~ 20 calendar days ~~((from))~~ of the date ~~((of mailing of))~~ the proposed decision ~~((or, upon timely application, within such further time as the board may allow. The statement of exceptions shall be served on all other parties pursuant to))~~ was transmitted, unless otherwise specified. Proof of service must be filed with the board as outlined in WAC 456-10-410.

~~((2))~~ Exceptions shall contain the specific factual and legal grounds upon which the exception is based. (3) An exception must indicate which portions of or what evidence in the record supports the exception. No new evidence or arguments may be ~~((introduced in the written exception; nor may the party or parties raise an argument in the exception that was not raised at the hearing. The party or parties making the exception shall be deemed to have waived all objections or irregularities not specifically set forth))~~ raised unless the written decision is based on a fact or facts that the parties did not already have an opportunity to address.

~~((3))~~ (4) Any party may ~~((make a reply))~~ respond to ~~((a written))~~ an exception. The ~~((reply, together with proof of service pur-~~

~~suant to WAC 456-10-410, shall be submitted))~~ response must be sent or transmitted to the board within ((ten business)) 14 calendar days of the date ((of the letter acknowledging receipt by the board of the written exception)) the exception was served, together with proof of service outlined in WAC 456-10-410.

~~((4) The disposition may be in the form of))~~ (5) The board will address an exception in a written order ((denying the exception and adopting the proposed decision as the final decision, granting the exception and issuing a final decision, or granting the exception and setting the matter for further hearing)). The board may require the parties to submit written briefs ~~((or statements of position))~~ or to appear and present oral argument ~~((regarding the matters on which exceptions were taken, within such time and on such terms as may be prescribed))~~ on the exception.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-730, filed 6/21/05, effective 8/1/05; WSR 95-05-032 (Order 95-02), § 456-10-730, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. WSR 90-11-106, § 456-10-730, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-730, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-10-755 Petition for reconsideration of a final decision.

(1) A petition for reconsideration of a final decision is not available where a proposed decision was first issued.

(2) Where a final decision has been issued and no proposed decision was first issued, any party may submit a petition for reconsideration ~~((with the board))~~ within 20 calendar days from the transmittal of the final decision together with proof of service ~~((pursuant to))~~ as outlined in WAC 456-10-410 ((within ten business days from the mailing of the final decision)). The board may require or any party may ~~((at its own option, within ten business days of the date of the letter acknowledging receipt by the board of the petition for reconsideration, submit to the board))~~ submit a response within 14 calendar days of the date the petition was served together with proof of service ~~((pursuant))~~ according to WAC 456-10-410.

(3) ~~((The))~~ Submitting ((of)) a petition for reconsideration ~~((shall))~~ suspends the final decision until further action by the board. The board may deny the petition, modify its decision, or reopen the hearing.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-10-755, filed 6/21/05, effective 8/1/05; WSR 95-05-032 (Order 95-02), § 456-10-755, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 82.03.140 and 82.03.150. WSR 90-11-106, § 456-10-755, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-057 (Order 89-03), § 456-10-755, filed 5/2/89.]

((SEPA))

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 456-10-140	Organization and office.
WAC 456-10-150	Quorum.
WAC 456-10-160	Meetings of the board.
WAC 456-10-215	Notice of appearance by representatives.
WAC 456-10-330	Amendments to notice of appeal.
WAC 456-10-507	Amicus.
WAC 456-10-970	Applicability of SEPA guidelines.

WSR 22-13-112
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 15, 2022, 3:45 p.m., effective July 16, 2022]

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

Purpose: The department is amending WAC 388-422-0020 What if you are afraid that cooperating with the division of child support (DCS) may be dangerous for you or the child in your care?

The amendments clarify terms related to good cause for noncooperation with the division of child support under the temporary assistance for needy families program.

Citation of Rules Affected by this Order: Amending WAC 388-422-0020.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Adopted under notice filed as WSR 22-10-009 on April 22, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 15, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4916.1

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

WAC 388-422-0020 What if you are afraid that cooperating with the division of child support (DCS) may ~~((be dangerous))~~ cause physical or emotional harm for you or the child in your care? (1) You can be excused from cooperating with DCS when you have a good reason. A good reason not to cooperate is also called good cause. You have a good reason when you can prove that:

(a) Cooperating with DCS would result in serious:

(i) physical ~~((or emotional))~~ harm to you or the child in your care; or

(ii) emotional harm to you or the child in your care.

(b) Establishing paternity or getting support would be harmful to the child who:

(i) Was conceived as a result of incest or rape; or
(ii) Is the subject of legal adoption proceedings pending before a superior court; or

(iii) Is the subject of ongoing discussions between you and a public or licensed child placement agency to decide whether you will keep the child or put the child up for adoption. The discussions cannot have gone on for more than three months.

(2) Once you claim good cause for TANF/SFA, you have (~~twenty~~) 20 days to give us the information that proves you have good cause not to cooperate with DCS. This information can include official records, sworn statements, or other information that supports your good cause claim. If you need to, you may ask for:

(a) More time to give proof; or

(b) Help in getting proof.

(3) While we review your good cause claim, DCS does not take any action to establish or enforce support on your case.

(4) You have the right to:

(a) Be told of your right to claim good cause for not cooperating with DCS;

(b) Get benefits while we are deciding your good cause claim, as long as you have given the proof needed to make a decision;

(c) Get a decision within (~~thirty~~) 30 days from the date you made your good cause claim, as long as you have given the proof needed to make a decision within (~~twenty~~) 20 days; and

(d) Get information about how to request a fair hearing if we deny your good cause claim.

(5) If we approve your good cause claim, we periodically review the claim depending on your circumstances.

(6) To see what DCS does when good cause is approved see WAC 388-14A-2060.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-422-0020, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-19-041, § 388-422-0020, filed 9/11/02, effective 10/12/02; WSR 98-16-044, § 388-422-0020, filed 7/31/98, effective 9/1/98. Formerly WAC 388-505-0570 and 388-505-0560.]

WSR 22-13-123

PERMANENT RULES

WESTERN WASHINGTON UNIVERSITY

[Filed June 17, 2022, 10:17 a.m., effective July 18, 2022]

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

Purpose: To keep information accurate and up-to-date, amendments to sections in chapters 516-35 and 516-36 WAC include changes in titles, offices, and processes; as well as updates to language to be clearer for off-campus users, and housekeeping changes as needed. Amendment in WAC 516-52-020 to allow for the use of face coverings.

Citation of Rules Affected by this Order: Amending WAC 516-35-001, 516-35-010, 516-35-020, 516-35-030, 516-36-001, 516-36-004, 516-36-008, 516-36-025, 516-36-030, and 516-52-020.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Adopted under notice filed as WSR 22-08-011 on March 24, 2022.

Changes Other than Editing from Proposed to Adopted Version: Change made in WAC 516-36-025(8). Public comment was received that the section should be modified to remove the requirement that an individual or organization be responsible for cleaning space after use. This had the potential to interfere with employee labor and that was not the intent. The intent is that the space may be inspected after use and costs may be assessed. This section now written reflects the intent.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 10, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 10, 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 10, 2022.

Jennifer L. Sloan
Rules Coordinator

OTS-3670.1

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-35-001 Definitions. As used in this chapter, the following words and phrases mean:

(1) **Business day.** Any day, Monday through Friday (excluding holidays), during which university offices are open.

(2) **Freedom of expression and assembly.** Any activity protected by the first amendment to the Constitution of the United States and Article I, sections 4 and 5 of the Washington state Constitution. Such ac-

tivities may include, but are not limited to, informational picketing, petition circulation, distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, noncontracted appearances of speakers, protests, meetings to display group feelings or sentiments, and other types of constitutionally protected assemblies to share information, perspective, or viewpoints. (~~Freedom of expression or assembly that involves the placement of any furniture, hardware, prop, vehicle, display, sound amplification, or audio-visual device or other object on university property requires prior approved space reservation. To reserve use of university property, refer to chapter 516-36 WAC.~~)

(3) **Limited public forum areas.** Areas of campus available as spaces for freedom of expression and peaceable assembly as protected by the Constitution of the United States and the Washington state Constitution, subject to reasonable time, place, and manner restrictions. Limited public forum areas do not include:

(a) Classrooms or academic buildings (~~conducting~~) utilized for scheduled educational programming with the exception that nothing herein shall be read to interfere between or with the academic freedom of the instructor and enrolled students to engage in educational programs;

(b) Reservable or scheduled property subject to the provisions of chapter 516-36 WAC;

(c) Private administrative or academic offices;

(d) Lavatory or maintenance facilities;

(e) Roadways or sidewalks necessary to permit the free flow of pedestrian, vehicular, emergency responder, or maintenance traffic; or

(f) Any other university property, on a case-by-case basis, where the reasonable application of time, place, and manner restrictions render the location inappropriate for expressive activities.

(4) **Nonuniversity group or individual.** An individual or a collection of individuals who do not have a formal relationship with the university. The term also includes members of these groups who are individually affiliated with the university who desire to use university property for personal, private, or nonuniversity group related activities.

(5) **Time, place, and manner.** Reasonable limitations on the exercise of expressive rights that are neutral as to the content of expression and leave open alternative channels of expression.

(6) **University.** Western Washington University.

(7) **University affiliate.** An entity that has a formal relationship with the university and also encompasses such entity's officers, agents, and employees. The term includes, but is not limited to, the office of the attorney general, contracted agencies, and 501 (c)(3) organizations with formal relationships to the university.

(8) **University group or individual.** An individual or collection of individuals that has a formal relationship with the university, such as a recognized employee group of the university, a registered student group or organization or an individual acting on behalf of the group or organization as well as an individual who is a currently enrolled student or current employee.

(9) **University property.** All buildings, grounds, or assets owned or controlled by the university and the streets, sidewalks, plazas, parking lots, and roadways within the boundaries of property owned or controlled by the university.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-35-001, filed 6/15/18, effective 7/16/18.]

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-35-010 Use of university property—Notice. (1) Any non-university group or individual who desires to use a limited public forum area on a temporary basis for freedom of expression (~~((or))~~) and assembly (~~((in which more than fifty people are likely to assemble,))~~) must submit notice of planned use to the (~~((university police department and to the dean of students))~~) Western Washington University department of public safety not less than (~~((fifteen))~~) five business days prior to use, subject to limitations set forth in WAC 516-35-030. However, use may be permitted with less notice so long as the use does not interfere with any other function or university operations.

(2) University affiliates or university groups or individuals who desire to use university property or a limited public forum area on a temporary basis for freedom of expression or assembly must adhere to applicable policies and laws and are requested to provide notice to the (~~((university police department and dean of students))~~) Western Washington University department of public safety. If university affiliates or university groups or individuals intend to set up free-standing objects on university property, notice must be given as directed in WAC 516-35-030 (3) and (4).

(3) Submitted notices (~~((may))~~) shall include, but are not limited to, the following:

(a) The contact information for the persons or organizations, including the organization's name and its contact person's name, person's name, address, email address, and telephone number;

(b) The date, time, and location requested for use;

(c) The nature and purpose of the use;

(d) The estimated number of people expected to be involved, including participants, spectators, supporters, and detractors or others;

(e) A description and intended use of any object, free-standing or otherwise, that will be placed on university property including, but not limited to, furniture, hardware, props, vehicle, displays, sound amplification device, audio-visual device, or other objects; and

~~((e))~~ (f) Other information as may be reasonably requested.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-35-010, filed 6/15/18, effective 7/16/18.]

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-35-020 Use of university property—Evaluation. (1) The president, or the president's designee, shall have the authority to accept, modify, or reject, in whole or in part, the planned use outlined or described in the notice submitted pursuant to this chapter.

(2) In evaluating a notice submitted pursuant to this chapter, the president, or the president's designee, may consider a variety of factors including, but not limited to, the following:

(a) Whether a university program or activity is scheduled at the location requested. First priority shall be given to the university program or scheduled activity;

(b) Whether the use is in connection with a university program or activity;

(c) Whether the intended use is compatible with the educational mission and objectives of the university.

(3) The president, or the president's designee, may specify reasonable fire, safety, law enforcement, sanitation, cleanup, insurance, and other risk- or impact-mitigating requirements for the use of university property. Charges may be applied in the event any of these requirements are deemed to have costs associated with them. ~~((The university will not provide utility connections or hookups.))~~

(4) Whenever the president, or the president's designee, rejects, either in whole or in part, a request for use of university property, the reasons for such rejection shall be stated in writing.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-35-020, filed 6/15/18, effective 7/16/18.]

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-35-030 Use of university property—Exceptions, limitations, and termination of use. (1) The president, or the president's designee, may apply time, place, and manner exceptions to limit, relocate, reschedule, terminate, cancel, or prohibit the use of university property for freedom of expression activities to protect persons or property from harm and/or to prevent the disruption of university operations including, but not limited to, violations of WAC 516-24-130, 516-52-020, or other laws or university policies.

(2) The use of university property for freedom of expression and assembly must comply with all requirements and limitations set forth in WAC 516-24-001 and 516-36-030.

(3) Any activity that involves the placement of furniture, hardware, prop, vehicle, display, sound amplification device, audio-visual device, or other free-standing object on university property for freedom of expression and assembly requires notice pursuant to WAC 516-35-010.

(a) Placed or free-standing objects that are not generally moveable or are of a size or nature that they may pose a personal safety risk, a risk to property, or block egress and traffic flow must have prior approval through a space reservation. To reserve university property, refer to chapter 516-36 WAC.

(b) Objects that are small, moveable by a single person, not permanent or do not need to be secured, and are lightweight; for example, small displays less than four feet in any dimension, folding tables, easels, or other similar object do not require a reservation to place on university property for a limited time and may be subject to other university imposed time, place, or manner restrictions.

(c) At least one person must be present at all times to attend to any placed object for the duration of use until completion of activity pursuant to subsection (6) of this section.

(4) In order to allow for the expression of a wide range of viewpoints and to allow the utilization of university property for a wide range of purposes, the use of university property for freedom of expression and assembly may be limited in duration to the following:

(a) Activities may not continue for longer than five calendar days from start to finish; and

(b) Activities are limited to 7:00 a.m. to 10:00 p.m. on any day due to the residential nature of campus.

(5) University employees, student groups, and university-affiliated groups may reserve outdoor space on campus for university-sponsored activities pursuant to chapter 516-36 WAC. If space is reserved for a university-sponsored activity, other persons and groups may be prohibited from engaging in freedom of expression and assembly in the reserved space. In such cases, a university representative may suggest another area on campus for freedom of expression and assembly.

(6) The group or individual utilizing university property for freedom of expression and assembly must return the university property to its original condition after the use and is responsible for the costs of cleanup and the costs to repair damages to the limited public forum area and other university property that arises from such use.

(7) The university will not provide utility connections or hook-ups.

(8) Nonuniversity groups and individuals may not use the interior of any facility for freedom of expression and assembly.

(9) Freedom of expression and assembly must otherwise be conducted in compliance with any other applicable university policies and rules, local ordinances, and state or federal law.

(10) **Exception - Open public meetings.** Nothing in these rules is intended to interfere with public participation in meetings of the university's governing board or associated student body that are required to be open to the public under the Open Public Meetings Act, chapter 42.30 RCW.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-35-030, filed 6/15/18, effective 7/16/18.]

OTS-3633.2

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-36-001 Use of university property—General policy and ((purpose)) scope. Western Washington University is an educational institution provided and maintained by the people of the state of Washington in order to carry out its broad missions of teaching, research, and public service. A state agency is under no obligation to make its public property available to the community for private purposes, and the university generally reserves its property, buildings, and grounds for its mission-related activities, including: Instruc-

tion, research, assembly, student activities, and recreational activities related to education. However, the university makes property available for a variety of uses that are of benefit to the general public under the conditions set forth in these regulations if such general uses substantially relate to, or do not interfere with, university missions.

The purpose of these regulations is to establish procedures and reasonable controls for the use of university property by nonuniversity groups or individuals, university affiliates, university groups or individuals, or students, faculty, or staff who desire to use university property for personal, private, or nonuniversity group related activity.

Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to ensure the proper maintenance of the property.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-36-001, filed 6/15/18, effective 7/16/18. Statutory Authority: RCW 28B.35.120(12), 34.05.220 (1)(b), 34.05.250, 28B.15.600, 42.17.310, 42.30.070 - 42.30.075, chapters 69.41 and 43.21C RCW. WSR 90-10-042, § 516-36-001, filed 4/27/90, effective 5/1/90; Order 75-10, § 516-36-001, filed 11/10/75; Order 72-10, § 516-36-001, filed 11/17/72.]

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-36-004 Freedom of expression and assembly activities not covered. Use of university property for freedom of expression and assembly activities is governed by rules set forth in chapter 516-35 WAC. This chapter does not apply to those individuals or groups using university property for freedom of expression and assembly activities except where directed by chapter 516.35 WAC.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-36-004, filed 6/15/18, effective 7/16/18.]

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-36-008 Definitions. As used in this chapter, the following words and phrases mean:

(1) **Business day.** Any day, Monday through Friday (excluding holidays), during which university offices are open.

(2) **Freedom of expression and assembly.** Any activity protected by the first amendment to the Constitution of the United States and Article I, sections 4 and 5 of the Washington state Constitution. Such activities may include, but are not limited to, informational picketing, petition circulation, distribution of information leaflets or pamphlets, speechmaking, demonstrations, rallies, noncontracted appearances of speakers, protests, meetings to display group feelings or sentiments, and other types of constitutionally protected assemblies to share information, perspective, or viewpoints.

(3) **Limited public forum areas.** Areas of campus available as spaces for freedom of expression and peaceable assembly as protected by the Constitution of the United States and the Washington state Constitution, subject to reasonable time, place, and manner restrictions. The use of limited public forum areas for freedom of expression and peaceable assembly activities is governed by chapter 516-35 WAC except for those activities identified in that chapter that require reservations. Limited public forum areas are identified in WAC 516-35-001. Limited public forum areas do not include property such as:

(a) Classrooms or academic buildings (~~(conducting)~~) utilized for scheduled educational programming with the exception that nothing herein shall be read to interfere between or with the academic freedom of the instructor and enrolled students to engage in educational programs;

(b) Reservable or scheduled property subject to the provisions of this chapter;

(c) Private administrative or academic offices;

(d) Lavatory or maintenance facilities;

(e) Roadways or sidewalks necessary to permit the free flow of pedestrian, vehicular, emergency responder, or maintenance traffic; or

(f) Any other university property, on a case-by-case basis, where the reasonable application of time, place, and manner restrictions render the location inappropriate for expressive activities.

(4) **Nonuniversity group or individual.** An individual or a collection of individuals who do not have a formal relationship with the university. The term also includes members of these groups who are individually affiliated with the university who desire to use university property for personal, private, or nonuniversity group related activities.

(5) **Space administrator.** A university employee, appointed by the president, or the president's designee, who has the authority and responsibility for a designated subset of university property to create and enforce policies and procedures for space use, delegate space approval authority, and are responsible for university space being used in accordance with this chapter, chapter 516-35 WAC, and the university mission.

(6) **Space approval authority.** A university employee who has the authority, consistent with these regulations and approved campus policies and procedures, to review, approve, amend, or deny requests for rental or use of university property.

(a) The university shall maintain a list of the approving authorities.

(b) Requests for approval to lease space shall be governed by chapter 516-34 WAC.

(7) **Time, place, and manner.** Reasonable limitations on the exercise of expressive rights that are neutral as to the content of expression and leave open alternative channels of expression.

(8) **University.** Western Washington University.

(9) **University affiliate.** An entity that has a formal relationship with the university and also encompasses such entity's officers, agents, and employees. The term includes, but is not limited to, the office of the attorney general, contracted agencies, and 501 (c)(3) organizations with formal relationships to the university.

(10) **University group or individual.** An individual or collection of individuals that has a formal relationship with the university, such as a recognized employee group of the university, a recognized student group or organization, or an individual acting on behalf of

the group or organization as well as an individual who is a currently enrolled student or current employee.

(11) **University property.** All buildings, grounds, or assets owned or controlled by the university and the streets, sidewalks, plazas, parking lots, and roadways within the boundaries of property owned or controlled by the university.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-36-008, filed 6/15/18, effective 7/16/18.]

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-36-025 Scheduling and reservation practices—Duties of requestor. (1) The primary purpose of university property is to serve the university's instructional, research, and public service activities. However, when not required for scheduled university use, property may be available for rental by nonuniversity groups or individuals in accordance with current fee schedules and other relevant terms and conditions.

(2) No university property may be used by individuals or groups unless the property, including buildings, equipment, and land, have been reserved except as provided in chapter 516-35 WAC. Reservations may not be required in limited public forum areas if the intended use of the property would not cause cost to the university or impact scheduled university activity.

(3) Requests to use university property are made to the space approval authority, as defined in WAC 516-36-008(6) and in accordance with WAC 516-36-020.

(4) The space approval authority may deny the request to use university property when such use would violate any of the limitations set forth in WAC 516-36-030 or where the requestor is unwilling to comply with university requirements for the use of property, as authorized by this chapter.

(5) The university may require an individual or organization to make an advance deposit, post a bond or obtain insurance to protect the university against cost or other liability as a condition to allowing use of any university property.

(6) When the university grants permission to an individual or organization to use its property it is with the understanding and on the condition that the individual or organization assumes full responsibility for any loss or damage resulting from such use and agrees to hold harmless and indemnify the university against any loss or damage claim arising out of such use.

(7) The university and/or government authorities may specify fire, safety, sanitation, and special regulations for activities occurring in, on or with university property. It is the responsibility of the user to obey those regulations, as well as to comply with other applicable university policies, procedures, rules, regulations, and state, local, and federal laws.

(8) When the university grants permission to an individual or organization to use its facilities, the facility may be subject to inspection by a representative of the university after the event. Reasonable charges may be assessed against the sponsoring organization

for the costs of extraordinary cleanup or for the repair of the damaged property.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-36-025, filed 6/15/18, effective 7/16/18.]

AMENDATORY SECTION (Amending WSR 18-13-073, filed 6/15/18, effective 7/16/18)

WAC 516-36-030 Limitations on use. The following limitations apply to all uses of any university property, unless specifically permitted by the university for special events:

(1) University property may not be used in ways which obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the university, any university building or facility, or that obstruct or interfere with educational activities or other lawful activities on university grounds, university controlled property, or at university sponsored events unless approved by the president, or the president's designee.

(2) University property may not be used in ways that interfere with educational, research, or public service activities inside or outside any university building or otherwise prevent the university from fulfilling its mission and achieving its primary purpose.

(3) University property may not be used for the purpose of campaigning regarding a ballot proposition or by, for, or against candidates who have filed for public office, except that:

(a) This provision does not apply to candidates for Western Washington University student offices or student ballot propositions;

(b) University groups may sponsor candidate forums as well as issue forums regarding ballot propositions;

(c) Candidates for office and proponents or opponents of ballot propositions may rent university property as a nonuniversity group or individual on a short-term basis for campaign purposes to the same extent and on the same basis as may other individuals or groups;

(d) Candidates for office and proponents or opponents of ballot propositions may use the limited public forum areas using the procedures of chapter 516-35 WAC to the same extent and on the same basis as may other individuals or groups; and

(e) For informational purposes, a university group may invite a candidate or another political speaker to one of the meetings of its membership on university property, if it has complied with the scheduling procedures of WAC 516-36-025 and applicable university policy.

(4) University property may not be used in ways that create safety hazards or pose unreasonable safety risks to students, employees, invitees, or guests.

(5) University property may not be used for commercial purposes, including: Advertising, commercial solicitation, sales, or other activities to promote a product, except as allowed under WAC 516-36-040.

(6) University property may not be used in furtherance of or in connection with illegal activity.

(7) University property may not be used in such manner as to create a hazard or result in damage to university property.

(8) University property may not be used where such use would create undue stress on university resources (e.g., a request for a major event may be denied if another major event is already scheduled for

the same time period, because of demands for parking, security coverage, etc.); use of limited public forum areas for freedom of expression and assembly must be in accordance with chapter 516-35 WAC and this chapter if applicable.

(9) Use of audio amplifying equipment or sound generation is permitted only in locations and at times that will not disturb the normal conduct of university operations. Advance permission by the president, or the president's designee, is required to use audio amplifying equipment or generate sound that may disturb the normal conduct of university operations.

(10) Alcoholic beverages may be served only as allowed under university policies. It is the responsibility of the event sponsor to obtain all necessary licenses from the Washington state liquor and cannabis board and adhere to their regulations, as well as all local ordinances, university rules, and regulations.

(11) No person may erect a tent or other shelter on university property or remain overnight on university property, including in a vehicle, trailer, tent, or other shelter, with the following exceptions:

(a) The use and occupancy of university housing in accordance with chapter 516-56 WAC;

(b) The use of property by a university employee or agent who remains overnight to fulfill the responsibilities of their position;

(c) The use of property by a university student who remains overnight to fulfill the responsibilities of their course of study;

(d) The use of property where overnight stays are specifically permitted in identified locations for attendees at special events designated by the university.

(e) The use of property during a university, local, state or federal declaration of an emergency as determined by the president, or the president's designee.

(12) Signs and posters and visual displays may be placed only at those locations authorized under, and in accordance with university policies.

(13) Handbills, leaflets, pamphlets, flyers, and similar materials may be distributed only in relation to university sanctioned activities or for purposes of freedom of expression. Materials may not be distributed in a manner that results in littering or requires university resources for disposal.

(14) Animals are only allowed on university property in accordance with WAC 516-52-010 and university policies.

(15) Smoking is not allowed in or on university property, except in accordance with chapter 70.160 RCW.

(16) Mopeds, Segways, skateboards, roller skates, roller blades, bicycles, and similar personal transportation devices may be used on campus in accordance with chapters 516-13 and 516-15 WAC.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-13-073, § 516-36-030, filed 6/15/18, effective 7/16/18. Statutory Authority: RCW 28B.35.120(12), 34.05.220 (1)(b), 34.05.250, 28B.15.600, 42.17.310, 42.30.070 - 42.30.075, chapters 69.41 and 43.21C RCW. WSR 90-10-042, § 516-36-030, filed 4/27/90, effective 5/1/90; Order 75-10, § 516-36-030, filed 11/10/75.]

OTS-3634.1

AMENDATORY SECTION (Amending WSR 18-09-049, filed 4/13/18, effective 5/14/18)

- WAC 516-52-020 Weapons and armaments prohibited.** (1) Definitions. As used in this section, the following words and phrases mean:
- (a) Armor or armaments. Includes, but are not limited to, shields, body armor, tactical gear, tactical face (~~(masks)~~) coverings, and helmets.
- (b) Firearm. A weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder, whether loaded or unloaded.
- (c) Weapon. Includes, but is not limited to, air guns, pellet guns, paint ball guns, or other pneumatic propellant devices, bows, crossbows, slingshots or other muscle powered projectile devices, daggers, swords, knives or other cutting or stabbing instruments with blades longer than three inches, clubs, bats, sand clubs, truncheons, metal knuckles, incendiary devices or materials, or any other objects or instruments apparently capable of producing bodily harm.
- (2) Only such persons who are authorized to carry firearms, ammunition, or other weapons or armaments as duly appointed and commissioned law enforcement officers in the state of Washington, commissioned by agencies of the United States government, or authorized by contract with the university, shall possess firearms or other weapons or armaments issued for their possession by their respective law enforcement agencies or employers while on the campus or other university-controlled property, including, but not limited to, residence halls.
- (3) Other than the law enforcement officers or other individuals referenced in subsection (2) of this section, individuals seeking to bring a firearm or other weapon onto campus, university-owned property, or a university sponsored event must obtain prior written authorization at the university public safety department, which shall have sole authority to review and approve any such request and, if approval is granted, establish conditions to the firearm or weapon authorization.
- (4) Members of the campus community and visitors who bring firearms or other weapons or armaments to campus without prior authorization must immediately remove them from university property or place the firearm(s), weapon(s), or armament(s) in the university provided storage facility. The storage facility is located at the university public safety department and is accessible (~~(twenty-four)~~) 24 hours per day.
- (5) Possession of a valid concealed pistol license authorized by the state of Washington is not an exemption under this section. However, nothing in this section shall prevent an individual holding a valid concealed pistol license from securing their pistol in a vehicle as authorized under RCW 9.41.050.
- (6) Except for those persons identified in subsection (2) of this section or under the circumstances described in subsection (3) or (4) of this section, possession of firearms, ammunition, fireworks, and explosives is prohibited on the university campus, university-owned property, and at university sponsored events. No one may possess fireworks or explosives unless certified or licensed to do so for purposes

of conducting university-authorized activities, building construction or demolition.

(7) Some ((~~weapons~~)) items including, but not limited to, sports equipment, kitchen utensils, laboratory materials and equipment, personal protective equipment, safety training equipment, costume/theatrical masks, and props in campus theatre productions are permitted when used for the purpose for which they are intended. Use of weapons, armor, or armaments in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons or property, or in any way to avoid apprehension for a criminal act or acts is prohibited.

(8) Violations of this section are subject to appropriate disciplinary or legal action.

[Statutory Authority: RCW 28B.35.120(12). WSR 18-09-049, § 516-52-020, filed 4/13/18, effective 5/14/18; WSR 93-01-080, § 516-52-020, filed 12/14/92, effective 1/14/93; WSR 90-17-031, § 516-52-020, filed 8/9/90, effective 9/1/90.]

WSR 22-13-128

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed June 17, 2022, 1:53 p.m., effective July 18, 2022]

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

Purpose: The rules ensure the proper implementation and enforcement of Clean Energy Transformation Act and address wholesale market transactions and the prohibition on double counting, as provided for under RCW 19.405.100 and 19.405.130. The rules provide clarification of the requirement in RCW 19.405.040 that a utility use renewable or nonemitting electricity sources in an amount equal to 100 percent of the utility's retail electric load; provide clarification of the requirement in RCW 19.405.050 that a utility supply 100 percent of all sales of electricity to Washington retail electric customers using electricity from renewable or nonemitting sources; establish specification, verification, and reporting requirements for (i) wholesale market purchases, and (ii) the prohibition of double counting of non-power attributes under RCW 19.405.040; and provide clarification on the treatment of storage resources under the requirement in chapter 19.405 RCW.

Citation of Rules Affected by this Order: New 4.

Statutory Authority for Adoption: RCW 19.405.100, 19.405.130.

Adopted under notice filed as WSR 22-07-104 on March 23, 2022.

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 4, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: June 17, 2022.

Dave Pringle
Legislative and
Rules Coordinator

OTS-3672.2NEW SECTION

WAC 194-40-370 Accounting for electricity from storage resources. (1) The eligibility of renewable or nonemitting electricity to demonstrate compliance with CETA is not affected by the use of storage resources.

(2) Except for storage resources located on the customer side of a retail meter, any electrical consumption or loss resulting from the

charging, holding, and discharging of storage resources is not considered retail electric load as defined in RCW 19.405.020(36).

(3) Any consumption or loss resulting from the charging, holding, and discharging of storage resources located on the customer side of a retail meter is considered retail electric load for the purpose of compliance with CETA.

[]

NEW SECTION

WAC 194-40-410 Use of renewable energy credits other than unbundled RECs to comply with the greenhouse gas neutral standard. (1) A utility may use a REC other than an unbundled REC to comply with the requirements of RCW 19.405.040 (1)(a) or to demonstrate performance compared to an interim target established under RCW 19.405.060(1) only if the utility complies with the requirements of this section.

(2) The utility must acquire the REC and the electricity associated with the REC in a single transaction through ownership or control of the generating facility or through a contract for purchase or exchange.

(3) The electricity associated with the REC must be:

(a) From a generating facility located within the utility's service area or balancing authority area; or

(b) Acquired by the utility at one of the following points of delivery:

(i) The transmission or distribution system of an electric utility (as defined in RCW 19.405.020);

(ii) The transmission system of the Bonneville Power Administration;

(iii) The transmission system of any entity that is a participant in an organized electricity market located in the Western Interconnection in which the electric utility is a participant; or

(iv) Another point of delivery designated by the utility for the purpose of subsequent delivery to the utility.

(4) The electricity associated with the REC must be from a generating facility or contract that is part of a resource portfolio reasonably expected to be capable of serving at least 80 percent of the utility's retail electric load over each compliance period. Each utility required under RCW 19.280.030(1) to prepare an integrated resource plan must demonstrate compliance with this requirement by, at a minimum, showing through an hourly analysis that the expected renewable or nonemitting output of the resource portfolio could be generated and delivered to serve at least 80 percent of expected retail electric load. This demonstration must use inputs and assumptions consistent with the utility's integrated resource plan and may be updated with changes in its resource portfolio.

(5) A REC is not eligible under this section if the utility sells or otherwise transfers ownership of the electricity associated with the REC in a transaction that (a) contractually specifies the source of the electricity by fuel source or as renewable or (b) transfers the nonpower attributes of the electricity.

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NEW SECTION

WAC 194-40-415 Use of renewable energy credits to comply with the 100 percent renewable or nonemitting standard. (1) Except as provided in subsection (2) of this section, a utility may not use a REC to comply with the requirements of RCW 19.405.050(1) unless:

(a) The utility acquired the REC and the electricity associated with the REC in a single transaction through ownership or control of the generating facility or through a contract for purchase or exchange; and

(b) The utility did not use the associated electricity for any purpose other than supplying electricity to its Washington retail electric customers.

(2) A utility may use any REC to comply with the requirements of RCW 19.405.050(1) if:

(a) The utility acquired the REC through participation in a clean electricity market;

(b) The REC is associated with electricity acquired through participation in a clean electricity market; and

(c) The utility obtained all electricity supplied to its retail customers from clean electricity markets.

(3) For purposes of this section, "clean electricity market" means an organized wholesale electricity market that provides for the physical delivery of electricity and excludes electricity from fossil fuel and unspecified sources.

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NEW SECTION

WAC 194-40-420 Safeguards to prevent double counting of unbundled RECs. (1) A utility may use an unbundled REC as an alternative compliance option, as provided in RCW 19.405.040 (1)(b), only if the utility demonstrates that there is no double counting of any nonpower attribute associated with that REC by complying with the requirements of this section.

(2) Except as provided in subsection (4) of this section, a utility may use an unbundled REC for alternative compliance only if the utility demonstrates:

(a) The associated electricity was sold, delivered, or transferred without specifying fuel sources or nonpower attributes and under a contract expressly stating the fuel source or nonpower attributes are not included; and

(b) The associated electricity was not delivered, reported, or claimed as a zero-emission specified source or assigned the emissions rate of the renewable generating facility under a GHG program.

(3) A utility's demonstration under this section may be met by documentation that the entity providing the unbundled REC:

(a) Provides contract, confirmation, or other transaction terms that comply with the requirements of subsection (2) of this section;

(b) Was a party to or otherwise has knowledge of the transaction in which the associated electricity was sold or transferred and at-tests to complying with the requirements of subsection (2) of this section; or

(c) Obtained the unbundled REC from an entity that attests that it and all previous owners of the REC transferred the REC using transaction terms complying with the requirements of (a) or (b) of this subsection.

(4) To claim and retire an unbundled REC for alternative compliance where the Washington-eligible RECs were created by renewable electricity marketed by BPA, a utility must demonstrate the REC was not associated with electricity from a system sale from BPA directly into a state with a GHG program and to an entity regulated by the state GHG program. The RECs are calculated based on the same vintage year as the year in which the electricity was imported to the state with the GHG program.

(5) For the purposes of this section, "GHG program" includes any governmental program outside of Washington that caps or limits greenhouse gas emissions or requires the purchase, surrender, or retirement of greenhouse gas allowances, if the scope of the greenhouse gas program includes electricity imported from outside the governmental jurisdiction and does not require the retirement of RECs for such imported electricity.

(6) This section sets only the minimum requirements necessary to demonstrate that no double counting has occurred. The auditor may request that the utility produce other evidence or recommend specific actions for the utility to consider to demonstrate that there is no double counting of nonpower attributes.

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WSR 22-13-135
PERMANENT RULES
BELLEVUE COLLEGE

[Filed June 17, 2022, 4:30 p.m., effective July 18, 2022]

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

Purpose: To update the current parking and traffic rules with the intention to remove and/or update outdated information while also providing greater clarity to better serve our campus community.

Citation of Rules Affected by this Order: New WAC 132H-116-015, 132H-116-025, 132H-116-035, 132H-116-045, 132H-116-055, 132H-116-065, 132H-116-075, 132H-116-085 and 132H-116-095; and repealing WAC 132H-116-300, 132H-116-310, 132H-116-315, 132H-116-320, 132H-116-330, 132H-116-350, 132H-116-351, 132H-116-352, 132H-116-353, 132H-116-354, 132H-116-355, 132H-116-356, 132H-116-357, 132H-116-358, 132H-116-360, 132H-116-405, 132H-116-410, 132H-116-415, 132H-116-430, 132H-116-431, 132H-116-432, 132H-116-433, 132H-116-460, 132H-116-470, 132H-116-590, 132H-116-615, 132H-116-620, 132H-116-630, 132H-116-655, 132H-116-750, 132H-116-765, 132H-116-790, and 132H-116-791.

Statutory Authority for Adoption: RCW 28B.50.140(13); chapter 34.05 RCW.

Adopted under notice filed as WSR 22-07-108 on March 23, 2022.

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 1.

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

Number of Sections Adopted on the Agency's own Initiative: New 9, Amended 0, Repealed 33.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 0, Repealed 33.

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 9, Amended 0, Repealed 33.

Date Adopted: June 15, 2022.

Loreen M. Keller
Associate Director
Policies and Special Projects

OTS-3686.5

NEW SECTION

WAC 132H-116-015 Purpose. (1) Under RCW 28B.50.140(10) the board of trustees of Community College District VIII has the authority to establish rules and regulations for pedestrian and vehicular traffic over property owned, operated, or maintained by the college district.

(2) The objectives of these regulations are:

(a) To protect and control pedestrian and vehicular traffic on property owned, operated, or maintained by the college district.

(b) To ensure access at all times for emergency equipment.

- (c) To minimize traffic disturbances.
- (d) To facilitate the operation of the college by providing adequate access to vehicles.
- (e) To allocate limited parking space for the most efficient use.
- (f) To protect state property.
- (3) If any provision of this chapter is adjudged by a court to be contrary to law, the remaining provisions shall continue to be in effect.

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NEW SECTION

WAC 132H-116-025 Definitions. For the purpose of this chapter, the following terms and definitions shall apply:

- (1) Board: The board of trustees of Community College District VIII, state of Washington.
- (2) Campus: Any and all real property, operated, controlled, or maintained by Bellevue College.
- (3) Public safety office: Unit of the college accountable to the vice president of administrative services and responsible for campus security, public safety, emergency operations, parking and traffic control.
- (4) Public safety officers: Employees of the college accountable to the vice president of administrative services and responsible for campus security, public safety, emergency operations, and parking and traffic control.
- (5) Student: 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, or otherwise. Persons who withdraw, graduate, or complete courses after the date of a reported violation, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."
- (6) Faculty members: Any person employed by the college as an instructor, counselor, librarian, program or department chair, or in any other position for which the training, experience, or responsibilities are comparable as determined by the appointing authority.
- (7) Staff: The administrative employees, classified members, and part-time staff employed by the college.
- (8) Visitor(s): Person(s) who come on to campus as guest(s), or who lawfully visit the campus and are neither employees nor students of the institution.
- (9) Pedestrian: A person who is not driving or otherwise occupying a vehicle.
- (10) Permit: A properly displayed document, card, or sticker, issued by the public safety office, that authorizes a vehicle to park in designated areas on the campus. Parking permits may also be virtual in nature and identified by other means, such as a license plate.
- (11) Carpool: Groups of two or more people, including faculty, staff, or students, who commute to the college in the same vehicle and who have obtained a carpool permit.
- (12) Vehicle: Any motorized or electric automobile, truck, motorcycle or moped that requires a DMV license plate to be displayed.

(13) Foot propelled device: Wheeled devices including, but not limited to, bicycles, skateboards, roller skates, or roller blades that are designed or used for recreation and/or transportation purposes. Foot propelled devices may be supplemented by battery power.

(14) Idling: The running of an engine that supplies the motive power for a vehicle, when not for the purpose of moving the vehicle with the normal flow of traffic on a street or roadway.

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NEW SECTION

WAC 132H-116-035 Parking permits and parking locations. (1) The vice president of administrative services or designee is authorized to issue all parking permits.

(2) Parking permit fees shall be established, as appropriate, by the college's board of trustees. Once fees have been established and approved the college president may adjust the fees. For represented employees, fees will be in accordance with applicable collective bargaining agreements (CBAs).

(3) No person shall park, or leave any vehicle, whether attended or unattended, on the campus of Bellevue College without a valid Bellevue College permit, a valid disability placard or license plate, or a government agency license plate.

(4) Permits issued by the public safety office shall be displayed in accordance with the instructions issued with the permit. Permits not displayed in accordance with the instructions issued with the permit are invalid. Vehicles that fail to display a permit in accordance with the instructions shall be subject to citation.

(5) Parking permit types: Bellevue College parking permits include current, temporary, or special permits and are valid for the date(s), times, and locations specified on the permits. Parking permits are required and lots are monitored 24 hours a day and seven days a week. All permits must be displayed according to the instructions on the permit or as described below. Bellevue College parking permits are issued by the public safety office or through authorized distribution points (e.g., a temporary parking permit kiosk). Permits include, but are not limited to, the following:

(a) Carpool permits: Faculty, staff, or students can apply for this permit through public safety. One permit will be issued for each carpool and may only be used among the registered members of the group. Carpool vehicles must also display or obtain a regular student or employee permit.

(b) Daily and hourly permits: Daily and hourly parking permits are available through the public safety office or through designated locations across campus.

(c) Employee permits: Parking permits for faculty and staff of Bellevue College. Registered volunteers are eligible for an employee permit.

(d) Discount student permits: Discounted student parking permits for students of Bellevue College that may be used in general parking lots.

(e) Guest permits: Temporary permits may be issued to guests of the college (including, but not limited to, guest speakers, job candidates, or visiting officials).

(f) Motorcycle permits: Issued by the public safety office for motorcycles.

(g) Special events: Temporary reserved parking for conferences, seminars, and other special events, can be reserved through the events office or public safety. Requests should be submitted by at least 10 business days in advance.

(h) Student permits: Parking permits for students of Bellevue College.

(6) Transfer of permits:

(a) With the exception of carpool permits, parking permits are not transferable. If a vehicle is sold or traded, the permit holder may retain their permit and use it on a different vehicle so long as they update their vehicle information with the public safety office.

(b) Permits may be reissued as authorized by the director of public safety.

(7) Parking permit refunds: In cases where a permit is no longer needed, employee or student permit holders may request a partial refund from public safety using the refund form on the public safety web page. Refund amounts will be based on the following:

(a) Parking permit fees will be refunded at 100 percent less five dollars when the refund form is received by the fifth instructional day of the quarter.

(b) Parking permit fees will be refunded at 50 percent when the refund form is received by the sixth instructional day through the 20th instructional day of the quarter.

(c) Parking permit fees will not be refunded when the refund form is received after the 20th instructional day of the quarter.

(d) The parking permit document, card, or sticker must be returned with the refund form when requesting a refund for it to be considered submitted. In the case of a virtual permit, the permit holder must notify public safety in writing using the refund form; however, no physical permit must accompany the form.

(8) A map of the designated parking lots/spaces on campus can be found on the college website and are also noted across campus with parking lot signs. When parking on campus, license plates must be clearly visible.

(9) Students, staff, faculty, and visitors may park on campus as follows:

(a) Student parking permits are valid only in areas designated for student parking, daily metered parking, and general parking.

(b) Staff/faculty parking permits are valid in the areas designated for employee parking, daily metered parking, and general parking.

(c) Visitors are subject to the parking regulations of Bellevue College and are required to have a valid temporary permit. Temporary parking permits are valid only in the area(s) designated in the temporary parking permit.

(10) Parking locations include, but are not limited to, the following:

(a) Disability parking spaces: Only vehicles displaying a valid state of Washington placard or license plate may park in designated disability spaces. Vehicles with disability placards or plates may park in any employee, student, metered, or general parking area on campus.

(b) Electric charging stations: A valid parking permit is required to park in electric vehicle charging spaces. Vehicles must be actively charging while parked in electric charging spaces.

(c) Electric and hybrid parking spaces: Parking for electric and hybrid vehicles only.

(d) Employee parking: Requires an employee permit. Bellevue College also provides 24-hour employee parking where employees may leave their vehicle overnight after notifying public safety.

(e) General parking: Available for use by all permit holders.

(f) Guest or special event parking: Guests may park in designated areas with either a guest or special event permit issued by the public safety office.

(g) Motorcycle parking: Motorcycles may park in employee or student lots in accordance with the permit type or areas designated for motorcycle parking.

(h) Reserved parking: Includes loading docks or other specially reserved areas (including, but not limited to, emergency response, college, or official visitor vehicles).

(i) Student parking: Requires a student permit (daily permits are allowed). Also includes limited weekday permits (including, but not limited to, Monday/Wednesday and Tuesday/Thursday student permits).

(j) Visitors: Visitors may park in designated lots with the purchase of an hourly or daily permit.

(11) Parking within designated spaces:

(a) No vehicle shall be parked on the campus except in those areas set aside and designated as parking areas.

(b) No vehicle shall be parked so as to occupy any portion of more than one parking space as designated within the parking area. The fact that other vehicles may have been so parked as to require the vehicle parked to occupy a portion of more than one space shall not constitute an excuse for a violation of this section.

(c) No vehicle shall be parked at any time in campus roadways, fire lanes, bus zones, loading zones, service driveways, walkways, courtyards, or in the landscaping except emergency vehicles, college owned vehicles, and designated service vehicles.

(d) No recreational vehicle (RV), motorhome, or vehicle used as a temporary or permanent dwelling shall be parked on campus overnight.

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NEW SECTION

WAC 132H-116-045 Traffic and parking regulations. (1) The authority and powers conferred upon the vice president of administrative services or the director of public safety by these regulations may be delegated to other college employees.

(2) Parking shall be allocated by the vice president of administrative services consistent with the objectives of these regulations.

(3) The applicable parking and traffic rules and regulations for Bellevue College include:

(a) The motor vehicle and other traffic laws of the state of Washington, Title 46 RCW.

(b) The traffic code of the city of Bellevue.

(c) The Bellevue College parking and traffic regulations.

(d) In case of conflict among the provisions of the motor vehicle and other traffic laws of the state of Washington or the traffic code of the city of Bellevue and Bellevue College parking and traffic regu-

lations, the provisions of the state of Washington motor vehicle laws shall govern.

(4) Regulatory signs, markings, barricades:

(a) The vice president of administrative services is authorized to erect signs, barricades, and other structures and to paint marks and other directions upon the streets and parking areas owned, operated, and maintained by the college.

(b) Drivers of vehicles shall obey the signs, barricades, structures, markings, and directions erected pursuant to this section. Drivers shall also comply with directions given to them by a campus public safety officer or other authorized college personnel controlling and regulating traffic or parking.

(c) No person without authorization from the vice president of administrative services shall move, deface, or in any other way change a sign, barricade, structure, marking or direction so placed, or previously placed, for the purpose of regulating traffic or parking.

(5) The regulations governing permits and parking within designated spaces shall not apply to the drivers of state-owned vehicles operated by Bellevue College in the performance of assigned functions.

(6) During special occasions that may cause additional and/or heavy traffic and during emergencies, the director of public safety is authorized to impose additional traffic and parking regulations to achieve the specified objectives of this chapter.

(7) The registered owner of the vehicle is responsible for their vehicle parked on campus. They shall be held responsible for all violations of these rules and regulations charged to that vehicle. However, the operator of a vehicle will not be relieved of responsibility for violating any rule or regulation of this chapter simply because they are not also the registered owner of the vehicle.

(8) Vehicles shall not exceed five miles per hour in parking lots, or 20 miles per hour on campus roads, or such lower speeds as may be reasonable and prudent based on the circumstances or as otherwise posted.

(9) No person driving or otherwise responsible for a motor vehicle shall permit it to stand unattended without first:

(a) Effectively setting the brake and transmission to prevent movement of the vehicle.

(b) Stopping the engine, turning off the vehicle or otherwise rendering the vehicle immobile.

(10) Vehicles standing or stopped, whether idling or parked, are subject to the rules under RCW 46.61.570 and Bellevue College policies and procedures and may be subject to citation or impoundment in accordance with such rules. Engine idling is prohibited in no parking zones on campus. Outside of no parking zones, employees, students, and visitors are encouraged to avoid unnecessary idling in order to create a safer and cleaner campus.

(11) Pedestrian's right of way:

(a) The operator of a vehicle shall yield right of way, slowing down or stopping, if need be, to so yield to any pedestrian, but no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible or unsafe for the driver to yield.

(b) Whenever any vehicle slows or stops so as to yield to pedestrian traffic, the operator of any other vehicle approaching from the rear shall not overtake and pass such a vehicle which has slowed or stopped to yield to pedestrian traffic.

(c) Where a sidewalk is provided, pedestrians shall proceed upon such sidewalk.

(12) Motorcycles and mopeds:

(a) Motorcycles and mopeds are subject to all traffic and parking rules and regulations controlling other vehicles.

(b) Motorcycles and mopeds must be parked in designated areas.

(c) Motorcycles and mopeds are not permitted on paths, sidewalks, or authorized bicycle or pedestrian areas or in buildings at any time.

(13) Foot propelled devices:

(a) Bicycles shall be secured in designated areas only. Unattended or improperly secured bicycles may be removed by public safety officers. Public safety patrol bicycles are exempt.

(b) No foot propelled devices shall be operated on or in campus walkways, corridors, courtyards, hallways or buildings unless their use is required as part of the educational process in an authorized program, with the exception of public safety patrol bicycles.

(14) The operator of any vehicle or foot propelled device involved in an accident on campus shall within 24 hours report such accident to the public safety office. This does not relieve any person so involved in an accident from their responsibility to file a state of Washington motor vehicle accident report.

(15) Any vehicle theft or theft from a vehicle that occurs on campus should be reported to the public safety office promptly.

(16) Except for college owned and/or operated vehicles, the college assumes no liability under any circumstances for vehicles on college properties.

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NEW SECTION

WAC 132H-116-055 Disability parking. Vehicles displaying a valid state of Washington disability parking placard or license plate may park in parking spaces or areas reserved for persons with physical disabilities pursuant to RCW 46.19.030.

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NEW SECTION

WAC 132H-116-065 Enforcement. (1) The vice president of administrative services is responsible for parking and traffic management on campus. The director of public safety has the authority to enforce all college parking and traffic rules and regulations and to delegate that authority.

(2) Parking rules and regulations will be enforceable throughout the calendar year on a 24-hour daily basis.

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NEW SECTION

WAC 132H-116-075 Citations. (1) Citations will be issued based on reasonable cause to believe that a violation of these rules and regulations has occurred. Citations are issued by affixing a copy of the citation on the vehicle.

(2) Grounds for the issuance of citations include, but are not limited to:

- (a) No valid parking permit displayed or on record;
- (b) Blocking or impeding traffic;
- (c) Displaying an unauthorized/stolen/forged permit;
- (d) Improperly displayed parking permit;
- (e) Improper use of carpool permit;
- (f) Parking a nonelectric/hybrid vehicle in an electric/hybrid space;

(g) Vehicles parked:

(i) In a disability space without a valid placard or license plate;

- (ii) Over designated time limit;
- (iii) In an area not designated for parking;
- (iv) In an area not authorized;
- (v) On or blocking a walkway;
- (vi) In a marked no parking area;
- (vii) In landscaping;
- (viii) In a reserved area without a special permit;
- (ix) In fire lane or impeding access to a fire hydrant;
- (x) In two or more spaces;
- (xi) In excess of 24 hours without prior approval.

(3) The college charges the following monetary fines for the following violations:

(a) Twenty-five dollar fine:

- (i) No valid parking permit displayed or on record;
- (ii) Improperly displayed parking permit;
- (iii) Parked over designated time limit;
- (iv) Parked in two or more spaces;
- (v) Parked in excess of 24 hours without prior approval;
- (vi) Parking a nonelectric/hybrid vehicle in an electric/hybrid space;
- (vii) Parking in an electric/hybrid vehicle charging space while not actively charging.

(b) Fifty dollar fine:

- (i) Blocking or impeding traffic;
- (ii) Parked on or blocking a walkway;
- (iii) Parked in an area not designated for parking;
- (iv) Parked in an area not authorized;
- (v) Parked in a marked no parking area;
- (vi) Parked in landscaping;
- (vii) Parked in a reserved area without a special permit;
- (viii) Parked in a fire lane or impeding access to a fire hydrant;

(ix) Improper use of a carpool permit;

(x) Parked in a reserved area without a special permit.

(c) Sixty dollar fine: Displaying an unauthorized/stolen/forged permit.

(d) Two hundred fifty dollar fine: Parked in a disability space without a valid placard or license plate.

(4) The registered owner of the vehicle is responsible for all fees and fines associated with violations of the college's parking rules and policies.

(5) Citations that are not appealed within 21 calendar days or paid within 21 calendar days may be subject to the following actions:

(a) Vehicle impoundment in accordance with WAC 132H-116-085;

(b) Denial of future parking privileges, whether student, employee, or visitors;

(c) Unpaid citations may be sent to a collections agency.

(6) An accumulation of citations that are not responded to and resolved, by payment or appeal, by a student or college employee may be cause for disciplinary action. Students in violation may be referred to the student conduct officer for disciplinary action. Employees in violation may be referred to human resources for disciplinary action. For represented employees, disciplinary action will be in accordance with applicable CBAs.

(7) Parking permits are the property of the college, and may be denied or revoked by the public safety director for any of the following reasons:

(a) When the purpose for which the permit was issued changes or no longer exists;

(b) When a permit is used by an unregistered vehicle or by an unauthorized person;

(c) Continued violations of parking regulations;

(d) Counterfeiting or altering a permit;

(e) Falsification on a parking permit application;

(f) Failure to comply with a final decision of the citation review committee or appeal authority.

(8) Vehicles displaying revoked permits will be subject to citation.

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NEW SECTION

WAC 132H-116-085 Impoundment. (1) In addition to imposing fines, the vice president of administrative services and the director of public safety are authorized to impound a vehicle parked on college property on the following grounds:

(a) Creating a safety hazard.

(b) Leaving a vehicle running and unattended.

(c) Vehicles parked in excess of 72 consecutive hours without prior approval from the public safety office are considered abandoned or unattended and are subject to impoundment at the registered owner's risk and expense. No vehicle, other than college owned or leased vehicles, shall be parked on college property in excess of 24 hours without prior documented approval from the public safety office. Vehicles parked on campus in excess of 24 hours, without prior documented approval from the public safety office, are subject to citation. Once a vehicle has accumulated three consecutive citations, public safety will place one impound warning on a vehicle. After 24 hours have passed since an impound warning was placed on a vehicle it may be towed.

(d) Parking:

(i) In a marked "tow away" or "no parking" zone.

- (ii) Without a valid disability permit or license plate in a space reserved for persons with physical disabilities.
 - (iii) Anywhere other than a designated parking area.
 - (e) Vehicles impeding access to:
 - (i) A roadway so as to impede the flow of vehicular and pedestrian traffic;
 - (ii) A walkway so as to impede the flow of pedestrian traffic;
 - (iii) A fire lane or impeding access to a fire hydrant including parking within 15 feet of a fire hydrant; or
 - (iv) The use of another legally parked vehicle.
 - (f) Accumulation of unpaid citations: An individual who accumulates four or more unpaid citations, after the deadline issued on the citations or after any appeal, is subject to having their vehicle impounded.
- (2) Vehicles shall be impounded subject to the following terms and conditions:
- (a) The expenses of impoundment and storage shall be charged to the registered owner of the vehicle and must be paid prior to the vehicle's release.
 - (b) The college shall not be liable for loss or damage of any kind resulting from the impound or storage of an impounded vehicle.
 - (c) Impoundment of a vehicle does not remove the obligation to pay any fines associated with the violation.

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NEW SECTION

WAC 132H-116-095 Appeals. (1) Appeals of fines and penalties:

- (a) Anyone who receives a citation for an alleged violation of these parking and traffic rules has the right to appeal.
- (b) Appeals must be submitted within 21 calendar days from the date the citation is issued. Appeals are to be submitted in writing through the online form on the public safety website. A person who fails to file a written appeal in conformance with these rules shall be deemed to have waived the right to appeal.
- (c) If an individual is in possession of an ADA placard that was not visibly present on the vehicle while parking in an ADA space their citation will be automatically waived, if they can provide documentation to public safety that the placard is registered to them.
- (d) Grounds for parking citation appeals include, but are not limited to, the following:
 - (i) Incomplete or incorrect citation;
 - (ii) Received citation within 20 minutes of paying for parking;
 - (iii) Financial hardship.
- (2) Citation review committee:
 - (a) Appeals shall be considered by the Bellevue College citation review committee in a brief adjudicative proceeding pursuant to procedures set forth in chapter 132H-108 WAC. The citation review committee may uphold, reduce, or waive the fine(s) associated with the parking and traffic citation.
 - (b) Any fine(s) still levied against the appellant must be paid within the specified deadline in the committee's initial order, unless the appellant seeks review of the committee's initial order.

(c) Nonpayment after the deadline has passed may result in any of the college actions referred to under WAC 132H-116-075 and 132H-116-085.

(d) The committee is made up of one student, one faculty representative and one classified staff representative. An exempt employee may substitute for a classified staff or faculty member for no longer than 120 days while an appropriate classified staff or faculty member can be identified. The committee members are appointed by the vice president of administrative services upon consultation with representative groups. The assistant director of public safety will serve as the nonvoting presiding officer of the committee. A public safety representative will serve as a nonvoting advisor and provide administrative support to the committee.

(e) The citation review committee will hold regularly scheduled meetings throughout the academic year.

(f) The committee shall consider each appeal on its merits based upon the parking and traffic regulations.

(g) Appellants may request to present their case to the appeals committee. In such case, an appellant will be notified of the hearing date and location via the email address they provided in their appeal. Hearings may be held virtually. If an appellant does not request to present their appeal or does not appear at the hearing, the committee will make a decision in the appellant's absence and consider the written appeal during its deliberations.

(h) The committee will issue an initial order containing a brief statement with the reasons for its decision within 10 calendar days after the hearing. Decisions will be communicated by email and first-class mail. Any fine(s) levied against the appellant in the initial order must be paid within 21 calendar days after the committee has issued a decision and mailed its initial order, unless the appellant seeks review of the initial order.

(i) Default decision: If the committee, without a showing of good cause, fails to conduct a hearing on an appeal within 60 days of receiving the notice of appeal, the fine shall automatically be considered waived.

(3) Review of initial order: An appellant who is not satisfied with the initial order has the right to seek review by the director of public safety. The appellant must submit their appeal using the online appeal form. An appeal from the initial order must be submitted within 21 calendar days of receiving the initial order. The director of public safety will issue a final order containing a written explanation of their decision within 10 calendar days after receiving the request for review. The director of public safety's decision constitutes final agency action and may be judicially appealed pursuant to the procedures set forth in chapter 34.05 RCW.

(4) Any appellant who has paid the fine(s) affirmed or set by the citation review committee has forfeited the right to an appeal.

(5) Right to appeal revocation: As established by WAC 132H-108-450(4), parking permit denials or revocations may be appealed to the vice president of administrative services. Appeals are to be submitted in writing through the online form on the public safety website.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132H-116-300	Preamble.
WAC 132H-116-310	Objectives of parking and traffic rules and regulations.
WAC 132H-116-315	Definitions.
WAC 132H-116-320	Applicable parking and traffic rules and regulations.
WAC 132H-116-330	Enforcement of parking and traffic rules and regulations.
WAC 132H-116-350	Permits required for vehicles on campus.
WAC 132H-116-351	Authorization for issuance of permits.
WAC 132H-116-352	Permit revocations.
WAC 132H-116-353	Right to appeal revocation.
WAC 132H-116-354	Transfer of permits.
WAC 132H-116-355	Responsibility for vehicles.
WAC 132H-116-356	Display of permits.
WAC 132H-116-357	Parking fees.
WAC 132H-116-358	Disability parking.
WAC 132H-116-360	Visitors.
WAC 132H-116-405	Allocation of parking spaces.
WAC 132H-116-410	Parking within designated spaces.
WAC 132H-116-415	Parking by permit type.
WAC 132H-116-430	Special parking and traffic regulations authorized.
WAC 132H-116-431	Regulatory signs, markings, barricades, etc.
WAC 132H-116-432	Speed.
WAC 132H-116-433	Pedestrian's right of way.
WAC 132H-116-460	Parking—Operator's responsibility.
WAC 132H-116-470	Exceptions to parking and traffic restrictions.
WAC 132H-116-590	Motorcycles, bicycles, scooters.
WAC 132H-116-615	Issuance of traffic citations.
WAC 132H-116-620	Fines, penalties and impounding.
WAC 132H-116-630	Appeals of fines and penalties.
WAC 132H-116-655	Report of accident and theft.
WAC 132H-116-750	Delegation of authority.
WAC 132H-116-765	Liability of college.
WAC 132H-116-790	Prohibition of literature.
WAC 132H-116-791	Enforcement.

WSR 22-13-144
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 21, 2022, 8:37 a.m., effective July 22, 2022]

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

Purpose: The purpose of this rule is to implement changes to chapter 74.34 RCW in response to the passing of E2SHB 1320 in 2021, as well as clarifying the implementation of 42 U.S.C. Sec. 1396r (g)(1)(D) and 1395i-3 (g)(1)(D).

Citation of Rules Affected by this Order: Amending WAC 388-103-0001 and 388-103-0210.

Statutory Authority for Adoption: RCW 74.34.068 and 74.34.165.

Other Authority: 42 U.S.C. Sec. 1396r (g)(1)(D), and 1395i-3 (g)(1)(D).

Adopted under notice filed as WSR 22-10-057 on May 2, 2022.

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

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

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

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

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

Date Adopted: June 21, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4922.3

AMENDATORY SECTION (Amending WSR 21-11-108, filed 5/19/21, effective 7/1/21)

WAC 388-103-0001 What definitions apply to this chapter? In addition to the definitions found in chapter 74.34 RCW, the following definitions apply to this chapter:

(1) With respect to "abuse", the following definitions apply:

(a) Intentional. A person's action or inaction is intentional when the person's objective or purpose is to inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.

(b) Willful. Willful is synonymous to knowing. A person's action or inaction is knowing when the person is aware that his or her action or inaction would inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.

(c) Reckless. A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that his or her action

or inaction is likely to inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult, and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

~~((1))~~ (2) "Adult family home" is defined under chapter 70.128 RCW.

~~((2))~~ (3) "Alleged perpetrator" means the person who is alleged to have abandoned, abused, financially exploited, neglected, or misappropriated the property of, an alleged victim; and the department has received a report of, is investigating, or has made an initial substantiated finding about such allegation.

~~((3))~~ (4) "Alleged victim" means:

(a) The person who is alleged to have been abandoned, abused, financially exploited, neglected, or had their property misappropriated by an alleged perpetrator; and the department has received a report of, is investigating, or has made an initial substantiated finding about such allegation; or

(b) The person who is alleged to be neglecting themselves; and the department has received a report of, is investigating, or has made an initial substantiated finding about the self-neglect.

~~((4))~~ (5) "Assisted living facility" is defined under chapter 18.20 RCW.

~~((5))~~ (6) "Basic necessities of life" means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication.

~~((6))~~ (7) "Facility" means a residence licensed or required to be licensed under:

(a) Chapter 18.20 RCW, assisted living facilities;

(b) Chapter 18.51 RCW, nursing homes;

(c) Chapter 70.128 RCW, adult family homes;

(d) Chapter 72.36 RCW, soldiers' homes;

(e) Chapter 71A.20 RCW, residential habilitation centers;

(f) Chapter 70.97 RCW, enhanced services facilities; or

(g) Any other facility licensed or certified by the department.

~~((7))~~ (8) "Final substantiated finding" means an initial substantiated finding of abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect that:

(a) Has been upheld through the administrative hearing process described in WAC 388-103-0090 through 388-103-0160; or

(b) Is not timely appealed to the office of administrative hearings as required under WAC 388-103-0100.

~~((8))~~ (9) "Initial substantiated finding" means a finding by the department that, more likely than not, the alleged abandonment, abuse, financial exploitation, misappropriation of resident property, neglect, or self-neglect occurred.

~~((9))~~ (10) "Legal representative" means a guardian or conservator appointed under either chapter 11.88 RCW or chapter 11.130 RCW; or an agent granted authority under a power of attorney as described under chapter 11.125 RCW.

~~((10))~~ (11) "Nursing assistant" means as it is defined under chapter 18.88A RCW.

~~((11))~~ (12) "Nursing facility" means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under section 1919(a) of the Social Security Act (42 U.S.C. Sec. 1396r).

~~((12))~~ (13) "Nursing home" means any facility licensed to operate under chapter 18.51 RCW.

~~((13))~~ (14) "Person with a duty of care," in the context of abandonment and neglect, includes:

(a) A guardian or conservator appointed under chapter 11.88 RCW or chapter 11.130 RCW;

(b) An agent granted authority under a power of attorney as described under chapter 11.125 RCW; or

(c) A person providing the basic necessities of life to a vulnerable adult where:

(i) The person is employed by or on behalf of the vulnerable adult; or

(ii) The person voluntarily agrees to provide, or has been providing, the basic necessities of life to the vulnerable adult on a continuing basis.

~~((14))~~ (15) "Skilled nursing facility" means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under section 1819(a) of the Social Security Act (42 U.S.C. Sec. 1395i-3).

~~((15))~~ (16) "Vulnerable adult abuse registry" means the registry, established and maintained by the department as required under RCW 74.39A.056, that contains identifying information about people who have final substantiated findings of abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect of a vulnerable adult.

~~((16))~~ "Willful." A person's action or inaction is willful when the person's action or inaction is intentional or knowing.

~~(a) INTENTIONAL. A person's action or inaction is intentional when the person's objective or purpose is to inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.~~

~~(b) KNOWING. A person's action or inaction is knowing when the person is aware that his or her action or inaction would inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.)~~

[Statutory Authority: RCW 74.34.068, 74.34.165; 42 U.S.C. Sec. 1396r (g) (1) (D), 42 U.S.C. Sec. 1395i3 (g) (1) (D). WSR 21-11-108, § 388-103-0001, filed 5/19/21, effective 7/1/21.]

AMENDATORY SECTION (Amending WSR 21-11-108, filed 5/19/21, effective 7/1/21)

WAC 388-103-0210 May a nursing assistant petition the department to have their name removed from the vulnerable adult abuse registry?

(1) This section implements 42 U.S.C. Sec. 1396r (g) (1) (D) and Sec. 1395i-3 (g) (1) (D) regarding a singular occurrence of neglect in a nursing facility or skilled nursing facility.

(2) A nursing assistant may petition the department to have their name removed from the vulnerable adult abuse registry, subject to the requirements of this section.

(3) Preliminary requirements for the department to accept a petition:

(a) At least one year must have elapsed between the date of the final substantiated finding and the date the department receives the petition;

(b) The final substantiated finding was a singular occurrence of neglect; ~~((and))~~

(c) The singular occurrence of neglect occurred in a nursing facility or skilled nursing facility; and

~~((e))~~ (d) The petition must be in writing and contain the following information:

(i) About the petitioner:

(A) Name;

(B) Date of birth;

(C) Social security number;

(D) Mailing address; and

(E) Phone number;

(ii) The final substantiated finding;

(iii) All documents regarding any disciplinary action, or any other negative action, taken against the petitioner under chapter 18.88A RCW;

(iv) A background check through the Washington state patrol that was completed no earlier than ~~((thirty))~~ 30 days prior to the date the department accepts the petition;

(v) An affidavit stating why the petitioner believes the department should grant the petition. The statement must include whether the petitioner has abused or neglected a vulnerable adult since the final substantiated finding was entered;

(vi) A list of three references for the department to contact regarding the petitioner's employment and personal history, where two references must be professional references; and

(vii) Any other relevant information the petitioner wants the department to consider.

(4) Standard for removal.

(a) The department will accept a petition if the requirements of subsection (3) of this section are met.

(b) Once the petition is accepted, the petitioner must attend an in-person interview with the department. "In-person" means either physical presence with department personnel, or visual presence through electronic means.

(c) Once the petition is accepted and the interview is completed, the department will determine whether the petitioner's employment and personal history reflects a pattern of abusive behavior or neglect:

(i) If the department determines the petitioner's employment and personal history does not reflect a pattern of abusive behavior or neglect, the department approves the petition, and removes the petitioner's name from the vulnerable adult abuse registry.

(ii) If the department determines the petitioner's employment and personal history does reflect a pattern of abusive behavior or neglect, the department denies the petition.

(iii) If the department is unable to determine whether the petitioner's employment and personal history reflects a pattern of abusive behavior or neglect, the department denies the petition.

(5) Other information.

(a) The department will act with reasonable promptness upon receiving a petition that contains the information required under subsection (3) of this section, and make its decision within ~~((sixty))~~ 60 days of accepting a petition.

(b) If the department requires additional information to make its determination, a letter will be sent to the petitioner requesting the additional information. The petitioner has (~~ten~~) 10 business days to provide the information. If the department does not receive the requested information, it may be unable to determine whether petitioner's employment and personal history reflects a pattern of abusive behavior or neglect, and deny the petition.

(c) Decisions and other correspondence regarding the petition will be mailed to the petitioner. At the petitioner's request, correspondence may also be sent via email.

(d) A petitioner does not have a right to an administrative hearing regarding any department action taken on a petition.

[Statutory Authority: RCW 74.34.068, 74.34.165; 42 U.S.C. Sec. 1396r (g) (1) (D), 42 U.S.C. Sec. 1395i3 (g) (1) (D). WSR 21-11-108, § 388-103-0210, filed 5/19/21, effective 7/1/21.]

WSR 22-13-155
PERMANENT RULES
MILITARY DEPARTMENT

[Filed June 21, 2022, 1:35 p.m., effective July 22, 2022]

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

Purpose: Prior to the adoption of the emergency rule CR-103E filed November 17, 2021, the military department has not required public records requesters to pay for the costs of copies as permitted by RCW 42.56.120, as amended in 2017 by EHB 1596. The purpose of this permanent rule is to allow the department to charge statutory fees under RCW 42.56.120 and mitigate current costs to the agency in responding to public records requests.

Citation of Rules Affected by this Order: Amending WAC 323-10-070.

Statutory Authority for Adoption: RCW 42.56.120.

Adopted under notice filed as WSR 22-09-044 on April 14, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 21, 2022.

Cynthia Whaley
Public Records Officer
Rules Coordinator

OTS-3479.1

AMENDATORY SECTION (Amending WSR 14-22-096, filed 11/4/14, effective 12/5/14)

WAC 323-10-070 Costs of providing copies of public records. (1) ~~((Costs for paper copies.))~~ **Inspection.** There is no fee for inspecting public records. ~~((A requestor may obtain standard black and white photocopies for fifteen cents per page. Copies in color or larger-sized documents cost will be based on the actual cost to reproduce them at the time of the request.~~

~~(2) Costs for electronic records. The cost of scanning existing office paper or other nonelectronic records is six cents per page. There will be no charge for emailing electronic records to a requestor, unless another cost applies such as a scanning fee. The charge for electronic records provided on any medium other than email will be in the amount necessary to reimburse the actual cost to the agency.~~

~~(3) Deposits. Before beginning to make copies or scanning responsive records,))~~

(2) **Statutory default costs.** Pursuant to RCW 42.56.120(2), the department 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:

(a) Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations;

(b) Staff resources are insufficient to perform a study and to calculate such actual costs; and

(c) A study would interfere with and disrupt other essential agency functions.

(3) **Fee schedule.**

(a) The department will charge for copies of records pursuant to the default fees in RCW 42.56.120 and as published in the department's fee schedule available on the agency website at <https://mil.wa.gov/public-record-disclosure>.

(b) The department will charge the actual amount charged by an external vendor for records copied by an external vendor.

(c) The charges for copies under this subsection may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

(4) **Customized electronic access services.** At the department's sole discretion, the department may provide customized electronic access to public records if the department estimates that the request would require the use of information technology expertise to prepare data compilations or provide customized electronic access services when such compilations and customized access services are not used by the department for other agency purposes. The department will charge the actual costs, including staff time, necessary to reimburse the department for providing customized electronic access services.

(5) **Deposits.** The public records officer or designee may require ((a)) an advance deposit of ((up to ten)) 10 percent of the estimated ((costs of copying all the records selected by the requestor)) fees when preparing records for an installment or an entire request. The public records officer or designee may also require the payment of the remainder of the copying or scanning costs before providing all the records, or the payment of the costs of copying or scanning an installment before providing that installment. The ((military)) department will not charge sales tax when it makes copies of or scans public records.

~~((4))~~ (6) **Payment of fees.** The department will not release any requested copies of public records unless and until the requestor has paid all copying and other charges as set forth in this section.

(7) **Waiver of fees.** The public records officer may waive the fee when the expenses of processing payment exceeds the costs of providing copies.

(8) **Costs of mailing.** The ((military)) department may ((also)) charge actual costs of mailing, including the cost of the shipping container.

~~((5))~~ (9) **Payment.** Payment may be made by cash, check, or money order to the ((military)) department.

[Statutory Authority: RCW 42.56.040. WSR 14-22-096, § 323-10-070, filed 11/4/14, effective 12/5/14. Statutory Authority: RCW 42.56.010

and 42.56.100. WSR 12-09-089, § 323-10-070, filed 4/18/12, effective 5/19/12; § 323-10-070, filed 2/13/74.]

WSR 22-13-158

PERMANENT RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2022-01—Filed June 21, 2022, 3:09 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: The purpose of this proposal is to amend some of the existing rules and to create new rules to support the public employees benefits board (PEBB) program:

1. Make technical amendments:

- Amending WAC 182-08-187, 182-08-199, 182-12-146, and 182-16-2050 to implement limited purpose flexible spending arrangement.
- Amending WAC 182-08-187 to clarify when an enrollment error is being corrected, PEBB medical and dental enrollment is effective the first day of the month following the date the enrollment error is identified.
- Amending WAC 182-08-198 to clarify that a subscriber or their dependent may change medical plans when they are no longer enrolled in a health savings account.
- Amending WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262 to clarify a special open enrollment related to a subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility.
- Amending WAC 182-08-199 to include employees cannot enroll in a medical flexible spending account (FSA) or limited purpose FSA in the same year and which FSA they will be enrolled in and to provide a technical correction when an employee or an employee's dependent has a change in enrollment under an employer-based dependent care assistance program during its annual open enrollment.
- Amending WAC 182-08-235 to move the language describing the statement requirements for educational service districts and board members of school districts or educational service districts to a note.
- Amending WAC 182-12-128 to include an employee may not waive enrollment in PEBB medical if they are enrolled in PEBB retiree insurance coverage.
- Amending WAC 182-12-146 to remove a WAC citation.
- Amending WAC 182-12-262 to clarify a dependent with more than one source of eligibility for enrollment in PEBB and school employees benefits board programs is limited to a single enrollment in medical, dental, and vision plans in either program, to clarify when a National Medical Support Notice requires a subscriber to cover a dependent child in health plan coverage, clarified enrollment and disenrollment requirements for supplemental dependent life insurance or accidental death and dismemberment (AD&D) insurance, and to remove WAC references.
- Amending WAC 182-12-263 to update a WAC citation.
- Amending WAC 182-12-300 to clarify the wellness incentive's eligibility.
- Making global amendments in chapter 182-16 WAC to update the use of reviewing officer or officers.

2. Amend rules to improve the administration of the PEBB program:

- Amending WAC 182-08-015 and 182-12-109 to update the definitions of annual open enrollment, life insurance, salary reduction plan, special open enrollment, and to create a new definition of limited purpose flexible spending arrangement or limited purpose FSA.
- Amending WAC 182-08-180 to include an employee who is on a leave of absence and maintains eligibility for the employer contribution will have their premiums waived for their employee-paid long-term disability insurance for the first 90 days.
- Amending WAC 182-12-114 to include an exception for seasonal employees who work a recurring, annual season with a duration of less than nine months are not eligible for the employee-paid LTD benefits.
- Amending WAC 182-12-262 to include a notification requirement for subscribers when a dependent is no longer eligible for supplemental dependent life insurance or AD&D insurance coverage and methods of submitting a request to remove an eligible dependent from supplemental dependent life insurance or AD&D insurance coverage.
- Amending WAC 182-16-020 to update the definitions of life insurance and salary reduction plan, and to create a new definition of limited purpose flexible spending arrangement or limited purpose FSA.
- Amending WAC 182-16-058 to clarify when service is complete.
- Amending WAC 182-16-066 to use preponderance of the evidence instead of substantial evidence when addressing presumptions.
- Amending WAC 182-16-2000 to clarify the authority may use the brief adjudicative proceedings for issues identified in the chapter.
- Amending WAC 182-16-2100 to include both the appellant and the authority may request review of an initial order and the appellant may request review of the initial order by filing a written request or making an oral request with the PEBB appeals unit.
- Creating WAC 182-16-2135 to address petitions for judicial review—Service on the authority.
- Amending WAC 182-16-2150 to include a reviewing officer or officers must make any inquiries necessary to ascertain whether the proceeding must be converted to a formal administrative hearing, and to remove the reviewing officer or officers will issue a final order that will convert the matter to a formal administrative hearing.
- Amending WAC 182-16-2160 to clarify the presiding officer or the reviewing officer or officers may convert a brief adjudicative proceeding to a formal administrative hearing at any time before the final order is issued on motion by the appellant and their representative and reviewing officer or officers.
- Amending WAC 182-16-3170 to include required information when the office of administrative hearings is holding a formal administrative hearing on behalf of the authority and to clarify the final order will only be issued by the authority.
- Creating WAC 182-16-3175 on how to request a review of an initial order issued by the office of administrative hearings.
- Creating WAC 182-16-3210 to address petitions for judicial review—Service on the authority.

Citation of Rules Affected by this Order: New WAC 182-16-2135, 182-16-3175 and 182-16-3210; and amending WAC 182-08-015, 182-08-180, 182-08-187, 182-08-198, 182-08-199, 182-08-235, 182-12-109,

182-12-114, 182-12-128, 182-12-146, 182-12-262, 182-12-263, 182-12-300, 182-16-020, 182-16-058, 182-16-064, 182-16-066, 182-16-2000, 182-16-2005, 182-16-2050, 182-16-2080, 182-16-2085, 182-16-2100, 182-16-2105, 182-16-2110, 182-16-2120, 182-16-2150, 182-16-2160, and 182-16-3170.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-10-081 on May 3, 2022.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 25, 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, 2022.

Wendy Barcus
Rules Coordinator

OTS-3745.1

AMENDATORY SECTION (Amending WSR 21-13-106, filed 6/18/21, effective 1/1/22)

WAC 182-08-015 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as supplemental accidental death and dismemberment insurance offered to and paid for by employees for themselves and their dependents.

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time 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 in coverage, or waive enrollment (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP) ((~~or~~)), the medical flexible spending arrangement (FSA), or limited purpose 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 public employees benefits board established under provisions of RCW 41.05.055.

"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 PEBB benefits 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 the public employees benefits board's 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 PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13) (a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB insurance coverage by a retiree or an eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby 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.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Employee" for the public employees benefits board program includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1) (g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization; (c) through December 31, 2019, employees of a school district or represented employees of an educational service district if the authority

agrees to provide any of the school districts' or educational service districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); (f) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW; and (g) through December 31, 2023, nonrepresented employees of an educational service district. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under RCW 41.05.011 or by the authority under this chapter.

"Employer" for the public employees benefits board program means the state of Washington.

"Employer-based group health plan" means group medical and group dental related to a current employment relationship. It does not include medical or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a state agency or employer group for its eligible employees as described under WAC 182-12-114 and 182-12-131.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, employee organizations representing state civil service employees, and through December 31, 2019, school districts and charter schools, and through December 31, 2023, educational service districts obtaining employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the public employees benefits board as described in WAC 182-08-245.

"Employer group rate surcharge" means the rate surcharge described in RCW 41.05.050(2).

"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency or an employer group for employees eligible under WAC 182-12-114 and 182-12-131. It also means SEBB insurance coverage for which an employer contribution is made by a SEBB organization, or basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by an educational service district.

"Employing agency" for the public employees benefits board program means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, or other political subdivision; and a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical or dental, or both, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insignificant shortfall" means a premium balance owed that is less than or equal to the lesser of \$50 or (~~ten~~) 10 percent of the premium required by the health plan as described in Treasury Regulation 26 C.F.R. 54.4980B-8.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Large claim" means a claim for more than \$25,000 in allowed costs for services in a quarter.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" means basic life insurance paid for by the employing agency, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the PEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state 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 chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Ongoing large claim" means a claim where the patient is expected to need ongoing case management into the next quarter for which the expected allowed cost is greater than \$25,000 in the quarter.

"PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby public 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 premium is less than (~~ninety-five~~) 95 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~~) 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Public employee" has the same meaning as employee.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or revoke their election under the DCAP, medical FSA, limited purpose FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as

institutions of higher education and any unit of state government established by law.

"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 employee, retiree, continuation coverage enrollee, or survivor who has been determined eligible by the PEBB program, employer group, or state agency, is enrolled in PEBB benefits, and is the individual to whom the PEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance or accidental death and dismemberment (AD&D) insurance coverage purchased by the employee in addition to the coverage provided by the employing agency.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means an eligible employee affirmatively declining enrollment in PEBB medical because the employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-12-128. An employee on approved educational leave who obtains another employer-based group health plan may waive enrollment as allowed under WAC 182-12-136. An employee may waive enrollment in PEBB medical to enroll in SEBB medical only if they are enrolled in SEBB dental and SEBB vision. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-106 (Admin #2021-01.06), § 182-08-015, filed 6/18/21, effective 1/1/22; WSR 20-16-062 (Admin #2020-03), § 182-08-015, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-015, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-015, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-015, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-015, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-015, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-015, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-08-015, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-015, filed 10/28/13, effective 1/1/14. Statutory

Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-015, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-08-015, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-08-015, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-08-015, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-08-015, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-08-015, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.068. WSR 06-23-165 (Order 06-09), § 182-08-015, filed 11/22/06, effective 12/23/06. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-08-015, filed 8/26/04, effective 1/1/05; WSR 03-17-031 (Order 02-07), § 182-08-015, filed 8/14/03, effective 9/14/03. Statutory Authority: Chapter 41.05 RCW. WSR 96-08-042, § 182-08-015, filed 3/29/96, effective 4/29/96.]

AMENDATORY SECTION (Amending WSR 21-13-103, filed 6/18/21, effective 1/1/22)

WAC 182-08-180 Premium payments and premium refunds. Public employees benefits board (PEBB) insurance coverage premiums and applicable premium surcharges for all subscribers are due as described in this section, except when an employing agency is correcting its enrollment error as described in WAC 182-08-187 (4) or (5).

(1) **Premium payments.** PEBB insurance coverage premiums and applicable premium surcharges for all subscribers become due the first of the month in which PEBB insurance coverage is effective.

Premiums and applicable premium surcharges are due from the subscriber for the entire month of PEBB insurance coverage and will not be prorated during any month.

(a) For subscribers not eligible for the employer contribution that are electing to enroll in PEBB retiree insurance coverage as described in WAC 182-12-171 (1)(a), 182-12-180 (3)(a), 182-12-200 (3)(a) or (b), 182-12-205 (6) or (7), 182-12-211, and 182-12-265; or electing to enroll in continuation coverage as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270, the first premium payment and applicable premium surcharges are due to the health care authority (HCA) or the contracted vendor no later than (~~forty-five~~) 45 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 PEBB medical must be made to the HCA as well as premiums associated with continuing PEBB dental or long-term disability (LTD) insurance coverage. Any medicare part D late enrollment penalty associated with the medicare advantage-prescription drug plan must be made to the contracted vendor. Premiums associated with life insurance and accidental death and dismemberment (AD&D) insurance 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 employees who are eligible for the employer contribution, premiums and applicable premium surcharges are due to the employing agency or contracted vendor. If an employee elects supplemental coverage or employee-paid LTD insurance, or is enrolled in employee-paid LTD insurance as described in WAC 182-08-197 (1)(a) or (3)(a), or is

enrolled in employee-paid LTD insurance as described in WAC 182-08-197 (1)(b), the employee is responsible for payment of premiums from the month that the supplemental coverage or employee-paid LTD insurance begins.

Exception: An employee who is on a leave of absence and maintains eligibility for the employer contribution, will have their premiums waived for their employee-paid LTD insurance for the first 90 days. For this purpose, "leave of absence" is defined as a paid or unpaid temporary or indefinite administrative leave, involuntary leave, sick leave, or insurance continued under the federal Family and Medical Leave Act, or paid family and medical leave program as described in WAC 182-12-138.

(c) Unpaid or underpaid premiums or applicable premium surcharges for all subscribers must be paid, and are due from the employing agency, subscriber, or a subscriber's legal representative to the HCA or contacted vendor. For subscribers not eligible for the employer contribution, monthly premiums or applicable premium surcharges that remain unpaid for (~~(thirty)~~) 30 days will be considered delinquent. A subscriber is allowed a grace period of (~~(thirty)~~) 30 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)~~) 60 days from the original due date, the subscriber's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly 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 of up to (~~(twelve)~~) 12 months in duration with the subscriber or the subscriber's legal representative upon request.

Exception: For a subscriber enrolled in a medicare advantage or a medicare advantage-prescription drug plan a notice will be sent to them notifying them that they are delinquent on their monthly premiums and that the enrollment will be terminated prospectively to the end of the month after the notice is sent.

(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 or contracted vendor and the monthly premiums or applicable premium surcharges remain unpaid for (~~(thirty)~~) 30 days; or

(ii) Premium payments or applicable premium surcharges received by the HCA or contracted vendor are underpaid by an amount greater than an insignificant shortfall and the monthly premiums or applicable premium surcharges remain underpaid for (~~(thirty)~~) 30 days past the date the monthly premiums or applicable premium surcharges were due.

(2) **Premium refunds.** PEBB insurance coverage 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 employing agency any excess premiums and applicable premium surcharges paid during the (~~(sixty)~~) 60 day adjustment period, except as indicated in WAC 182-12-148(5).

(b) If a PEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-16-2010, and provides clear and convincing evidence of extraordinary circumstances, such that the subscriber could not timely submit the necessary information to accomplish an allowable enrollment change within (~~(sixty)~~) 60 days after the event that created a change of premiums, the PEBB director, the PEBB director's designee, or the PEBB appeals unit may:

(i) Approve a refund of premiums and applicable premium surcharges which does not exceed (~~(twelve)~~) 12 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 the PEBB director or the PEBB director's designee.

(d) HCA errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the employing agency, subscriber, or beneficiary.

(e) Employing agency errors will be corrected by returning all excess premiums and applicable premium surcharges paid by the employee or beneficiary as described in WAC 182-08-187 (4) and (5).

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-11 and 2021-12. WSR 21-13-103 (Admin #2021-01.03), § 182-08-180, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-08-180, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-180, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-180, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-180, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-180, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-180, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-180, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-180, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-08-180, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-08-180, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-08-180, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-08-180, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-08-180, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-08-180, filed 8/26/04, effective 1/1/05; WSR 03-17-031 (Order 02-07), § 182-08-180, filed 8/14/03, effective 9/14/03. Statutory Authority: Chapter 41.05 RCW. WSR 96-08-042, § 182-08-180, filed 3/29/96, effective 4/29/96; Order 01-77, § 182-08-180, filed 8/26/77.]

AMENDATORY SECTION (Amending WSR 21-13-103, filed 6/18/21, effective 1/1/22)

WAC 182-08-187 How do employing agencies and contracted vendors correct enrollment errors and is there a limit on retroactive enrollment? (1) An employing agency or contracted vendor that makes one or more of the following enrollment errors must correct the error as described in subsections (2) through (5) of this section.

(a) Failure to timely notify an employee of their eligibility for public employee benefits board (PEBB) benefits and the employer contribution as described in WAC 182-12-113(2);

(b) Failure to enroll the employee and their dependents in PEBB benefits as elected by the employee, if the elections were timely;

(c) Failure to enroll an employee and their dependents in PEBB benefits as described in WAC 182-08-197 (1)(b);

(d) Failure to accurately reflect an employee's premium surcharge attestation on the employee's account;

(e) Enrolling an employee or their dependent in PEBB insurance coverage when they are not eligible as described in WAC 182-12-114 or 182-12-260 and it is clear there was no fraud or intentional misrepresentation by the employee involved; or

(f) Providing incorrect information regarding PEBB benefits to the employee that they relied upon.

(2) The employing agency or the applicable contracted vendor must enroll the employee and the employee's dependents, as elected, or terminate enrollment in PEBB benefits as described in subsection (3) of this section, reconcile premium payments and applicable premium surcharges as described in subsection (4) of this section, and provide recourse as described in subsection (5) of this section.

(3) Enrollment or termination.

(a) PEBB medical and dental enrollment is effective ((~~at a minimum~~)) the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (5) of this section. If the enrollment error is identified on the first day of the month, the enrollment correction is effective that day;

(b) Basic life, basic accidental death and dismemberment (AD&D), employer-paid long-term disability (LTD) insurance, and employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)) enrollment is retroactive to the first day of the month following the day the employee became newly eligible, or the first day of the month the employee regained eligibility, as described in WAC 182-08-197. If the employee became newly eligible on the first working day of a month, basic life, basic AD&D, employer-paid LTD insurance, and employee-paid LTD insurance begin on that date;

(c) Supplemental life, supplemental AD&D, and employee-paid LTD insurance enrollment is retroactive to the first day of the month following the day the employee became newly eligible if the employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date on the employee's application for this coverage). If an employing agency enrollment error occurred when the employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-08-197(3):

(i) Supplemental life, supplemental AD&D, and employee-paid LTD insurance is enrolled the first day of the month the employee regained eligibility, at the same level of coverage the employee continued during the period of leave, without evidence of insurability.

(ii) If the employee was not eligible to continue employee-paid LTD insurance during the period of leave as described in WAC 182-12-133, employee-paid LTD insurance is reinstated the first day of the month the employee regained eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(iii) If the employee was eligible to continue supplemental life insurance, supplemental AD&D insurance, and employee-paid LTD insurance under the period of leave but did not, the employee must provide evidence of insurability and receive approval from the contracted vendor.

(d) If the employee is eligible and elects (or elected) to enroll in the medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP), enrollment is limited to (~~sixty~~) 60 days prior to the date enrollment is processed, but not earlier than the current plan year. If an employee was not enrolled in a medical FSA, limited purpose FSA, or DCAP as elected, the employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect;

(e) If the employee or their dependent was not eligible but still enrolled as described in subsection (1)(e) of this section, the employee's or their dependent's PEBB benefits will be terminated prospectively effective as of the last day of the month.

(4) Premium payments.

(a) The employing agency must remit to the authority the employer contribution and the employee contribution for health plan premiums, applicable premium surcharges, basic life, basic AD&D, and employer-paid LTD starting the date PEBB benefits begins as described in subsections (3) and (5)(a)(i) of this section. If a state agency failed to notify a newly eligible employee of their eligibility for PEBB benefits, the state agency may only collect the employee contribution for health plan premiums and applicable premium surcharges for coverage for the months after the employee was notified.

(b) When an employing agency fails to correctly enroll the amount of employee-paid LTD insurance elected by the employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the employee is responsible for premiums for the most recent (~~twenty-four~~) 24 months of coverage. The employing agency is responsible for additional months of premiums.

(ii) When a premium refund is due to the employee, the LTD insurance contracted vendor is responsible for premium refunds for the most recent (~~twenty-four~~) 24 months of coverage. The employing agency is responsible for additional months of premium refund.

(c) When an employing agency mistakenly enrolls an employee or their dependent as described in subsection (1)(e) of this section, premiums and any applicable premium surcharges will be refunded by the employing agency to the employee without rescinding the insurance coverage.

(5) Recourse.

(a) Employee eligibility for PEBB benefits begins on the first day of the month following the date eligibility is established as described in WAC 182-12-114. Dependent eligibility is described in WAC 182-12-260, and dependent enrollment is described in WAC 182-12-262. When retroactive correction of an enrollment error is limited as described in subsection (3)(b), (c) and (d) of this section, the employing agency must work with the employee, and receive approval from the authority, to implement retroactive PEBB benefits within the following parameters:

(i) Retroactive enrollment in a PEBB insurance coverage;

(ii) Reimbursement of claims paid;

- (iii) Reimbursement of amounts paid by the employee or dependent for medical and dental premiums;
 - (iv) Reimbursement of amounts paid by the employee for the premium surcharges;
 - (v) Other legal remedy received or offered; or
 - (vi) Other recourse, upon approval by the authority.
- (b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for noncovered services or in the case of an individual who is not eligible for PEBB benefits.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-11 and 2021-12. WSR 21-13-103 (Admin #2021-01.03), § 182-08-187, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-08-187, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-187, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-187, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-187, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-187, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-187, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-187, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-187, filed 10/28/13, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 21-13-106, filed 6/18/21, effective 1/1/22)

WAC 182-08-198 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 public employees benefits board (PEBB) annual open enrollment period. A subscriber must submit the required enrollment forms to change their health plan. An employee submits the enrollment forms to their employing agency. Any other subscriber submits the enrollment forms to the PEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** 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 PEBB benefits as described in WAC 182-12-114 or regaining eligibility for PEBB benefits as described in WAC 182-08-197. The change in enrollment must be allowable under 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 dependent, or both. To disenroll from a medicare advantage plan or medicare advantage-prescription drug plan, the change in enrollment must be allowable under 42 C.F.R. Secs.

422.62(b) and 423.38(c). To make a health plan change, a subscriber must submit the required enrollment forms (and a completed disenrollment form, if required). The forms must be received no later than ((~~sixty~~)) 60 days after the event occurs, except as described in (i) of this subsection. An employee submits the enrollment forms to their employing agency. Any other subscriber submits the enrollment forms to the PEBB 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 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.

Exception: When a subscriber or their dependent is enrolled in a medicare advantage or medicare advantage-prescription drug plan, they may disenroll during a special enrollment period as allowed under 42 C.F.R. Secs. 422.62(b) and 423.38(c). The new medical plan coverage will begin the first day of the month following the date the medicare advantage plan disenrollment form is received.

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. If the special open enrollment is due to the enrollment of an extended dependent or a dependent with a disability, the change in health plan coverage will begin the first day of the month following the later of the event date or eligibility certification. 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.

Note: A subscriber may not change their health plan if their state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(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 their 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 or their dependent's eligibility for the employer contribution under their employer-based group health plan;

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) 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 accessibility to network providers and covered services;

Exception: A dental plan is considered available if a provider is located within ((~~fifty~~)) 50 miles of the subscriber's new residence.

(f) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the sub-

scriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(i) Subscriber or a subscriber's dependent enrolls in coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare, or enrolls in or terminates enrollment in a medicare advantage-prescription drug or a Part D plan. If the subscriber's current medical plan becomes unavailable due to the subscriber's or a subscriber's dependent's enrollment in medicare, the subscriber must select a new medical plan as described in WAC 182-08-196(2).

(i) A subscriber enrolled in PEBB retiree insurance coverage or an eligible subscriber enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage has six months from the date of their or their dependent's enrollment in medicare Part B to enroll in a PEBB medicare supplement plan for which they or their dependent is eligible. The forms must be received by the PEBB program no later than six months after the enrollment in medicare Part B for either the subscriber or the subscriber's dependent;

(ii) A subscriber enrolled in PEBB retiree insurance coverage or an eligible subscriber enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage has seven months to enroll in a medicare advantage or medicare advantage-prescription drug plan that begins three months before they or their dependent first enrolled in both medicare Part A and Part B and ends three months after the month of medicare eligibility. A subscriber may also enroll themselves or their dependent in a medicare advantage or medicare advantage-prescription drug plan before their last day of the medicare Part B initial enrollment period. The forms must be received by the PEBB program no later than the last day of the month prior to the month the subscriber or the subscriber's dependent enrolls in the medicare advantage or medicare advantage-prescription drug plan.

(j) Subscriber or a subscriber's dependent's current medical 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;

(k) 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. A subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy;

(ii) Treatment following a recent organ transplant;

(iii) A scheduled surgery;

(iv) Recent major surgery still within the postoperative period;

or

(v) Treatment for a high-risk pregnancy.

(3) If the employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-106 (Admin #2021-01.06), § 182-08-198, filed 6/18/21, effective 1/1/22; WSR 20-16-062 (Admin #2020-03), § 182-08-198, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-198, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-198, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-198, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-198, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-198, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-08-198, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-198, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-198, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-08-198, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-08-198, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-08-198, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-08-198, filed 10/1/08, effective 1/1/09; WSR 08-09-027 (Order 08-01), § 182-08-198, filed 4/8/08, effective 4/9/08; WSR 07-20-129 (Order 07-01), § 182-08-198, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.068. WSR 06-23-165 (Order 06-09), § 182-08-198, filed 11/22/06, effective 12/23/06. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-08-198, filed 7/27/05, effective 8/27/05.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-08-199 When may an employee enroll, or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP)? An employee who is eligible to participate in the salary reduction plan as described in WAC 182-12-116 may enroll, or revoke their election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-12-114 and enrolling as described in WAC 182-08-197(1).

(2) **During annual open enrollment:** An eligible employee may elect to enroll in or opt out of participation under the premium payment plan during the annual open enrollment by submitting the required form

to their employing agency. An eligible employee may elect to enroll or reenroll in the medical FSA, limited purpose FSA, DCAP, or both an FSA and DCAP during the annual open enrollment by submitting the required forms to their employing agency 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.

Notes:

1. Employees (~~enrolled~~) cannot enroll in a medical FSA and a limited purpose FSA in the same year.
2. Employees enrolled in a consumer directed health plan (CDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. Employees who elect (~~both will only be enrolled~~) enrollment in the CDHP with a HSA and a medical FSA will instead be enrolled in the limited purpose FSA.
3. Employees who are not enrolled in a CDHP with a HSA and elect both a medical FSA and a limited purpose FSA will be enrolled in the medical FSA.

(3) **During a special open enrollment:** An 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, limited purpose FSA, or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the employee must submit the required form to their employing agency. The employing agency must receive the required form and evidence of the event that created the special open enrollment no later than (~~sixty~~) 60 days after the event occurs.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the 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.** An 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 later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the employee;
- Birth, adoption, or when the 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) Employee's dependent no longer meets public employee benefits board (PEBB) eligibility criteria because:

- Employee has a change in marital status;
- Employee's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;
- An eligible dependent child turns age (~~twenty-six~~) 26 or otherwise does not meet dependent child eligibility criteria;

- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
 - An eligible dependent dies.
- (iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);
- (iv) Employee has a change in employment status that affects the employee's eligibility for their employer contribution toward their employer-based group health plan;
- (v) The employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (a)(v) 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.

- (vi) Employee or an employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB annual open enrollment;
- (vii) Employee or an employee's dependent has a change in residence that affects health plan availability;
- (viii) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence resulted in the dependent losing their health insurance;
- (ix) A court order requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);
- (x) Employee or an employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;
- (xi) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB medical plan coverage from medicaid or CHIP;
- (xii) Employee or an employee's dependent enrolls in coverage under medicare or the employee or an employee's dependent loses eligibility for coverage under medicare;
- (xiii) Employee or an employee's dependent's current medical plan becomes unavailable because the employee or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) requires evidence that the employee or employee's dependent is no longer eligible for an HSA;
- (xiv) Employee or an employee's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the employee or the employee's dependent. The employee may not change their health plan election if the employee's or dependent's physician stops participation with the employee's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:
- Active cancer treatment such as chemotherapy or radiation therapy;
 - Treatment following a recent organ transplant;
 - A scheduled surgery;
 - Recent major surgery still within the postoperative period; or

- Treatment for a high-risk pregnancy.

(xv) Employee or employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

If the employee is having premiums taken from payroll on a pretax basis, a medical 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 and limited purpose FSA.** An employee may enroll or revoke their election and make a new election under the medical FSA or limited purpose 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 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 employing agency. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership if the domestic partner qualifies as a tax dependent of the employee;
- Birth, adoption, or when the 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) Employee's dependent no longer meets PEBB eligibility criteria because:

- Employee has a change in marital status;
- Employee's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;
- An eligible dependent child turns age (~~(twenty-six)~~) 26 or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the HIPAA;

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the medical FSA or limited purpose FSA;

(v) A court order requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) Employee or an employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) Employee or an employee's dependent enrolls in coverage under medicare.

(c) **DCAP.** An 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 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 employing agency. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership if the domestic partner qualifies as a tax dependent of the employee;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for DCAP;

(iii) Employee or an employee's dependent has a change in enrollment under an employer-based (~~(group health plan)~~) DCAP during its annual open enrollment that does not align with the PEBB annual open enrollment;

(iv) Employee changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) Employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC 26 U.S.C. Sec. 21 (b) (1);

(vi) Employee's dependent care provider imposes a change in the cost of dependent care; employee may make a change in the DCAP election amount to reflect the new cost if the dependent care provider is not a qualifying relative of the employee as defined in IRC 26 U.S.C. Sec. 152.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-08-199, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-199, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-199, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-199, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-199, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-199, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-199, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-08-199, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-199, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR

12-20-022 (Order 2012-01), § 182-08-199, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-08-199, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-08-199, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-08-199, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-08-199, filed 10/1/08, effective 1/1/09.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-08-235 Employer group and board of directors for school districts and educational service districts application process. This section applies to employer groups as defined in WAC 182-08-015 and board members of school districts and educational service districts. An employer group or board member of a school district or an educational service district may apply to obtain public employees benefits board (PEBB) insurance coverage through a contract with the health care authority (HCA).

(1) Employer groups and board members of school districts and educational service districts with less than (~~five hundred~~) 500 employees must apply at least (~~sixty~~) 60 days before the requested coverage effective date. Employer groups with (~~five hundred~~) 500 or more employees but with less than (~~five thousand~~) 5,000 employees must apply at least (~~ninety~~) 90 days before the requested effective date.

Employer groups with (~~five thousand~~) 5,000 or more employees must apply at least (~~one hundred twenty~~) 120 days before the requested coverage effective date. To apply, employer groups must submit the documents and information described in subsection (2) of this section to the PEBB program as follows:

(a) Board members of school districts and educational service districts and educational service districts applying for their nonrepresented employees are required to provide the documents described in subsection (2)(a) through (c) of this section;

Exception: Educational service districts required by the superintendent of public instruction to purchase PEBB insurance coverage provided by the authority are required to submit documents and information described in subsection (2)(a)(iii), (b), and (c) of this section.

(b) Counties, municipalities, political subdivisions, and tribal governments with fewer than (~~five thousand~~) 5,000 employees are required to provide the documents and information described in subsection (2)(a) through (f) of this section;

(c) Counties, municipalities, political subdivisions, and tribal governments with (~~five thousand~~) 5,000 or more employees will have their application approved or denied through the evaluation criteria described in WAC 182-08-240 and are required to provide the documents and information described in subsection (2)(a) through (d), (f), and (g) of this section; and

(d) All employee organizations representing state civil services employees and the Washington health benefit exchange, regardless of the number of employees, will have their application approved or denied through the evaluation criteria described in WAC 182-08-240 and are required to provide the documents and information described in subsection (2)(a) through (d), (f), and (g) of this section.

(2) Documents and information required with application:

(a) A letter of application that includes the information described in (a)(i) through (iv) of this subsection:

(i) A reference to the group's authorizing statute;

(ii) A description of the organizational structure of the group and a description of the employee bargaining unit or group of nonrepresented employees for which the group is applying;

(iii) Employer group or board members of school district or educational service district tax ID number (TIN); and

(iv) A statement of whether the group is applying to obtain only medical or all available PEBB insurance coverages. (~~Educational service districts applying for its nonrepresented employees must purchase medical, dental, life, and long-term disability insurance. Board members of school districts or educational service districts must provide a statement of whether the group is applying to obtain medical, dental, and life insurance.~~)

Note: Educational service districts applying for its nonrepresented employees must provide a statement that the group is agreeing to obtain medical, dental, life, and long-term disability insurance. Board members of school districts or educational service districts must provide a statement that the group is agreeing to obtain medical, dental, and life insurance.

(b) A resolution from the group's governing body authorizing the purchase of PEBB insurance coverage.

(c) A signed governmental function attestation document that attests to the fact that employees for whom the group is applying are governmental employees whose services are substantially all in the performance of essential governmental functions.

(d) A member level census file for all of the employees for whom the group is applying. The file must be provided in the format required by the authority and contain the following demographic data, by member, with each member classified as employee, spouse or state registered domestic partner, or child:

(i) Employee ID (any identifier which uniquely identifies the employee; for dependents the employee's unique identifier must be used);

(ii) Age;

(iii) Birth sex;

(iv) First three digits of the member's zip code based on residence;

(v) Indicator of whether the employee is active or retired, if the group is requesting to include retirees; and

(vi) Indicator of whether the member is enrolled in coverage.

(e) Historical claims and cost information that include the following:

(i) Large claims history for (~~twenty-four~~) 24 months by quarter that excludes the most recent three months;

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;

(iii) Summary of historical plan costs; and

(iv) The director or the director's designee may make an exception to the claims and cost information requirements based on the size of the group, except that the current health plan does not have a case management program, then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim. If historical claims and cost information as described in (e)(i) through (iii) of this subsection are unavailable, the director or the director's designee may make an exception to allow all of the following alternative requirements:

- A letter from their carrier indicating they will not or cannot provide claims data.

- Provide information about the health plan most employees are enrolled in by completing the actuarial calculator authorized by the PEBB program.

- Current premiums for the health plan.

(f) If the application is for a subset of the group's employees (e.g., bargaining unit), the group must provide a member level census file of all employees eligible under their current health plan who are not included on the member level census file in (d) of this subsection. This includes retired employees participating under the group's current health plan. The file must include the same demographic data by member.

(g) Employer groups described in subsection (1)(c) and (d) of this section must submit to an actuarial evaluation of the group provided by an actuary designated by the PEBB program. The group must pay for the cost of the evaluation. This cost is nonrefundable. A group that is approved will not have to pay for an additional actuarial evaluation if it applies to add another bargaining unit within two years of the evaluation. Employer groups of this size must provide the following:

(i) Large claims history for (~~twenty-four~~) 24 months, by quarter that excludes the most recent three months;

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;

(iii) Executive summary of benefits;

(iv) Summary of benefits and certificate of coverage; and

(v) Summary of historical plan costs.

Exception: If the current health plan does not have a case management program then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim.

(3) The authority may automatically deny a group application if the group fails to provide the required information and documents described in this section.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-08-235, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-235, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-235, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-235, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-235, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-235, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-235, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-235, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-235, filed 9/25/12, effective 11/1/12.]

OTS-3747.1

AMENDATORY SECTION (Amending WSR 21-13-106, filed 6/18/21, effective 1/1/22)

WAC 182-12-109 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 employing agency, as well as supplemental accidental death and dismemberment insurance offered to and paid for by employees for themselves and their dependents.

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time 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 in coverage, or waive enrollment (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP) ((~~or~~), the medical flexible spending arrangement (FSA), or limited purpose FSA. They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Benefits-eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3) (a) (ii).

"Blind vendor" means a "licensee" as defined in RCW 74.18.200.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Calendar days" or "days" means all days including Saturdays, 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 PEBB benefits 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 the public employees benefits board's 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 PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13) (a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB insurance coverage by a retiree or an eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby 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.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employee" for the public employees benefits board program includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization; (c) through December 31, 2019, employees of a school district or represented employees of an educational service district if the authority agrees to provide any of the school districts' or educational service districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); (f) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW; and (g) through December 31, 2023, nonrepresented employees of an educational service district. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under RCW 41.05.011 or by the authority under this chapter.

"Employer" for the public employees benefits board program means the state of Washington.

"Employer-based group dental" means group dental related to a current employment relationship. It does not include dental coverage

available to retired employees, individual market dental coverage, or government-sponsored programs such as medicaid.

"Employer-based group health plan" means group medical and group dental related to a current employment relationship. It does not include medical or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a state agency or employer group for its eligible employees as described under WAC 182-12-114 and 182-12-131.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, employee organizations representing state civil service employees, and through December 31, 2019, school districts and charter schools, and through December 31, 2023, educational service districts obtaining employee benefits through a contractual agreement with the authority to participate in benefit plans developed by the public employees benefits board as described in WAC 182-08-245.

"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency or an employer group for employees eligible in WAC 182-12-114 and 182-12-131. It also means SEBB insurance coverage for which an employer contribution is made by a SEBB organization, or basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by an educational service district.

"Employing agency" for the public employees benefits board means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, or other political subdivision; and a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal retiree medical plan" means the Federal Employees Health Benefits program (FEHB) or TRICARE plans which are not employer-based group medical.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical or dental, or both, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" means basic life insurance paid for by the employing agency, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the PEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state 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 chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Pay status" means all hours for which an employee receives pay.

"PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby public 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 premium is less than (~~ninety-five~~) 95 percent of the ad-

ditional 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~~) 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Public employee" has the same meaning as employee.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, limited purpose 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" includes:

(a) Through December 31, 2023, all employees of school districts and charter schools established under chapter 28A.710 RCW, and represented employees of educational service districts. For the exclusive purpose of eligibility for PEBB retiree insurance coverage, the term "school employee" also includes nonrepresented employees of an educational service district; and

(b) Effective January 1, 2024, all employees of school districts, educational service districts, and charter schools established under chapter 28A.710 RCW.

"SEBB" means the school employees benefits board.

"SEBB insurance coverage" means any medical, dental, vision, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"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.

"Season" means any recurring annual period of work at a specific time of year that lasts three to (~~eleven~~) 11 consecutive months.

"Seasonal employee" means a state employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment (see definition of "waive" in this section). Employees eligible to participate in the salary reduction(~~s~~) plan may enroll in or revoke their election under the DCAP, medical FSA, limited purpose FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"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 employee, retiree, continuation coverage enrollee, or survivor who has been determined eligible by the PEBB program, employer group, or state agency, is enrolled in PEBB benefits, and is the individual to whom the PEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance or accidental death and dismemberment (AD&D) insurance coverage purchased by the employee in addition to the coverage provided by the employing agency.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means an eligible employee affirmatively declining enrollment in PEBB medical because the employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-12-128. An employee on approved educational leave who obtains another employer-based group health plan may waive enrollment as allowed under WAC 182-12-136. An employee may waive enrollment in PEBB medical to enroll in SEBB medical only if they are enrolled in SEBB dental and SEBB vision. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-106 (Admin #2021-01.06), § 182-12-109, filed 6/18/21, effective 1/1/22; WSR 20-16-062 (Admin #2020-03), § 182-12-109, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-109, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-109, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-109, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-109, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-109, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-109, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-12-109, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-109, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-109, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160

and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-109, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-109, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-109, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-109, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-109, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.068. WSR 06-23-165 (Order 06-09), § 182-12-109, filed 11/22/06, effective 12/23/06. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-109, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 21-13-103, filed 6/18/21, effective 1/1/22)

WAC 182-12-114 How do employees establish eligibility for public employees benefits board (PEBB) benefits? Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in subsections (1) through (5) of this section shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

Hours that are excluded in determining eligibility include stand-by hours and any temporary increases in work hours, of six months or less, caused by training or emergencies (except governor-declared emergencies) that have not been or are not anticipated to be part of the employee's regular work schedule or pattern. Any hours worked in direct response to a governor-declared emergency are not excludable and must be included in determining eligibility. In order to include excluded hours in determining eligibility, employing agencies must request and receive the public employees benefits board (PEBB) program's approval.

For how the employer contribution toward PEBB benefits is maintained after eligibility is established under this section, see WAC 182-12-131.

(1) Employees are eligible for PEBB benefits as follows, except as described in subsections (2) through (5) of this section:

(a) **Eligibility.** An employee is eligible if they are anticipated to work an average of at least (~~eighty~~) 80 hours per month and are anticipated to work for at least eight hours in each month for more than six consecutive months.

(b) **Determining eligibility.**

(i) **Upon employment:** An employee is eligible from the date of employment if the employing agency anticipates the employee will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern:** If an employing agency revises an employee's anticipated work hours or anticipated duration of employment such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern:** An employee who is determined to be ineligible, but later meets the eligibility criteria in (a) of this subsection, becomes eligible the first of the month following the six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one

position or job to establish eligibility and maintain the employer contribution toward PEBB benefits. Employees become eligible through stacking when they meet the requirements described in (a) of this subsection. They must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

- (i) The employee works two or more positions or jobs at the same time (concurrent stacking);
- (ii) The employee moves from one position or job to another (consecutive stacking); or
- (iii) The employee combines hours from a seasonal position with hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward PEBB benefits as described in WAC 182-12-131(1).

(d) **When PEBB benefits begin.** Medical, dental, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, employer-paid long-term disability (LTD) insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the date an employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(2) **Seasonal employees,** as defined in WAC 182-12-109, are eligible as follows:

(a) **Eligibility.** A seasonal employee is eligible if they are anticipated to work an average of at least (~~eighty~~) 80 hours per month and are anticipated to work for at least eight hours in each month of at least three consecutive months of the season.

(b) **Determining eligibility.**

(i) **Upon employment:** A seasonal employee is eligible from the date of employment if the employing agency anticipates that they will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern.** If an employing agency revises an employee's anticipated work hours or anticipated duration of employment such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern.** An employee who is determined to be ineligible for benefits, but later works an average of at least (~~eighty~~) 80 hours per month and works for at least eight hours in each month and works for more than six consecutive months, becomes eligible the first of the month following a six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward PEBB benefits. Employees become eligible through stacking when they meet the requirements described in (a) of this subsection. They must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

- (i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position or job with hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward PEBB benefits as described in WAC 182-12-131(1).

(d) **When PEBB benefits begin.** Medical, dental, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

Exception: Seasonal employees who work a recurring, annual season with a duration of less than nine months are not eligible for the employee-paid LTD insurance benefit.

(3) **Faculty** are eligible as follows:

(a) **Determining eligibility.** "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees is governed by RCW 28B.50.489.

(i) **Upon employment:** Faculty who the employing agency anticipates will work half-time or more for the entire instructional year, or equivalent nine-month period, are eligible from the date of employment.

(ii) **For faculty hired on quarter/semester to quarter/semester basis:** Faculty who the employing agency anticipates will not work for the entire instructional year, or equivalent nine-month period, are eligible at the beginning of the second consecutive quarter or semester of employment in which they are anticipated to work, or has actually worked, half-time or more. Spring and fall are considered consecutive quarters/semesters when first establishing eligibility for faculty that work less than half-time during the summer quarter/semester.

(iii) **Upon revision of anticipated work pattern:** Faculty who receive additional workload after the beginning of the anticipated work period (quarter, semester, or instructional year), such that their workload meets the eligibility criteria as described in (a)(i) or (ii) of this subsection become eligible when the revision is made.

(b) **Stacking.** Faculty may establish eligibility and maintain the employer contribution toward PEBB benefits by working as faculty for more than one institution of higher education. Faculty workloads may only be stacked with other faculty workloads to establish eligibility under this section or maintain eligibility as described in WAC 182-12-131(3). A faculty becomes eligible through stacking when they meet the requirements as described in (a) of this subsection. When a faculty works for more than one institution of higher education, the faculty must notify their employing agencies that they work at more than one institution and may be eligible through stacking.

(c) **When PEBB benefits begin.**

(i) Medical, dental, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the

faculty declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the faculty becomes eligible. If the faculty becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(ii) For faculty hired on a quarter/semester to quarter/semester basis under (a)(ii) of this subsection, medical, dental, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the faculty declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin the first day of the month following the beginning of the second consecutive quarter/semester of half-time or more employment. If the first day of the second consecutive quarter/semester is the first working day of the month, then coverage begins at the beginning of the second consecutive quarter/semester. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(4) **Elected and full-time appointed officials of the legislative and executive branches of state government** are eligible as follows:

(a) **Eligibility.** A legislator is eligible for PEBB benefits on the date their term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible on the date their terms begin or the date they take the oath of office, whichever occurs first.

(b) **When PEBB benefits begin.** Medical, dental, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(5) **Justices and judges** are eligible as follows:

(a) **Eligibility.** A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for PEBB benefits on the date they take the oath of office.

(b) **When PEBB benefits begin.** Medical, dental, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then coverage begins on that date. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-11 and 2021-12. WSR 21-13-103 (Admin #2021-01.03), §

182-12-114, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-114, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-114, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-114, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-114, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-114, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-114, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-114, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-114, filed 11/17/09, effective 1/1/10.]

AMENDATORY SECTION (Amending WSR 21-13-102, filed 6/18/21, effective 1/1/22)

WAC 182-12-128 When may an employee waive enrollment in public employees benefits board (PEBB) medical and when may they enroll in PEBB medical after having waived enrollment? An employee may waive enrollment in public employees benefits board (PEBB) medical only 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. They may not waive enrollment in PEBB medical if they are enrolled in PEBB retiree insurance coverage. An employee who waives enrollment in PEBB medical must enroll in PEBB dental, basic life insurance, basic accidental death and dismemberment insurance, and employer-paid long-term disability (LTD) insurance (unless the employing agency does not participate in these PEBB insurance coverages). For an employing agency that participates in LTD insurance, an employee will also be enrolled in employee-paid LTD insurance automatically unless the employee declines their employee-paid LTD insurance as described in WAC 182-08-197.

Exception: An employee may waive their enrollment in PEBB medical to enroll in school employees benefits board (SEBB) medical only if they are enrolled in SEBB dental and SEBB vision. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental.

(1) To waive enrollment in PEBB medical, the employee must submit the required form to their employing agency at one of the following times:

(a) **When the employee becomes eligible:** An employee may waive PEBB medical when they become eligible for PEBB benefits. The employee must indicate their election to waive enrollment in PEBB medical on the required form and submit the form to their employing agency. The employing agency must receive the form no later than (~~thirty-one~~) 31 days after the date the employee becomes eligible for PEBB benefits (see WAC 182-08-197). PEBB medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) **During the annual open enrollment:** An employee may waive PEBB medical during the annual open enrollment. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** An employee may waive PEBB medical during a special open enrollment only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (4) of this section. A special open enrollment event must be an event other than an employee gaining initial eligibility or regaining eligibility for PEBB benefits.

The employee must submit the required form to their employing agency. The employing agency must receive the form no later than (~~sixty~~) 60 days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment to the employing agency.

PEBB medical will be waived the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, PEBB medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical will be waived the last day of the previous month.

(2) If an employee waives PEBB medical, the employee may not enroll dependents in PEBB medical.

(3) Once PEBB medical is waived, the employee is only allowed to enroll in PEBB medical at the following times:

(a) During the annual open enrollment. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will begin January 1st of the following year.

(b) During a special open enrollment. A special open enrollment allows an employee to 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 employee must submit the required form to their employing agency. The employing agency must receive the form no later than (~~sixty~~) 60 days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment to the employing agency.

PEBB medical will begin the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical for the employee will begin on the first day of the month in which the event occurs. PEBB medical for the newly born child, newly adopted child, spouse, or state registered domestic partner will begin as described in WAC 182-12-262

(3) (a) (iv).

If an employee who is eligible for the employer contribution toward PEBB benefits was enrolled as a dependent in SEBB medical, SEBB dental, and SEBB vision and is removed by the SEBB subscriber, the health care authority will notify the employee of their removal from the SEBB subscriber's account and that they have experienced a special enrollment event. The employee will be required to return from waived enrollment and elect PEBB medical and PEBB dental. If the employee's employing agency does not receive the employee's required forms indicating their medical and dental elections within (~~sixty~~) 60 days of

the employee losing SEBB medical, SEBB dental, and SEBB vision, they will be defaulted into employee-only PEBB medical and PEBB dental as described in WAC 182-08-197 (1)(b)(i) and (ii).

(4) **Special open enrollment:** Any one of the events in (a) through (k) of this subsection may create a special open enrollment that allows the employee to enroll in PEBB medical after having waived enrollment. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the employee, the employee's dependent, or both.

(a) Employee acquires a new dependent due to:

(i) Marriage or registering 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) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Employee has a change in employment status that affects the employee's eligibility for their employer contribution toward their employer-based group medical;

(d) The employee's dependent has a change in their own employment status that affects their eligibility or their dependent's 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) Employee or an employee's dependent has a change in enrollment under an employer-based group medical plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(f) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence resulted in the dependent losing their health insurance;

(g) A court order requires the employee or any other individual to provide a health plan for an eligible dependent of the employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) Employee or an employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

Note: An employee may only return from having waived PEBB medical for the events described in (h) of this subsection. An employee may not waive their PEBB medical for the events described in (h) of this subsection.

(i) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(j) Employee or employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan;

(k) Employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09. WSR 21-13-102 (Admin #2021-01.02), § 182-12-128, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-128, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-128, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-128, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-128, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-128, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-128, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-128, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-12-128, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-128, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-128, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-128, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-128, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-128, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-128, filed 10/1/08, effective 1/1/09; WSR 08-09-027 (Order 08-01), § 182-12-128, filed 4/8/08, effective 4/9/08; WSR 07-20-129 (Order 07-01), § 182-12-128, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-128, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-146 When is an enrollee eligible to continue public employees benefits board (PEBB) benefits under Consolidated Omnibus Budget Reconciliation Act (COBRA)? (1) An employee or an employee's dependent who loses eligibility for the employer contribution toward public employees benefits board (PEBB) benefits and who qualifies for continuation coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) may continue coverage for PEBB medical, dental, or both.

(2) An employee or an employee's dependent who loses eligibility for continuation coverage described in WAC 182-12-133, (~~(182-12-138,)~~) 182-12-141, 182-12-142, or 182-12-148 but who has not used the maximum number of months allowed under COBRA may continue PEBB medical, dental, or both for the remaining difference in months.

(3) A retired employee who loses eligibility for PEBB retiree insurance coverage because an employer group, with the exception of educational service districts, ceases participation in PEBB insurance coverage may continue PEBB medical, dental, or both.

(4) A retiree or a dependent of a retiree, who is no longer eligible as described in WAC 182-12-171, 182-12-180, or 182-12-260 may continue PEBB medical, dental, or both.

(5) A blind vendor who ceases to actively operate a facility as described in WAC 182-12-111 (5) (a) may continue enrollment in PEBB medical for the maximum number of months allowed under COBRA as described in this section.

(6) A board member who no longer qualifies as described in WAC 182-12-111 (5) (c) may continue enrollment in PEBB medical, dental, or both for the maximum number of months allowed under COBRA as described in this section.

(7) An enrollee may continue PEBB medical, dental, or both under COBRA by self-paying the premium and applicable premium surcharges set by the health care authority (HCA):

(a) The election must be received by the PEBB program no later than ~~((sixty))~~ 60 days from the date the enrollee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the PEBB program, whichever is later;

(b) The first premium payment under COBRA coverage and applicable premium surcharges are due to the HCA no later than ~~((forty-five))~~ 45 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 182-08-180 (1) (c);

(c) COBRA continuation coverage enrollees who voluntarily terminate their COBRA coverage will not be eligible to reenroll in COBRA coverage unless they regain eligibility as described in WAC 182-12-114. 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 PEBB program receives the termination request or on the last day of the month specified in the COBRA 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;

(d) An employee enrolled in a medical flexible spending arrangement (FSA) or limited purpose FSA and the employee's dependents will have an opportunity to continue making contributions to their medical FSA or limited purpose FSA by electing COBRA if on the date of the qualifying event, as described under 42 U.S.C. Sec. 300bb-3, the employee's medical FSA or limited purpose 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))~~ 60 days from the date the PEBB health plan coverage ended or from the postmark date on the election notice sent by the contracted vendor, whichever is later. The first premium payment under COBRA coverage is due to the contracted vendor no later than ~~((forty-five))~~ 45 days after the election period ends as described above.

(8) A subscriber's state registered domestic partner and the state registered domestic partner's children may continue PEBB medical, dental, or both on the same terms and conditions as spouses and other eligible dependents under COBRA as described under RCW 26.60.015.

(9) Medical and dental coverage under COBRA begin on the first day of the month following the day the COBRA enrollee loses eligibility for PEBB health plan coverage as described in WAC 182-12-131, 182-12-133, 182-12-141, 182-12-142, 182-12-148, 182-12-171, 182-12-180, 182-12-250, 182-12-260, or 182-12-265.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-146, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-146, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-146, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-146, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-146, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-146, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin 2013-01), § 182-12-146, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-146, filed 9/25/12, effective 11/1/12; WSR 09-23-102 (Order 09-02), § 182-12-146, filed 11/17/09, effective 1/1/10; WSR 07-20-129 (Order 07-01), § 182-12-146, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-146, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 21-13-106, filed 6/18/21, effective 1/1/22)

WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) **Enrolling dependents in public employees benefits board (PEBB) health plan coverage (~~and the effective date of~~), supplemental dependent life insurance, and accidental death and dismemberment (AD&D) insurance.** A dependent must be enrolled in the same health plan coverage as the subscriber(~~, and~~) except as described in WAC 182-12-171 (1)(c). The subscriber must be enrolled in health plan coverage to enroll their dependent in health plan coverage except as provided in WAC 182-12-205 (3)(c). A dependent with more than one source of eligibility for enrollment in the PEBB and school employees benefits board (SEBB) programs is limited to a single enrollment in medical, dental, and vision plans in either the PEBB or SEBB program. Subscribers must satisfy the enrollment requirements as described in subsection (4) of this section and may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in PEBB benefits. If eligibility is verified the dependent's effective date will be as follows:

(i) PEBB health plan coverage will be the same as the subscriber's effective date;

(ii) Supplemental dependent life insurance or AD&D insurance, if elected, will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least (~~fourteen~~) 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) **During the annual open enrollment.** PEBB health plan coverage begins January 1st of the following year;

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section;

(d) **When a National Medical Support Notice (NMSN)** requires a subscriber to cover a dependent child in health plan coverage as described in WAC 182-12-263; or

(e) **Any time during the calendar year for supplemental dependent life insurance or AD&D insurance** by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance. Supplemental dependent life insurance or AD&D insurance will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(2) **Removing dependents from a subscriber's PEBB health plan coverage or supplemental dependent life insurance or AD&D insurance.**

(a) **A dependent's eligibility for enrollment in PEBB health plan coverage or supplemental dependent life insurance or AD&D insurance ends the last day of the month the dependent** meets the eligibility criteria as described in WAC 182-12-250 or 182-12-260. Subscribers must provide notice when a dependent is no longer eligible due to divorce, annulment, dissolution, or qualifying event of a dependent ceasing to be eligible as a dependent child, as described in WAC 182-12-260(3). For supplemental dependent life insurance or AD&D insurance, subscribers must notify the contracted vendor on the required form, in writing, or by telephone when a dependent is no longer eligible. Contact information for the contracted vendor may be found at hca.wa.gov/employees-contact-plan. For PEBB health plan coverage, the notice must be received within ((sixty)) 60 days of the last day of the month the dependent loses eligibility ((for PEBB health plan coverage)). Employees must notify their employing agency when a dependent is no longer eligible for PEBB health plan coverage, except as required under WAC 182-12-260 (3)(g)(ii). All other subscribers must notify the PEBB program. Consequences for not submitting notice within the required ((sixty)) 60 days include, but are not limited to:

(i) The dependent may lose eligibility to continue PEBB medical or dental under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility as described in WAC 182-12-270;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) **Employees have the opportunity to remove eligible dependents:**

(i) During the annual open enrollment. The dependent will be removed from PEBB health plan coverage the last day of December;

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section;

(iii) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in PEBB coverage, and that health plan coverage is in fact provided as described in WAC 182-12-263(2); or

(iv) Any time during the calendar year from supplemental dependent life insurance or AD&D insurance by submitting ((the required form)) a request to the contracted vendor on the required form, in

writing, or by telephone. Contact information for the contracted vendor may be found at hca.wa.gov/employees-contact-plan.

(c) **Retirees (see WAC 182-12-171, 182-12-180, or 182-12-211), survivors (see WAC 182-12-180, 182-12-250, or 182-12-265), and PEBB continuation coverage enrollees (see WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148) may remove dependents** from their PEBB health plan coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. The dependent will be removed from the subscriber's PEBB health plan coverage prospectively. PEBB health plan coverage will end on the last day of the month in which the written notice is received by the PEBB 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, PEBB health plan coverage will end on the last day of the previous month. PEBB continuation coverage enrollees may remove dependents from supplemental dependent life insurance or AD&D insurance any time during the calendar year by submitting ((the required form)) a request to the contracted vendor on the required form, in writing, or by telephone. Contact information for the contracted vendor may be found at hca.wa.gov/employees-contact-plan.

(3) **Special open enrollment.**

(a) Subscribers may enroll or remove their eligible dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code 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. To disenroll from a medicare advantage or medicare advantage-prescription drug plan, the change in enrollment must be allowable under 42 C.F.R. Secs. 422.62(b) and 423.38(c).

(i) PEBB health plan coverage will begin the first of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment begins on that day.

(ii) PEBB health plan coverage for an extended dependent or a dependent with a disability will begin the first day of the month following the later of the event date or eligibility certification.

(iii) The dependent will be removed from the subscriber's PEBB health plan 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, PEBB health plan coverage will begin or end as follows:

- For the newly born child, PEBB health plan coverage will begin the date of birth;
- For a newly adopted child, PEBB health plan coverage will begin on the date of placement or the date a legal obligation is assumed in anticipation of adoption, whichever is earlier;
- For a spouse or state registered domestic partner of a subscriber, PEBB 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 PEBB health plan coverage the last day of the month in which the event occurred((†)).

(v) Supplemental dependent life insurance or AD&D insurance will begin the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) The events described in this subsection (3)(b)(i) of this section create a special open enrollment to enroll eligible dependents in supplemental dependent life insurance or AD&D insurance. Any one of the following events may create a special open enrollment to enroll or remove eligible dependents from PEBB health plan coverage:

(i) Subscriber acquires a new dependent due to:

- Marriage or registering a state registered domestic partnership;
- Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) 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);

(iii) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(iv) The subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (iv) 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.

(v) Subscriber or a subscriber's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(vi) 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 resulted in the dependent losing their health insurance;

(vii) 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);

(viii) Subscriber or a subscriber's dependent enrolls in 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;

(ix) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(x) Subscriber's dependent enrolls in medicare, or loses eligibility for medicare.

(4) Enrollment requirements. A subscriber must submit the required forms within the time frames described in this subsection. For PEBB health plan coverage, an employee must submit the required forms to their employing agency, a subscriber on continuation coverage or PEBB retiree insurance coverage must submit the required forms to the PEBB program. In addition to the required forms indicating dependent

enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment. All required forms and documents must be received within the required time frames. An employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval within the required time frames.

Note: When enrolling a state registered domestic partner or a state registered domestic partner's child, a subscriber must certify that the state registered domestic partner or state registered domestic partner's child is a tax dependent on the required form; otherwise, the PEBB program will assume the state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(a) If a subscriber wants to enroll their eligible dependents in PEBB health plan coverage when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the required forms and submit them within the required time frame described in WAC 182-08-197, (~~(182-08-187)~~) 182-12-171, 182-12-180, 182-12-211, or 182-12-250. If an employee enrolls a dependent in supplemental dependent life insurance or AD&D insurance, the required form must be submitted within the required time frame described in WAC 182-08-197 (~~or 182-08-187~~).

(b) If a subscriber wants to enroll eligible dependents in PEBB health plan coverage during the PEBB annual open enrollment period, the required forms must be received no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the required forms must be received no later than (~~(sixty)~~) 60 days after the dependent becomes eligible. An employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval. An employee may enroll a dependent in supplemental dependent life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required form is submitted to the contracted vendor as required. Evidence of insurability will be required for supplemental dependent life insurance over the guaranteed issue coverage amount. Evidence of insurability is not required for supplemental AD&D insurance.

(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 in PEBB health plan coverage, the subscriber should notify the PEBB 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)~~) 60 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. An employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval no later than 60 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. A newly born child must be at least (~~(fourteen)~~) 14 days old before supplemental dependent life insurance or AD&D insurance coverage can become effective.

(e) If the subscriber wants to enroll a child age (~~(twenty-six)~~) 26 or older as a child with a disability in PEBB health plan coverage, the required forms must be received no later than (~~(sixty)~~) 60 days after the child reaches age (~~(twenty-six)~~) 26 or within the relevant time frame described in (a), (b), and (f) of this subsection. To recertify an enrolled child with a disability, the required forms must

be received by the PEBB program or the contracted vendor by the child's scheduled PEBB health plan coverage termination date.

(f) If the subscriber wants to change a dependent's enrollment status in PEBB health plan coverage during a special open enrollment, the required forms must be received no later than (~~sixty~~) 60 days after the event that creates the special open enrollment.

Exception: If the subscriber wants to change a dependent's enrollment or disenrollment in a medicare advantage or medicare advantage-prescription drug plan, the required forms must be received during a special enrollment period as allowed under 42 C.F.R. Secs. 422.62(b) and 423.38(c).

(g) An employee may enroll a dependent in supplemental dependent life insurance or AD&D insurance at any time during the calendar year by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-106 (Admin #2021-01.06), § 182-12-262, filed 6/18/21, effective 1/1/22; WSR 20-16-062 (Admin #2020-03), § 182-12-262, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-262, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-262, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-262, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-262, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-262, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-262, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-12-262, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-262, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-262, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-262, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-262, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-262, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-262, filed 10/1/08, effective 1/1/09; WSR 08-09-027 (Order 08-01), § 182-12-262, filed 4/8/08, effective 4/9/08.]

AMENDATORY SECTION (Amending WSR 21-13-102, filed 6/18/21, effective 1/1/22)

WAC 182-12-263 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 (c) of this section. Employees submit the required forms to their em-

ploying agency. Subscribers on continuation coverage or PEBB retiree insurance coverage submit the required forms to the public employees benefits board (PEBB) program.

(b) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN, the employing agency or the PEBB program may make enrollment or health plan coverage changes according to (c) of this subsection upon request of:

- (i) The child's other parent; or
- (ii) Child support enforcement program.

(c) Changes to health plan coverage or enrollment are allowed as directed by the NMSN:

- (i) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN;
- (ii) An employee who has waived PEBB medical under WAC 182-12-128 will be enrolled in medical as directed by the NMSN, in order to enroll the dependent;
- (iii) The subscriber's selected health plan will be changed if directed by the NMSN;
- (iv) If the dependent is already enrolled under another PEBB subscriber, the dependent will be removed from the other health plan coverage and enrolled as directed by the NMSN;
- (v) If the dependent is enrolled in both school employees benefits board medical and PEBB medical as a dependent as described in WAC 182-12-123 (6) ~~((f))~~ (g) and there is a NMSN in place, enrollment will be in accordance with the NMSN; or
- (vi) 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.

(d) Changes to health plan coverage or enrollment as described in (c) (i) through (iii) of this subsection will begin the first day of the month following receipt by the employing agency of the NMSN. If the NMSN is received by the employing agency 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 (c) (iv) of this 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.

(2) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in PEBB coverage, and that health plan coverage is in fact provided, the dependent may be removed from the subscriber's PEBB health plan coverage prospectively.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09. WSR 21-13-102 (Admin #2021-01.02), § 182-12-263, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-263, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-263, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-263, filed 10/3/18, effective 1/1/19. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-263, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW

41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-263, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-263, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-263, filed 9/25/12, effective 11/1/12.]

AMENDATORY SECTION (Amending WSR 21-13-105, filed 6/18/21, effective 1/1/22)

WAC 182-12-300 Public employees benefits board (PEBB) wellness incentive program eligibility and procedural requirements. The board annually determines the design of the PEBB wellness incentive program.

(1) All subscribers, except PEBB subscribers who are enrolled in both medicare Parts A and B, and in the medicare risk pool as described in RCW 41.05.080(3), are eligible to participate in the PEBB wellness incentive program.

(2) Effective January 1, 2020, to receive the PEBB wellness incentive of a reduction to the subscriber's medical plan deductible or a deposit to the subscriber's health savings account for the following plan year, eligible subscribers must complete PEBB wellness incentive program requirements during the current plan year by the following deadline:

(a) For subscribers continuing enrollment in PEBB medical and subscribers enrolling in PEBB medical with an effective date in January through September, the deadline is November 30th; or

(b) For subscribers enrolling in PEBB medical with an effective date in October through December, the deadline is December 31st.

(3) Subscribers who do not complete the requirements according to subsection (2) of this section, except as noted, within the time frame described are not eligible to receive a PEBB wellness incentive the following plan year.

Note: All eligible subscribers can earn a wellness incentive. Subscribers who cannot complete the wellness incentive program requirements may be able to earn the same incentive by different means. The contracted vendor will work with enrollees (and their physician, if they wish) to define an individual wellness program that provides the opportunity to qualify for the same incentive in light of the enrollee's health status.

(4) A PEBB wellness incentive will be provided only if:

(a) For the wellness incentive described in subsection (2) of this section the subscriber is still eligible (~~(for)~~) to participate in the PEBB wellness incentive program and is enrolled in a PEBB medical plan in the year the incentive applies;

(b) The funding rate provided by the legislature is designed to provide a PEBB wellness incentive program or a PEBB wellness incentive, or both; or

(c) Specific appropriations are provided for wellness incentives.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolution PEBB 2021-15. WSR 21-13-105 (Admin #2021-01.05), § 182-12-300, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-300, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-300, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-300, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-300, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.160, 2015 c 116, and

PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-300, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-12-300, filed 3/26/14, effective 4/26/14.]

OTS-3749.1

AMENDATORY SECTION (Amending WSR 21-13-106, filed 6/18/21, effective 1/1/22)

WAC 182-16-020 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 employing agency, as well as supplemental accidental death and dismemberment insurance offered to and paid for by employees for themselves and their dependents.

"Appellant" means a person who requests a brief adjudicative proceeding with the PEBB appeals unit about the action of the employing agency, the HCA, or its contracted vendor.

"Authority" or "HCA" means the Washington state health care authority.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Brief adjudicative proceeding" means the process described in RCW 34.05.482 through 34.05.494 and in WAC 182-16-2000 through 182-16-2160.

"Business days" means all days except Saturdays, Sundays, and all state 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 PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Denial" or "denial notice" means an action by, or communication from, an employing agency, contracted vendor, or the PEBB program that aggrieves a subscriber, a dependent, or an applicant, with regard to PEBB benefits including, but not limited to, actions or communications expressly designated as a "denial," "denial notice," or "cancellation notice."

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state 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.

"Dispositive motion" means a motion made to a presiding officer, ((review)) reviewing 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.

"Employee" for the public employees benefits board program includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization; (c) through December 31, 2019, employees of a school district or represented employees of an educational service district if the authority agrees to provide any of the school districts' or educational service districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); (f) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW; and (g) through December 31, 2023, nonrepresented employees of an educational service district. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under RCW 41.05.011 or by the authority under this chapter.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, employee organizations representing state civil service employees, and through December 31, 2019, school districts and charter schools, and through December 31, 2023, educational service districts obtaining employee benefits through a contractual agreement with the

authority to participate in benefit plans developed by the public employees benefits board as described in WAC 182-08-245.

"Employing agency" for the public employees benefits board program means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, or other political subdivision; and a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"File" or "filing" means the act of delivering documents to the office of the presiding officer, (~~review~~) reviewing officer, or hearing officer. A document is considered filed when it is received by the authority or its designee. A document may be filed by one or more of the following:

- Personal delivery to the authority at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, Washington 98501;

- First class, registered, or certified mail to the authority to the following mailing address:

Health Care Authority
Attn: PEBB Appeals Unit
P.O. Box 45504
Olympia, WA 98504-5504;

- Fax: 360-763-4709; or

- Submission online through the designated submission portal.

The identified methods are the exclusive methods for a document to be filed, and submission of documents by any other fashion to the authority shall not constitute filing unless agreed to in advance by the authority.

"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 34.05.476 and WAC 182-16-3000 through 182-16-3200.

"HCA hearing representative" means a person who is authorized to represent the PEBB 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 or dental, or both, developed by the board 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.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Life insurance" means basic life insurance paid for by the employing agency, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees

includes retiree term life insurance offered to and paid for by retirees.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the PEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state 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 chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011.

"Prehearing conference" means a proceeding scheduled and conducted by a hearing officer to address issues in preparation for a formal administrative hearing.

"Premium payment plan" means a benefit plan whereby public 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~~) 95 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~~) 95 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 employee" has the same meaning as employee.

"((Review)) Reviewing officer or officers" means one or more delegates from the director that consider appeals relating to the administration of PEBB benefits by the PEBB program.

"Salary reduction plan" means a benefit plan whereby public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Service" or "serve" means the process described in WAC 182-16-058.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education, and any unit of state government established by law.

"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 employee, retiree, continuation coverage enrollee, or survivor who has been determined eligible by the PEBB program, employer group, or state agency, is enrolled in PEBB benefits, and is the individual to whom the PEBB 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.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-106 (Admin #2021-01.06), § 182-16-020, filed 6/18/21, effective 1/1/22; WSR 20-16-062 (Admin #2020-03), § 182-16-020, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-020, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-020, filed 10/29/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and PEBB policy resolutions. WSR 17-19-077 (Order 2017-01), § 182-16-020, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-16-020, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-16-020, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-020, filed

9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-16-020, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-16-020, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-16-020, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-16-020, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 09-23-102 (Order 09-02), § 182-16-020, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-16-020, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-16-020, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.010 and 34.05.250. WSR 91-14-025, § 182-16-020, filed 6/25/91, effective 7/26/91.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-058 Service or serve. (1) When the rules in this chapter or in other public employees benefits board (PEBB) program rules or statutes require a party to serve copies of documents on other parties, a party must send copies of the documents to all other parties or their representatives as described in this chapter. In this section, requirements for service or delivery by a party apply also when service is required by the presiding officer, (~~review~~) reviewing officer or officers, or hearing officer.

(2) Unless otherwise stated in applicable law, documents may be sent only as identified in this chapter to accomplish service. A party may serve someone by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail sent via the United States Postal Service or Washington state consolidated mail services;

(c) Fax;

(d) Commercial delivery service; or

(e) Legal messenger service.

(3) A party must serve all other parties or their representatives whenever the party files a motion, pleading, brief, or other document with the presiding officer, (~~review~~) reviewing officer or officers, or hearing officer's office, or when required by law.

(4) Unless otherwise stated in applicable law, service is complete when:

(a) Personal service is made;

(b) Mail is properly stamped, addressed, and deposited in the United States Postal Service;

(c) Mail is properly addressed, and deposited in the Washington state consolidated mail services;

(d) Fax produces proof of transmission;

(e) A parcel is delivered to a commercial delivery service with charges prepaid; or

(f) A parcel is delivered to a legal messenger service with charges prepaid.

(5) A party may prove service by providing any of the following:

(a) A signed affidavit of mailing or certificate of service;

(b) The certified mail receipt signed by the person who received the parcel;

(c) A signed receipt from the person who accepted the commercial delivery service or legal messenger service parcel;

(d) Proof of fax transmission.

(6) Service cannot be made by electronic mail unless mutually agreed to in advance and in writing by the parties.

(7) If the document is a subpoena, follow the compliance procedure as described in WAC 182-16-3130.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-058, filed 7/28/20, effective 1/1/21; WSR 18-22-033 (Admin #2018-03), § 182-16-058, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 19-17-073, filed 8/20/19, effective 1/1/20)

WAC 182-16-064 Applicable rules and laws. (1) An employing agency must apply public employees benefits board (PEBB) program rules adopted in the Washington Administrative Code (WAC) and follow instructions from the authority.

(2) A presiding officer, (~~review~~) reviewing officer or officers, or hearing officer must first apply the applicable PEBB program rules adopted in the WAC. If no PEBB program rule applies, the presiding officer, (~~review~~) reviewing 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 182-16-130, and court decisions.

[Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-064, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-064, filed 10/29/18, effective 1/1/19. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-064, filed 9/25/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-066 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~~) reviewing 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 to prove a party's position. Unless stated otherwise in rules or law, the standard of proof in a brief adjudicative proceeding or formal admin-

istrative hearing is a preponderance of the evidence, meaning that something is more likely to be true than not.

(3) Public officers and state agencies are presumed to have properly performed their duties and acted as described in the law, unless (~~substantial~~) preponderance of the evidence to the contrary is presented. A party challenging this presumption bears the burden of proof.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-066, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-066, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033, § 182-16-066 (Admin #2018-03), filed 10/29/18, effective 1/1/19. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-16-066, filed 9/25/14, effective 1/1/15.]

AMENDATORY SECTION (Amending WSR 19-17-073, filed 8/20/19, effective 1/1/20)

WAC 182-16-2000 Brief adjudicative proceedings. Pursuant to RCW 34.05.482, the authority (~~will~~) may 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 34.05.476 which govern formal administrative hearings.

[Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2000, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2000, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 18-22-033, filed 10/29/18, effective 1/1/19)

WAC 182-16-2005 Record—Brief adjudicative proceeding. The record in a brief adjudicative proceeding consists of any documents regarding the matter, considered or prepared by the presiding officer for the brief adjudicative proceeding or by the (~~review~~) reviewing officer or officers for any review. The authority's record does not have to constitute the exclusive basis for agency action, unless otherwise required by law.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2005, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-2050 How can an employee appeal a decision regarding the administration of benefits offered under the salary reduction plan? (1) Any 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 state agency. The state agency must receive the written request for administrative review no later than ~~((thirty))~~ 30 days after the date of the denial. The contents of the written request for administrative review are to be provided as described in WAC 182-16-2070.

(a) Upon receiving the written request for administrative review, the state agency 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 state agency must render a written decision within ~~((thirty))~~ 30 days of receiving the written request for administrative review. The written decision must be sent to the employee who submitted the written request for review and must include a description of appeal rights. The state agency must also send a copy of the state agency's written decision to the state agency's administrator (or designee) and to the PEBB appeals unit. If a state agency fails to render a written decision within ~~((thirty))~~ 30 days of receiving the written request for administrative review, the request for administrative review may be considered denied as of the ~~((thirty-first))~~ 31st day and the original underlying state agency decision may be appealed to the PEBB appeals unit by following the process in this section.

(2) Any employee who disagrees with the state agency'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 PEBB appeals unit.

(a) The PEBB appeals unit must receive the request for a brief adjudicative proceeding no later than ~~((thirty))~~ 30 days after the date of the state agency's written decision on the request for administrative review. If a state agency fails to render a written decision within ~~((thirty))~~ 30 days of receiving a written request for administrative review, the PEBB appeals unit must receive the request for a brief adjudicative proceeding no later than ~~((thirty))~~ 30 days after the date the request for administrative review was deemed denied. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(i) The PEBB appeals unit must notify the appellant in writing when the request for a brief adjudicative proceeding has been received.

(ii) Once the PEBB appeals unit receives a request for a brief adjudicative proceeding, the PEBB appeals unit will send a request for documentation and information to the applicable state agency. The state agency will then have two business days to respond to the request and provide the documentation and information requested. The state agency will also send a copy of the documentation and information to the employee.

(iii) The brief adjudicative proceeding will be conducted by a presiding officer designated by the director.

(b) If an employee fails to timely request a brief adjudicative proceeding, the state agency's prior written decision becomes the authority's final order without further action.

(3) Any employee aggrieved by a decision regarding a claim for benefits under the medical flexible spending arrangement or limited purpose flexible spending arrangement (FSA) or dependent care assistance program (DCAP) offered under the salary reduction plan may appeal that decision to the authority's contracted vendor by following the appeal process of that contracted vendor.

(a) Any employee who disagrees with a decision in response to an appeal filed with the contracted vendor that administers the medical FSA, limited purpose FSA, and DCAP under the salary reduction plan may request a brief adjudicative proceeding by submitting a written request to the PEBB appeals unit. The PEBB appeals unit must receive the request for a brief adjudicative proceeding no later than (~~thirty~~) 30 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 182-16-2070.

(i) The PEBB appeals unit must 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 an employee fails to timely request a brief adjudicative proceeding, the contracted vendor's prior written decision becomes the authority's final order without further action.

(4) Any 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 authority by submitting a written request to the PEBB appeals unit for a brief adjudicative proceeding.

(a) The PEBB appeals unit must receive the request for a brief adjudicative proceeding no later than (~~thirty~~) 30 days after the date of the denial notice by the PEBB program. The contents of the request for a brief adjudicative proceeding are to be provided as described in WAC 182-16-2070.

(i) The PEBB appeals unit must 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 an employee fails to timely request a brief adjudicative proceeding, the PEBB program's prior written decision becomes the authority's final order without further action.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-2050, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2050, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2050, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 19-17-073, filed 8/20/19, effective 1/1/20)

WAC 182-16-2080 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~~) reviewing 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 nonattorney representative must provide the PEBB appeals unit and other parties with a signed, written consent permitting release to the nonattorney representative of the appellant's 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 PEBB appeals unit and other parties with a signed, written consent permitting release to the attorney of the appellant's 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~~) reviewing officer or officers' office and serve all parties with the notice.

[Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2080, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2080, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-2085 Continuances. The presiding officer or (~~review~~) reviewing officer or officers may grant, in their sole discretion, a request for a continuance on motion of the appellant, the authority, or on their own. The continuance may be up to (~~thirty~~) 30 calendar days.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-2085, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2085, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2085, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-2100 How to request a review of an initial order resulting from a brief adjudicative proceeding. (1) Both the appellant and the authority may request review of an initial order. An appellant who has received an initial order upholding an employing agency decision, public employees benefits board (PEBB) program decision, or a decision made by a PEBB program contracted vendor, may request review of the initial order by the authority. The appellant (~~((must file))~~) may request review of the initial order by filing a written request for review of the initial order or (~~((make))~~) making an oral request (~~((for review of the initial order))~~) with the PEBB appeals unit within (~~((twenty-one))~~) 21 days after service of the initial order. The written or oral request for review of the initial order must be made by using the contact information included in the initial order. If the appellant fails to request review of the initial order within (~~((twenty-one))~~) 21 days, the initial order becomes the authority's final order without further action.

(2) Upon timely request by the appellant, a review of an initial order will be performed by one or more (~~((review))~~) reviewing officers designated by the director of the authority.

(3) If the appellant has not requested review, the authority may review an order resulting from a brief adjudicative proceeding on its own, 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.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-2100, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2100, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2100, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 19-17-073, filed 8/20/19, effective 1/1/20)

WAC 182-16-2105 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 public employees benefits board (PEBB) appeals unit. The PEBB appeals unit will present the withdrawal request to the presiding officer or (~~((review))~~) reviewing 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))~~) reviewing officer or officers must enter and serve a written order dismissing the 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 rein-

state the request for a brief adjudicative proceeding or review of an initial order unless time remains on their original appeal period.

[Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2105, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2105, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-2110 Final order. (1) A final order issued by the (~~review~~) reviewing officer or officers will be in writing and include a brief statement of the reasons for the decision.

(2) The final order must be served within (~~twenty~~) 20 days of the date of the initial order or of the date the request for review of the initial order was received by the PEBB appeals unit, whichever is later.

(3) The final order will include a notice that reconsideration and judicial review may be available.

(4) A request for review of the initial order is deemed denied if the authority does not issue a final order within (~~twenty~~) 20 days after the request for review of the initial order is filed.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-2110, filed 7/28/20, effective 1/1/21; WSR 18-22-033 (Admin #2018-03), § 182-16-2110, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-2120 Request for reconsideration. (1) A request for reconsideration asks the (~~review~~) reviewing officer or officers to reconsider the final order because the party believes the (~~review~~) reviewing 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~~) reviewing officer or officers who entered the final order.

(4) If a party files a request for reconsideration:

(a) The (~~review~~) reviewing 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~~) reviewing officer or officers must serve 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~~)) reviewing officer or officers no later than seven business days after the service date of the ((~~review~~)) reviewing 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~~)) reviewing 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~~)) reviewing 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 request and setting the matter for further hearing.

(9) If the ((~~review~~)) reviewing officer or officers do not send an order on the request for reconsideration within ((~~twenty~~)) 20 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 request 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 prior to the final order being issued.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-2120, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2120, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2120, filed 10/29/18, effective 1/1/19.]

NEW SECTION

WAC 182-16-2135 Petitions for judicial review—Service on the authority. Delivery pursuant to RCW 34.05.542(4) shall be deemed to have been made when a copy of the petition for judicial review has

been received by the public employees benefits board (PEBB) appeals unit at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA 98501 or received by mail at the PEBB appeals unit, P.O. Box 45504, Olympia, WA 98504-5504.

[]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-2150 ((Review)) Reviewing officer or officers—Designation and authority. (1) The designation of a ((review)) reviewing officer or officers must be consistent with the requirements of RCW 34.05.491 and the ((review)) reviewing officer or officers must not have personally participated in the decision made by the employing agency or PEBB program.

(2) The ((review)) reviewing officer or officers must review the initial order and the record to determine if the initial order was correctly decided and make any inquiries necessary to ascertain whether the proceeding must be converted to a formal administrative hearing.

(3) The ((review)) reviewing 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) ~~((Convert the matter to a formal administrative hearing; or~~
- ~~(d))~~ Remand to the presiding officer in whole or in part.

(4) A ((review)) reviewing officer or officers are limited to those powers granted by the state constitution, statutes, rules, or applicable case law.

(5) A ((review)) reviewing officer or officers may not decide that a rule is invalid or unenforceable.

(6) In addition to the record, the ((review)) reviewing officer or officers may employ the authority's expertise as a basis for the decision.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-2150, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2150, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2150, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-2160 Conversion of a brief adjudicative proceeding to a formal administrative hearing. (1) The presiding officer or the ((review)) reviewing officer or officers, in their sole discretion, may convert a brief adjudicative proceeding to a formal administrative

hearing at any time before the final order is issued on motion by ~~((the subscriber or enrollee or their))~~:

(a) The appellant;

(b) The representative(~~(, the))~~ of the appellant;

(c) The authority(~~(, or on the))~~; or

(d) The presiding officer or (~~(review))~~ reviewing officer or (~~(officers' own))~~ officers.

(2) The presiding officer or (~~(review))~~ reviewing 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 or RCW 34.05.413 through 34.05.476 that govern formal administrative hearings.

(3) When a brief adjudicative proceeding is converted to a formal administrative hearing, the director designates a hearing officer to conduct the formal administrative hearing upon notice to the ~~((subscriber or enrollee))~~ appellant and the authority.

(4) When a brief adjudicative proceeding is converted to a formal administrative hearing, WAC 182-16-010 through 182-16-130 and 182-16-3000 through 182-16-3200 apply to the formal administrative hearing.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-2160, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-2160, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-2160, filed 10/29/18, effective 1/1/19.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-16-3170 Office of administrative hearings—Initial or final order ((deadline))—Required information. (1) ~~((Within ninety days after the formal administrative hearing record is closed, the hearing officer must serve a copy of the final order to all parties))~~ **Initial order:** When the office of administrative hearings is holding a formal administrative hearing on behalf of the authority, the hearing officer must render a written initial order that addresses the issue or issues raised by the appellant in their appeal. The hearing officer must serve a copy of the initial order on all parties and the initial order must contain information on how the appellant may request review of the initial order.

(2) **Final order:** The final order will only be issued by the authority. After the reviewing officer or officers receives a request for review, the reviewing officer or officers has 20 calendar days to enter and serve a final order to all parties unless the reviewing officer serves notice allowing more time.

~~((2))~~ (3) In the written final order, the hearing officer must:

- (a) Identify the order as a final order of the public employees benefits board (PEBB) program;
- (b) List the name and docket number of the case and the names of all parties and representatives;
- (c) Enter findings of fact used to resolve the dispute based on the evidence admitted in the record;
- (d) Explain why evidence is, or is not, credible when describing the weight given to evidence related to disputed facts;
- (e) State the law that applies to the dispute;
- (f) Apply the law to the facts of the case in the conclusions of law;
- (g) Discuss the reasons for the decision based on the facts and the law;
- (h) State the result and remedy ordered; and
- (i) Include any other information required by law or program rules.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-16-3170, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-16-3170, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-22-033 (Admin #2018-03), § 182-16-3170, filed 10/29/18, effective 1/1/19.]

NEW SECTION

WAC 182-16-3175 How to request a review of an initial order by the office of administrative hearings. (1) Both the appellant and the authority may request review of an initial order. An appellant who has received an initial order upholding an employing agency decision, a public employees benefits board (PEBB) program decision, or a decision made by a PEBB program contracted vendor, may request review of the initial order or an oral request with the PEBB appeals unit within 20 days after service of the initial order. The written or oral request for review of the initial order must be made by using the contact information included in the initial order. If such review is requested, the hearing officer or their designee from the authority, shall issue a final order in accordance with WAC 182-16-3030. If the appellant fails to request review of the initial order within 20 days, the initial order becomes the authority's final order without further action.

(2) Upon timely request by the appellant, a review of an initial order will be performed by one or more reviewing officers designated by the director of the authority.

(3) If the appellant has not requested review of the initial order, the authority may review an initial order issued by the office of administrative hearings on its own, 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.

[]

NEW SECTION

WAC 182-16-3210 Petitions for judicial review—Service on the authority. Delivery pursuant to RCW 34.05.542(4) shall be deemed to have been made when a copy of the petition for judicial review has been received by the public employees benefits board (PEBB) appeals unit at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA 98501 or received by mail at the PEBB appeals unit, P.O. Box 45504, Olympia, WA 98504-5504.

[]

WSR 22-13-160

PERMANENT RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2022-02.03—Filed June 21, 2022, 3:49 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: The purpose of this proposal is to implement a policy resolution to support the public employees benefits board (PEBB) program: Amending WAC 182-12-171, 182-12-180, 182-12-200, 182-12-211, 182-12-250, and 182-12-265 to implement Policy Resolution PEBB 2022-03 Medicare Advantage Prescription Drug plan enrollment during the gap months.

Citation of Rules Affected by this Order: Amending WAC 182-12-171, 182-12-180, 182-12-200, 182-12-211, 182-12-250, and 182-12-265.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy Resolution PEBB 2022-03.

Adopted under notice filed as WSR 22-10-084 on May 3, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 6, Repealed 0.

Date Adopted: June 21, 2022.

Wendy Barcus
Rules Coordinator

OTS-3748.3

AMENDATORY SECTION (Amending WSR 20-16-063, filed 7/28/20, effective 1/1/21)

WAC 182-12-171 When is a retiring employee or a retiring school employee eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage? A retiring employee or a retiring school employee is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) insurance coverage as a retiree if they meet procedural and substantive eligibility requirements as described in subsections (1), (2), and (3) of this section. An elected and full-time appointed official of the legislative and executive branch of state government is eligible as described in WAC 182-12-180.

(1) **Procedural requirements.** A retiring employee or a retiring school employee must enroll or defer enrollment in PEBB retiree insurance coverage as described in (a) through (d) of this subsection:

(a) To enroll in PEBB retiree insurance coverage, the required form must be received by the PEBB program no later than ~~((sixty))~~ 60 days after the employee's or the school employee's employer-paid coverage, Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, or continuation coverage ends. The effective date of PEBB retiree insurance coverage is the first day of the month after the employee's or the school employee's employer-paid coverage, COBRA coverage, or continuation coverage ends;

(Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms must be received by the PEBB program no later than the last day of the month prior to the month the employee's or the school employee's employer-paid, COBRA coverage, or continuation coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, a retiring employee or a retiring school employee may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2:))

Note: Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(b) The employee's or the school employee's first premium payment for PEBB retiree insurance coverage and applicable premium surcharges are due to the health care authority (HCA) no later than ~~((forty-five))~~ 45 days after the election period ends as described in (a) of this subsection. Following the employee's or the school employee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c); and

(c) If a retiring employee or a retiring school employee elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the retiring employee or the retiring school employee;

Exception: If a retiring employee or a retiring school employee selects a medicare supplement plan or ~~((medicare advantage-prescription drug))~~ MA-PD plan, nonmedicare enrollees will be enrolled in the ~~((Uniform Medical Plan (UMP)))~~ UMP Classic. If a retiring employee or a retiring school employee selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(d) To defer enrollment in PEBB retiree insurance coverage, the employee or the school employee must meet substantive eligibility requirements in subsection (2) of this section and defer enrollment as described in WAC 182-12-200 or 182-12-205.

(2) Substantive eligibility requirements.

An employee who is eligible for PEBB benefits through an employing agency, or a school employee who is eligible for SEBB benefits through a SEBB organization or basic benefits through an educational service district as defined in RCW 28A.400.270 who ends public employment may enroll or defer enrollment in PEBB retiree insurance coverage if they meet procedural and substantive eligibility requirements.

To be eligible to continue enrollment or defer enrollment in PEBB retiree insurance coverage, the employee or the school employee must be vested in and eligible to retire under a Washington state-sponsored retirement plan when the employee's or school employee's employer-paid coverage, COBRA coverage, or continuation coverage ends. An exception to the requirement to be vested in and eligible to retire under a Washington state-sponsored retirement plan is provided for employees of an employer group in (c)(i) of this subsection.

(a) A retiring employee of a state agency must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring employee who receives a lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the employee the choice between a

lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan; or

(ii) A retiring employee who is a member of a Plan 3 retirement plan, also called a separated employee (defined in RCW 41.05.011(25)), must meet their Plan 3 retirement eligibility criteria. The employee does not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage.

(b) A retiring employee of a Washington higher education institution who is a member of a higher education retirement plan (HERP) must immediately begin to receive a monthly retirement plan payment, or meet their HERP plan's retirement eligibility criteria, or be at least age (~~(fifty-five)~~) 55 with (~~(ten)~~) 10 years of state service;

(c) A retiring employee of an employer group participating in PEBB insurance coverage under contractual agreement with the authority must be eligible to retire as described in (c)(i) or (ii) of this subsection to be eligible to continue PEBB retiree insurance coverage, except for an educational service district employee who must meet the requirements as described in (d) of this subsection.

(i) A retiring employee who is eligible to retire under a retirement plan sponsored by an employer group or tribal government that is not a Washington state-sponsored retirement plan must meet the same age and years of service requirements as if they were a member of public employees retirement system Plan 1, if their date of hire with that employer group or tribal government was before October 1, 1977, or Plan 2, if their date of hire with that employer group or tribal government was on or after October 1, 1977.

(ii) A retiring employee who is eligible to retire under a Washington state-sponsored retirement plan must immediately begin to receive a monthly retirement plan payment, with exceptions described in (a)(i) and (ii) of this subsection.

(iii) A retired employee of an employer group, except a Washington state educational service district, that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage if they enrolled after September 15, 1991. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-146.

(iv) A retired employee of a tribal government employer that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-146.

(d) A retiring school employee must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring school employee who ends employment before October 1, 1993; or

(ii) A retiring school employee who receives a lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the school employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan, or the school employee enrolled before 1995; or

(iii) A retiring school employee who is a member of a Plan 3 retirement system, also called a separated employee (defined in RCW 41.05.011(25)), must meet their Plan 3 retirement eligibility criteria; or

(iv) A school employee who retired as of September 30, 1993, and began receiving a monthly retirement plan payment from a Washington

state-sponsored retirement system (as defined in chapters 41.32, 41.35 or 41.40 RCW) is eligible if they enrolled in a PEBB health plan no later than the HCA's annual open enrollment period for the year beginning January 1, 1995.

(3) A retiring employee or a retiring school employee and their enrolled dependents who are eligible for medicare must enroll and maintain enrollment in both medicare Parts A and B if the employee or the school employee retired after July 1, 1991. If a retiree or an enrolled dependent becomes eligible for medicare after enrollment in PEBB retiree insurance coverage, they must enroll and maintain enrollment in medicare Parts A and B to remain enrolled in a PEBB retiree health plan. If an enrollee who is eligible for medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in a PEBB retiree health plan. The enrollee's eligibility will end as described in the termination notice sent by the PEBB program. The enrollee may continue PEBB health plan enrollment as described in WAC 182-12-146.

Note: For the exclusive purpose of medicare Part A as described in this subsection, "eligible" means the enrollee is eligible for medicare Part A without a monthly premium.

(4) Washington state-sponsored retirement plans include:

- (a) Higher education retirement plans;
- (b) Law enforcement officers' and firefighters' retirement system;
- (c) Public employees' retirement system;
- (d) Public safety employees' retirement system;
- (e) School employees' retirement system;
- (f) State judges/judicial retirement system;
- (g) Teachers' retirement system; and
- (h) State patrol retirement system.
- (i) The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered Washington state-sponsored retirement systems for Washington State University Extension for an employee covered under PEBB benefits at the time of retirement.

[Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-171, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolution. WSR 19-17-073 (Admin #2019-01), § 182-12-171, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-171, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-171, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-171, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-171, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-171, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-171, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-171, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-171, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-171, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-171, filed

11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-171, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-171, filed 10/3/07, effective 11/3/07; WSR 06-11-156 (Order 06-02), § 182-12-171, filed 5/24/06, effective 6/24/06. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-12-171, filed 7/27/05, effective 8/27/05. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-171, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 20-16-063, filed 7/28/20, effective 1/1/21)

WAC 182-12-180 When is an elected and full-time appointed official of the legislative and executive branch of state government, or their survivor eligible to continue enrollment in public employees benefits board (PEBB) retiree insurance coverage? (1) An elected and full-time appointed official of the legislative and executive branch of state government is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage under the same terms as an outgoing legislator, when they voluntarily or involuntarily leave public office. The following officials are eligible if they meet the procedural requirements as described in subsection (3) of this section:

(a) A member of the state legislature;

(b) A statewide elected official of the executive branch;

(c) An executive official appointed directly by the governor as the single head of an executive branch agency; or

(d) An official appointed directly by a state legislative committee as the single head of a legislative branch agency or an official appointed to secretary of the senate or chief clerk of the house of representatives.

(2) The spouse, state registered domestic partner, or child of an official described in subsection (1) of this section who loses eligibility due to the death of the official may enroll as a survivor under PEBB retiree insurance coverage as described in (a) and (b) of this subsection and must meet procedural requirements to enroll or defer enrollment as described in subsection (3) of this section.

(a) The official's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The official's child may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

(3) **Procedural requirements.** An official described in subsection (1) of this section or their survivor described in subsection (2) of this section must enroll or defer enrollment in PEBB retiree insurance coverage as described in (a) through (d) of this subsection:

(a) For an official to enroll in PEBB retiree insurance coverage the required forms must be received by the PEBB program no later than ((sixty)) 60 days after the official leaves public office. The effective date of PEBB retiree insurance coverage is the first day of the month after the official leaves public office;

For a survivor to enroll in PEBB retiree insurance coverage, the required forms must be received by the PEBB program no later than ((sixty)) 60 days after the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends. The effective date of PEBB retiree insurance coverage is the first day of the month

after the date of the official's death or the first day of the month after the survivor's PEBB insurance coverage ends;

(Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms must be received by the PEBB program before the official leaves public office or no later than the last day of the month prior to the month PEBB insurance coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).))

Note: Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(b) The official's or survivor's first premium payment and applicable premium surcharges are due to the health care authority (HCA) no later than (~~forty-five~~) 45 days after the official's or survivor's election period ends as described in (a) of this subsection. Following the official's or survivor's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1) (c);

(c) If an official or a survivor elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the official or survivor;

Exception: If an official or a survivor selects a medicare supplement plan or (~~medicare advantage-prescription drug~~) MA-PD plan, nonmedicare enrollees will be enrolled in the (~~Uniform Medical Plan (UMP)~~) UMP Classic. If an official or a survivor selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(d) To defer enrollment in PEBB retiree insurance coverage the official or the survivor must meet deferral enrollment requirements as described in WAC 182-12-200 or 182-12-205.

(4) If the official, an enrolled dependent, or their survivor is eligible for medicare or becomes eligible for medicare after enrollment in PEBB retiree insurance coverage, they must enroll and maintain enrollment in medicare Parts A and B to remain enrolled in a PEBB retiree health plan. If an enrollee who is eligible for medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in a PEBB retiree health plan. The enrollee's eligibility will end as described in the termination notice sent by the PEBB program. The enrollee may continue PEBB health plan enrollment as described in WAC 182-12-146.

Note: For the exclusive purpose of medicare Part A as described in this subsection, "eligible" means the enrollee is eligible for medicare Part A without a monthly premium.

(5) An official described in subsection (1) of this section shall be included in the term "retiree" or "retiring employee" as used in chapters 182-08, 182-12, and 182-16 WAC.

[Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-180, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-180, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-180, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-180, filed 9/15/17, effective 1/1/18.]

AMENDATORY SECTION (Amending WSR 21-13-104, filed 6/18/21, effective 1/1/22)

WAC 182-12-200 May a retiring employee, a retiring school employee, or a retiree enrolled as a dependent in a health plan sponsored by public employees benefits board (PEBB), a Washington state educational service district, or school employees benefits board (SEBB) defer enrollment under PEBB retiree insurance coverage? (1) A retiring employee or a retiring school employee may defer enrollment in public employees benefits board (PEBB) retiree insurance coverage at retirement if they meet substantive eligibility requirements as described in WAC 182-12-171(2) or as described in WAC 182-12-180(1). An enrolled retiree may defer enrollment after enrolling in PEBB retiree insurance coverage. Enrollment in PEBB retiree insurance coverage may be deferred when they are enrolled as a dependent in a health plan sponsored by PEBB, a Washington state educational service district, or school employees benefits board (SEBB), including such coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) or continuation coverage.

(2) A retiring employee, a retiring school employee, or a retiree who defers enrollment in PEBB retiree insurance coverage defers enrollment in PEBB medical and PEBB dental. A retiree must be enrolled in PEBB medical to enroll in PEBB dental. A retiree who defers enrollment also defers enrollment for all eligible dependents. A retiree may only defer enrollment in PEBB retiree term life insurance as described in WAC 182-12-209 (3) (b).

(3) A retiring employee, a retiring school employee, or a retiree who defers enrollment as described in this section may later enroll themselves and their dependents in a PEBB health plan by submitting the required forms as described below and evidence of continuous enrollment in a health plan sponsored by PEBB, a Washington state educational service district, or SEBB. A gap of (~~thirty-one~~) 31 days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of enrollment in a health plan sponsored by PEBB, a Washington state educational service district, or SEBB, and between each period of enrollment in qualifying coverages as described in WAC 182-12-205 (3) (a) through (e) during the deferral period:

(a) During the PEBB annual open enrollment period. The required form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(b) When enrollment in a health plan sponsored by PEBB, a Washington state educational service district, or SEBB ends, or such coverage under COBRA or continuation coverage ends. The required forms to enroll must be received by the PEBB program no later than (~~sixty~~) 60 days after coverage ends. PEBB health plan coverage begins the first day of the month following the date the other coverage ends. To continue in a deferred status, the retiree must defer enrollment as described in WAC 182-12-205.

(Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month the other coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).))

Note: Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(c) If a retiree elects to enroll a dependent in PEBB health plan coverage as described in this subsection, the dependent must be enrolled in the same PEBB medical or PEBB dental plan as the retiree.

Exception: If a retiree selects a medicare supplement plan or (~~medicare advantage-prescription drug~~) MA-PD plan, nonmedicare enrollees will be enrolled in the (~~Uniform Medical Plan (UMP)~~) UMP Classic. If a retiree selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolution PEBB 2021-14. WSR 21-13-104 (Admin #2021-01.04), § 182-12-200, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-200, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-200, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-200, filed 10/3/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-200, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-200, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-200, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160. WSR 09-23-102 (Order 09-02), § 182-12-200, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-200, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-200, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-200, filed 8/26/04, effective 1/1/05. Statutory Authority: RCW 41.05.160. WSR 01-17-041 (Order 01-00), § 182-12-200, filed 8/9/01, effective 9/9/01; WSR 97-21-127, § 182-12-200, filed 10/21/97, effective 11/21/97. Statutory Authority: Chapter 41.05 RCW. WSR 96-08-043, § 182-12-200, filed 3/29/96, effective 4/29/96; Order 4-77, § 182-12-200, filed 11/17/77.]

AMENDATORY SECTION (Amending WSR 20-16-063, filed 7/28/20, effective 1/1/21)

WAC 182-12-211 May an employee or a school employee who is determined to be retroactively eligible for disability retirement enroll or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage? (1) An employee or a school employee who is determined to be retroactively eligible for a disability retirement is eligible to enroll or defer enrollment (as described in WAC 182-12-200 or 182-12-205) in public employees benefits board (PEBB) retiree insurance coverage if:

(a) The employee or the school employee submits the required form and a copy of the formal determination letter they received from the Washington state department of retirement systems (DRS) or the appropriate higher education authority;

(b) The employee's or the school employee's form and a copy of their Washington state-sponsored retirement system's formal determination letter are received by the PEBB program no later than (~~sixty~~) 60 days after the date on the determination letter; and

(c) The employee or the school employee immediately begins to receive a monthly pension benefit or a supplemental retirement plan ben-

efit under their higher education retirement plan (HERP), with exceptions described below from WAC 182-12-171(2):

(i) A retiring employee of a state agency, an employer group participating under a Washington state sponsored retirement plan, or a retiring school employee who receives a lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan; or

(ii) A retiring employee of a state agency, an employer group participating under a Washington state sponsored retirement plan, or a retiring school employee who is a member of a Plan 3 retirement plan, also called a separated employee (defined in RCW 41.05.011(25)), must meet their Plan 3 retirement eligibility criteria. The employee or the school employee does not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage; or

(iii) A retiring employee of a Washington higher education institution who is a member of a higher education retirement plan (HERP) must immediately begin to receive a monthly retirement plan payment, or meet their HERP plan's retirement eligibility criteria, or be at least age ~~((fifty-five))~~ 55 with ~~((ten))~~ 10 years of state service.

(2) The employee or the school employee, at their option, must indicate the date of enrollment or deferment in PEBB retiree insurance coverage on the form. The employee or the school employee may choose from the following dates:

(a) The retirement date as stated in the formal determination letter; or

(b) The first day of the month following the date the formal determination letter was written.

(Exception: ~~Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive. The employee or the school employee may change health plans to a medicare advantage or medicare advantage-prescription drug plan during a special enrollment period as described in WAC 182-08-198(2).)~~

Note: Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(3) The director may make an exception to the date of PEBB retiree insurance coverage described in subsection (2)(a) and (b) of this section; however, such request must demonstrate extraordinary circumstances beyond the control of the retiree.

(4) Premiums and applicable premium surcharges are due from the effective date of enrollment in PEBB retiree insurance coverage.

(5) If a retiring employee or a retiring school employee elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the retiring employee or the retiring school employee.

Exception: ~~If a retiring employee or a retiring school employee selects a medicare supplement plan or ((medicare advantage-prescription drug)) MA-PD plan, nonmedicare enrollees will be enrolled in the ((Uniform Medical Plan (UMP))) UMP Classic. If a retiring employee or a retiring school employee selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.~~

[Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-211, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-211, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-211, filed 10/3/18,

effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-211, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-211, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-211, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-211, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-211, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 09-23-102 (Order 09-02), § 182-12-211, filed 11/17/09, effective 1/1/10; WSR 07-20-129 (Order 07-01), § 182-12-211, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-211, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 21-13-101, filed 6/18/21, effective 1/1/22)

WAC 182-12-250 Public employees benefits board (PEBB) insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty. Surviving spouses, state registered domestic partners, and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage.

(1) This section applies to the surviving spouse, the surviving state registered domestic partner, and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010.

(3) "Surviving spouse, state registered domestic partner, and dependent children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) A state registered domestic partner as defined in RCW 26.60.020(1); and

(d) Children. The term "children" includes children of the emergency service worker up to age (~~twenty-six~~) 26. Children with disabilities as defined in RCW 41.26.030(6) are eligible at any age.

"Children" is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren or children of a state registered domestic partner;

(iii) Legally adopted children;

(iv) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(v) Children specified in a court order or divorce decree; or

(vi) Children as defined in RCW 26.26A.100.

(4) Surviving spouses, state registered domestic partners, and children who are eligible for medicare must enroll in both Parts A and B of medicare.

Note: For the exclusive purpose of medicare Part A as described in this subsection, "eligible" means the enrollee is eligible for medicare Part A without a monthly premium.

(5) The survivor (or agent acting on their behalf) must submit the required forms to the PEBB program to either enroll or defer enrollment in PEBB retiree insurance coverage as described in subsection (7) of this section. The forms must be received by the PEBB program no later than (~~one hundred eighty~~) 180 days after the later of:

(a) The death of the emergency service worker;

(b) The date on the letter from the department of retirement systems or the board for volunteer firefighters and reserve officers that informs the survivor that they are determined to be an eligible survivor;

(c) The last day the surviving spouse, state registered domestic partner, or child was covered under any health plan through the emergency service worker's employer; or

(d) The last day the surviving spouse, state registered domestic partner, or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in PEBB retiree insurance coverage may choose among the following options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose required forms are received by the PEBB program no later than September 1, 2006;

(b) The first of the month that is not earlier than (~~sixty~~) 60 days before the date that the PEBB program receives the required forms (for example, if the PEBB program receives the required forms on August 29th, the survivor may request health plan enrollment to begin on July 1st); or

(c) The first of the month after the date that the PEBB program receives the required forms.

(Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the survivor may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).)

Note: Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

For surviving spouses, state registered domestic partners, and children who enroll, monthly health plan premiums and applicable premium surcharges must be paid by the survivor as described in WAC 182-08-180 (1)(c) except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) Survivors must choose one of the following two options to maintain eligibility for PEBB retiree insurance coverage:

(a) Enroll in a PEBB health plan:

(i) Enroll in medical; or

(ii) Enroll in medical and dental.

(iii) Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in PEBB retiree insurance coverage if continuously enrolled in qualifying coverage as described in WAC 182-12-205(3).

(ii) Survivors may enroll in a PEBB health plan as described in WAC 182-12-205(6). Survivors must provide evidence that they were continuously enrolled in one or more qualifying coverages as described in WAC 182-12-205 (3) (a) through (e) when enrolling in a PEBB health plan.

(Exception: ~~Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the survivor may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2)-)~~)

Note: Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during the annual open enrollment. In addition to the annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

(9) Survivors will lose their right to enroll in PEBB retiree insurance coverage if they:

(a) Do not apply to enroll or defer enrollment within the time-lines as described in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in other qualifying coverage during the deferral period, as described in subsection (7) (b) (i) of this section.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolution PEBB 2021-01. WSR 21-13-101 (Admin #2021-01.01), § 182-12-250, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-250, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160 and PEBB policy resolutions. WSR 18-20-117 (Admin #2018-02), § 182-12-250, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-250, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-250, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-250, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-250, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-250, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-250, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-250, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-250, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-250, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-250, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-250, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.080. WSR 06-20-099 (Order 06-08), § 182-12-250, filed 10/3/06, effective 11/3/06. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-250, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 21-13-104, filed 6/18/21, effective 1/1/22)

WAC 182-12-265 What options for continuing health plan enrollment are available to a surviving spouse, state registered domestic partner, or child, if an employee, a school employee, or a retiree dies? The survivor of an eligible employee, an eligible school employee, or a retiree who meets the eligibility criteria and submits the required forms as described in subsection (1), (2), or (3) of this section is eligible to enroll or defer enrollment as a survivor under public employees benefits board (PEBB) retiree insurance coverage. If enrolling in PEBB retiree insurance coverage, the survivor's first premium payment and applicable premium surcharges are due to the health care authority (HCA) no later than (~~forty-five~~) 45 days after the election period ends as described in subsection (1), (2), or (3) of this section. Following the survivor's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c).

(1) An employee's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible employee may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system. To satisfy the requirement to immediately receive a monthly retirement benefit they must begin receiving monthly benefit payments no later than (~~one hundred twenty~~) 120 days from the date of death of the employee. The required forms to enroll or defer enrollment must be received by the PEBB program no later than (~~sixty~~) 60 days after the later of the date of the employee's death or the date the survivor's PEBB insurance coverage ends.

(Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms must be received by the PEBB program no later than the last day of the month prior to the month PEBB insurance coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the survivor may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).)

Note: Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(a) The employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The employee's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

Notes: If a spouse, state registered domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit, they are not eligible to enroll as a survivor under PEBB retiree insurance coverage. However, they may continue health plan enrollment as described in WAC 182-12-146.
Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an employee of a participating employer group will cease at the end of the month in which the group's contract with the authority ends unless the employer group is an educational service district.
Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an elected and full-time appointed official of the legislative and executive branches of state government is described in WAC 182-12-180.

(2) A retiree's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible retiree may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage. The required forms to enroll or defer enrollment must be received by the PEBB program no later than (~~sixty~~) 60 days after the retiree's death.

(a) The retiree's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The retiree's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

(c) If a spouse, state registered domestic partner, or child of an eligible retiree is not enrolled in a PEBB health plan at the time of the retiree's death, the survivor is eligible to enroll or defer enrollment as a survivor under PEBB retiree insurance coverage. The required forms to enroll or defer enrollment must be received by the PEBB program no later than (~~sixty~~) 60 days after the retiree's death. For a survivor to enroll in a PEBB health plan who is not enrolled due to the retiree electing to defer enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 or 182-12-205, the survivor must also provide evidence of continuous enrollment in one or more qualifying coverages as described in WAC 182-12-205 (3) (a) through (e) from the most recent open enrollment for which the survivor was not enrolled in a PEBB medical plan prior to the retiree's death. A gap of (~~thirty-one~~) 31 days or less is allowed between the date PEBB retiree insurance coverage was deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period.

Note: Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an employer group retiree will cease at the end of the month in which the group's contract with the authority ends unless the employer group is an educational service district.

(3) A school employee's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible school employee may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage at the time of the school employee's death, provided the employee died on or after October 1, 1993. The survivor must immediately begin receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW. The required forms to enroll or defer enrollment must be received by the PEBB program no later than (~~sixty~~) 60 days after the later of the date of the school employee's death or the date the survivor's educational service district coverage, or school employees benefits board (SEBB) insurance coverage ends.

(Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms must be received by the PEBB program no later than the last day of the month prior to the month the educational service district coverage or SEBB insurance coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the survivor may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).)

Note: Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(a) The school employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The school employee's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

Note: If a spouse, state registered domestic partner, or child of an eligible school employee is not eligible for a retirement benefit allowance, they are not eligible to enroll as a survivor under PEBB retiree insurance coverage. However, a spouse, state registered domestic partner, or child of an eligible school employee enrolled in SEBB insurance coverage may continue health plan enrollment as described in WAC 182-31-090.

(4) If premiums and applicable premium surcharges received by the HCA are sufficient as described in WAC 182-08-180 (1) (d) (ii) to maintain PEBB health plan enrollment after the employee, school employee, or retiree's death, the PEBB program will consider the payment as notice of the survivor's intent to continue enrollment.

If the survivor's enrollment ended due to the death of the employee, school employee, or retiree, the PEBB program will reinstate the survivor's enrollment without a gap subject to payment of premium and applicable premium surcharges.

(5) If a survivor elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the survivor.

Exception: If a survivor selects a medicare supplement plan or ~~((medicare advantage-prescription drug))~~ MA-PD plan, nonmedicare enrollees will be enrolled in the ~~((Uniform Medical Plan (UMP)))~~ UMP Classic. If a survivor selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(6) In order to avoid duplication of group medical coverage, a survivor may defer enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 and 182-12-205.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolution PEBB 2021-14. WSR 21-13-104 (Admin #2021-01.04), § 182-12-265, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-265, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-265, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-265, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-265, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-265, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-265, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-265, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-265, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 09-23-102 (Order 09-02), § 182-12-265, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-265, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-265, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.068. WSR 06-23-165 (Order 06-09), § 182-12-265, filed 11/22/06, effective 12/23/06. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-12-265, filed 7/27/05, effective 8/27/05. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-265, filed 8/26/04, effective 1/1/05.]

WSR 22-13-163

PERMANENT RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2022-02.01—Filed June 21, 2022, 4:05 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: The purpose of this proposal is to implement policy resolutions to support the public employees benefits board (PEBB) program: Amended WAC 182-08-197 to implement Policy Resolutions PEBB 2022-01 Employees returning to work from active duty and PEBB 2022-04 Deferring PEBB retiree insurance coverage when the subscriber becomes eligible for the employer contribution.

Citation of Rules Affected by this Order: Amending WAC 182-08-197.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy Resolutions PEBB 2022-01 and PEBB 2022-04.

Adopted under notice filed as WSR 22-10-082 on May 3, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 21, 2022.

Wendy Barcus
Rules Coordinator

OTS-3746.1

AMENDATORY SECTION (Amending WSR 21-13-103, filed 6/18/21, effective 1/1/22)

WAC 182-08-197 When must a newly eligible employee, or an employee who regains eligibility for the employer contribution, elect public employees benefits board (PEBB) benefits and complete required forms? An employee who is newly eligible or who regains eligibility for the employer contribution toward public employees benefits board (PEBB) benefits enrolls as described in this section.

(1) When an employee is newly eligible for PEBB benefits:

(a) An employee must complete the required forms indicating their enrollment elections, including an election to waive enrollment provided the employee is eligible to waive as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency or contracted vendor. Their employing agency or contracted vendor must

receive the forms no later than (~~(thirty-one)~~) 31 days after the employee becomes eligible for PEBB benefits under WAC 182-12-114.

(i) An employee may enroll in supplemental life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required forms are returned to the employee's employing agency or contracted vendor as required. An employee may apply for enrollment in supplemental life insurance over the guaranteed issue coverage amount at any time during the calendar year by submitting the required form to the contracted vendor for approval. For an employee who requests a change in their supplemental life insurance after the election period described in this subsection, the change begins the first day of the month following the date the contracted vendor approves the request. An employee may enroll in supplemental accidental death and dismemberment (AD&D) insurance at any time during the calendar year without evidence of insurability by submitting the required form to the contracted vendor.

(ii) Employees are enrolled in employee-paid long-term disability (LTD) insurance automatically. An employee may elect to reduce their employee-paid LTD insurance or decline their employee-paid LTD insurance by returning the form to their employing agency. An employee may apply for a change in their employee-paid LTD insurance at any time during the calendar year by submitting the required form to their employing agency or the contracted vendor. For an employee who requests a change in their employee-paid LTD insurance after the election period described in this subsection, the change begins the first day of the month following the date the employing agency receives the required form requesting to reduce or decline the employee-paid LTD insurance, or the day of the month the contracted vendor approves the required form to increase the employee-paid LTD insurance.

(iii) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116), the employee will automatically enroll in the premium payment plan upon enrollment in PEBB medical allowing medical premiums to be taken on a pretax basis. To opt out of the premium payment plan, a new employee must complete the required form and return it to their state agency. The form must be received by their state agency no later than (~~(thirty-one)~~) 31 days after the employee becomes eligible for PEBB benefits.

(iv) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116), the employee may enroll in the state's medical flexible spending arrangement (FSA) (~~(or)~~), limited purpose FSA, dependent care assistance program (DCAP), or both an FSA and DCAP, except as limited by subsection (4) of this section. To enroll in these PEBB benefits, the employee must return the required form to their state agency. The form must be received by the state agency no later than (~~(thirty-one)~~) 31 days after the employee becomes eligible for PEBB benefits.

(b) If a newly eligible employee's employing agency, or the authority's contracted vendor in the case of life insurance and AD&D insurance, does not receive the employee's required forms indicating medical, dental, life insurance, AD&D insurance, and LTD insurance elections, and the employee's tobacco use status attestation within (~~(thirty-one)~~) 31 days of the employee becoming eligible, their enrollment will be as follows for those elections not received within (~~(thirty-one)~~) 31 days:

- (i) A medical plan determined by the health care authority (HCA);
- (ii) A dental plan determined by the HCA;
- (iii) Basic life insurance;

(iv) Basic AD&D insurance;
 (v) Employer-paid LTD insurance and employee-paid LTD insurance;
 (vi) Dependents will not be enrolled; and
 (vii) A tobacco use premium surcharge will be incurred as described in WAC 182-08-185 (1)(b).

(2) The employer contribution toward PEBB benefits ends according to WAC 182-12-131. When an employee's employment ends, participation in the salary reduction plan ends.

(3) When an employee regains eligibility for the employer contribution toward PEBB benefits, including following a period of leave described in WAC 182-12-133(1), or after being between periods of leave as described in WAC 182-12-142 (1) and (2), or 182-12-131 (3)(e), PEBB medical and dental begin on the first day of the month the employee is in pay status eight or more hours, or the first day of the month in which the quarter or semester begins for faculty who regains eligibility as described in WAC 182-12-131 (3)(e).

Note: When an employee who is called to active duty in the uniformed services under Uniformed Services Employment and Reemployment Rights Act (USERRA) loses eligibility for the employer contribution toward PEBB benefits, they regain eligibility for the employer contribution toward PEBB benefits the day they return from active duty. Employer-paid PEBB benefits will begin the first day of the month in which they return from active duty.

(a) An employee must complete the required forms indicating their enrollment elections, including an election to waive enrollment if the employee chooses to waive enrollment as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency except as described in (d) of this subsection. Forms must be received by the employing agency, life insurance contracted vendor, or AD&D contracted vendor, if required, no later than (~~thirty-one~~) 31 days after the employee regains eligibility, except as described in (a)(i) and (b) of this subsection:

(i) An employee who self-paid for supplemental life insurance or supplemental AD&D coverage after losing eligibility will maintain that level of coverage upon return;

(ii) An employee who was eligible to continue supplemental life insurance but discontinued that supplemental coverage must submit evidence of insurability to the contracted vendor if they choose to reenroll when they regain eligibility for the employer contribution;

(iii) An employee who was eligible to continue employee-paid LTD insurance but discontinued that coverage must submit evidence of insurability for employee-paid LTD insurance to the contracted vendor when they regain eligibility for the employer contribution.

(b) An employee or faculty in any of the following circumstances does not have to return a form indicating employee-paid LTD insurance elections. Their employee-paid LTD insurance will be automatically reinstated effective the first day of the month they are in pay status eight or more hours or the first day of the month in which the quarter or semester begins for faculty who regains eligibility as described in WAC 182-12-131 (3)(e):

(i) The employee continued to self-pay for their employee-paid LTD insurance after losing eligibility for the employer contribution;

(ii) The employee was not eligible to continue employee-paid LTD insurance after losing eligibility for the employer contribution.

(c) If an employee's employing agency, or contracted vendor accepting forms directly, does not receive the required forms within (~~thirty-one~~) 31 days of the employee regaining eligibility, the employee's enrollment for those elections not received will be as described in subsection (1)(b)(i) through (vii) of this section, except as described in (a)(i) and (b) of this subsection.

(d) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116) the employee may enroll in the medical FSA (~~(or)~~), limited purpose FSA, DCAP, or both an FSA and DCAP, except as limited by subsection (4) of this section. To enroll in these PEBB benefits, the employee must return the required form to the contracted vendor or their state agency. The contracted vendor or employee's state agency must receive the form no later than (~~thirty-one~~) 31 days after the employee becomes eligible for PEBB benefits.

(4) If an employee who is eligible to participate in the salary reduction plan (see WAC 182-12-116) is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in a DCAP (~~(or)~~), a medical FSA, or a limited purpose FSA until the beginning of the next plan year, unless the time between employments is (~~thirty~~) 30 days or less and within the current plan year. The employee must notify their new state agency of the transfer by providing the new state agency's personnel, payroll, or benefits office the required form no later than (~~thirty-one~~) 31 days after the employee's first day of work with the new state agency.

(5) An employee's PEBB benefits elections remain the same when an employee transfers from one employing agency to another employing agency without a break in PEBB benefits for one month or more. This includes movement of an employee between any entities described in WAC 182-12-111 and participating in PEBB benefits. PEBB benefits elections also remain the same when an employee has a break in employment that does not interrupt their employer contribution toward PEBB benefits.

(6) When a retiree becomes eligible for the employer contribution toward PEBB benefits, PEBB retiree insurance coverage will be automatically deferred. The subscriber will be exempt from the deferral form requirement. When the subscriber is no longer eligible for the employer contribution toward PEBB benefits, they must enroll or defer PEBB retiree insurance coverage as described in WAC 182-12-171, 182-12-200, and 182-12-205.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-11 and 2021-12. WSR 21-13-103 (Admin #2021-01.03), § 182-08-197, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and PEBB policy resolution 2020-04. WSR 20-16-059 (Admin #2020-01), § 182-08-197, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-197, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-197, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-197, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-197, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-197, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-197, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-197, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-197, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-08-197, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-08-197, filed 10/6/10, effective 1/1/11; WSR 09-23-102

(Order 09-02), § 182-08-197, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-08-197, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-08-197, filed 10/3/07, effective 11/3/07; WSR 06-11-156 (Order 06-02), § 182-08-197, filed 5/24/06, effective 6/24/06. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-08-197, filed 7/27/05, effective 8/27/05.]

WSR 22-13-164

PERMANENT RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2022-02.02—Filed June 21, 2022, 4:30 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: The purpose of this proposal is to implement a policy resolution and to make technical amendments to support the public employees benefits board (PEBB) program:

1. Implement PEB board policy resolution: Amended WAC 182-12-123 to implement Policy Resolution PEBB 2022-02 employees may waive enrollment in dental.

2. Make other technical amendments: Amended WAC 182-12-123 to add specific timelines when an employee must resolve their dual enrollment, to update citation references, to include additional WAC references, to clarify specific timelines when a school employee must resolve their dual enrollment, to provide a technical correction, and to add new language related to reinstating coverage retroactively.

Citation of Rules Affected by this Order: Amending WAC 182-12-123.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy Resolution PEBB 2022-02.

Adopted under notice filed as WSR 22-10-083 on May 3, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 21, 2022.

Wendy Barcus
Rules Coordinator

OTS-3776.1

AMENDATORY SECTION (Amending WSR 21-13-102, filed 6/18/21, effective 1/1/22)

WAC 182-12-123 Is dual enrollment in public employees benefits board (PEBB) and school employees benefits board (SEBB) prohibited?

Public employees benefits board (PEBB) medical and dental coverage is limited to a single enrollment per individual as described in subsections (1) through (5) of this section. Effective January 1, 2022, individuals are limited to a single enrollment in medical, dental, and

vision plans in either the PEBB program or school employees benefits board (SEBB) program as described in subsection (6) of this section.

(1) An individual who has more than one source of eligibility for enrollment in PEBB medical and PEBB dental coverage (called "dual eligibility") is limited to one enrollment.

(2) An eligible employee may waive PEBB medical and enroll as a dependent under the PEBB medical plan of their spouse, state registered domestic partner, or parent as described in WAC 182-12-128.

(3) A dependent enrolled in PEBB medical or PEBB dental who becomes eligible for PEBB benefits as an employee must elect to enroll in PEBB benefits as described in WAC 182-08-197 (1) or (3). This includes making an election to enroll in or waive enrollment in PEBB medical as described in WAC 182-12-128.

(a) If the employee does not waive enrollment in PEBB medical, the employee is not eligible to remain enrolled in their spouse's, state registered domestic partner's, or parent's PEBB medical as a dependent. If the employee's spouse, state registered domestic partner, or parent does not take action to remove the employee (who is enrolled as a dependent) from their subscriber account, the PEBB program will automatically disenroll the employee's enrollment as a dependent the last day of the month before the employee's enrollment in PEBB benefits begins as described in WAC 182-12-114.

Exception: An enrolled dependent who becomes newly eligible for PEBB benefits as an employee may be dual-enrolled in PEBB medical and dental for one month. This exception is only allowed for the first month the dependent is enrolled as an employee, and only if the dependent becomes enrolled as an employee on the first working day of a month that is not the first day of the month.

(b) If the employee elects to waive their enrollment in PEBB medical, the employee will remain enrolled in PEBB medical under their spouse's, state registered domestic partner's, or parent's PEBB medical as a dependent.

(4) A child who is eligible for PEBB medical and PEBB dental under two subscribers may be enrolled under both subscribers but is limited to a single enrollment in PEBB medical and a single enrollment in PEBB dental.

(5) When an employee is eligible for the employer contribution toward PEBB benefits due to employment in more than one PEBB-participating employing agency the following provisions apply:

(a) The employee must choose to enroll under only one employing agency.

Exception: Faculty who seek to establish or maintain eligibility as described in WAC 182-12-114(3) with two or more state institutions of higher education will be enrolled under the employing agency responsible to pay the employer contribution according to WAC 182-08-200(2).

(b) If the employee loses eligibility under the employing agency, they must notify their other employing agency no later than ~~((sixty))~~ 60 days from the date PEBB benefits end through the employing agency described in (a) of this subsection to transfer coverage.

(c) The employee's elections remain the same when an employee transfers their enrollment under one employing agency to another employing agency without a break in PEBB benefits for one month or more, as described in (b) of this subsection.

(6) An individual who has more than one source of eligibility for enrollment in the PEBB and SEBB programs is limited to a single enrollment in medical, dental, and vision plans in either the PEBB or SEBB program. An employee must elect to enroll in PEBB benefits as described in WAC 182-08-197, waive enrollment as described in WAC 182-12-128, or remove eligible dependents as described in WAC 182-12-262. If the ~~((individual))~~ employee takes no action to resolve the dual enrollment, the PEBB program or the SEBB program will auto-

matically enroll or automatically disenroll the individual as described in (d) through (h) of this subsection.

(a) An eligible employee may waive enrollment in PEBB medical to enroll in SEBB medical only if they are enrolled in SEBB dental and SEBB vision as described in WAC 182-12-128. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental.

(b) An eligible employee who waives enrollment in PEBB medical when they are enrolled in other employer-based group medical, a TRI-CARE plan, or medicare as described in WAC 182-12-128, and are not enrolled in SEBB medical, may waive enrollment in PEBB dental only if they are enrolled in both SEBB dental and SEBB vision as an eligible dependent in the SEBB program.

(c) A school employee in the SEBB program who waives SEBB medical, SEBB dental, and SEBB vision for PEBB medical must be enrolled in PEBB dental. If ~~((necessary,))~~ the school employee is not already enrolled in PEBB dental, the PEBB program will automatically enroll the ~~((individual))~~ school employee in the associated subscriber's PEBB dental.

~~((e))~~ (d) If the employee is enrolled only in PEBB dental, and is also enrolled in SEBB medical, and no action is taken to resolve their dual enrollment, the employee will remain in SEBB medical. The PEBB program will automatically disenroll the employee from PEBB dental in which they are enrolled. If the employee is not already enrolled in SEBB dental or SEBB vision, the SEBB program will automatically enroll them in both as described in WAC 182-31-070 (6)(g). The employee's enrollment in PEBB program life insurance, accidental death and dismemberment (AD&D) insurance, and long-term disability (LTD) insurance will remain.

~~((d))~~ (e) If the employee is enrolled in PEBB medical and is also a school employee in the SEBB program and enrolled in SEBB medical, and the employee has been enrolled in SEBB medical longer than they have been enrolled in PEBB medical, and no action is taken by the employee to resolve their dual enrollment, they will remain in SEBB medical. The PEBB program will automatically disenroll the employee from PEBB medical and PEBB dental. The employee's enrollment in PEBB program life insurance, AD&D insurance, and LTD insurance will remain. If the employee ~~((eligible under both the PEBB program as an employee and the SEBB program as a school employee is not enrolled in any medical, but is enrolled only in PEBB dental and SEBB vision (with or without SEBB dental),~~ the employee will remain in SEBB vision and if enrolled, SEBB dental)) is not enrolled in medical under either the PEBB or SEBB program but is enrolled only in PEBB dental and SEBB vision (with or without enrollment in SEBB dental), the employee will remain in SEBB vision and if enrolled, SEBB dental. If the employee is not already enrolled in SEBB dental, the SEBB program will automatically enroll them as described in WAC 182-31-070 (6)(g). The PEBB program will automatically disenroll the employee from PEBB dental.

~~((e))~~ (f) If the employee's dependent is enrolled in any PEBB medical or PEBB dental plan, and the dependent is also a school employee in the SEBB program and enrolled in SEBB medical, and no action is taken by either the employee or the dependent to resolve the dependent's dual enrollment, the employee's dependent will remain in SEBB medical. The PEBB program will automatically disenroll the employee's dependent from PEBB medical and PEBB dental in which they are enrolled.

~~((f))~~ (g) If the employee's dependent is enrolled in both PEBB medical and SEBB medical as a dependent and has been enrolled in SEBB medical longer than they have been enrolled in PEBB medical, and no action is taken to resolve the dual enrollment, the employee's dependent will remain in SEBB medical. The PEBB program will automatically disenroll the employee's dependent from PEBB medical and PEBB dental if they are enrolled. If the employee's dependent who is eligible as a dependent in both the PEBB and SEBB programs is not enrolled in any medical but is enrolled only in PEBB dental and SEBB vision (with or without SEBB dental) as a dependent, the dependent will remain in SEBB vision and if enrolled, SEBB dental. The PEBB program will automatically disenroll the employee's dependent from PEBB dental.

Exception: If there is a National Medical Support Notice (NMSN) or a court order in place, enrollment will be in accordance with the NMSN or order.

~~((g))~~ (h) If the employee's dependent, who is also a school employee in the SEBB program who the SEBB program automatically disenrolled from SEBB dental and SEBB vision, the PEBB program will automatically enroll the employee's dependent in PEBB dental, if they are not already enrolled.

~~((h))~~ (i) If the employee who is eligible for the employer contribution toward PEBB benefits was enrolled as a dependent in SEBB medical, SEBB dental, and SEBB vision and is removed by the SEBB subscriber, the employee will be required to return from waived enrollment as described in WAC 182-12-128 (3)(b).

(j) If the PEBB program automatically disenrolls an individual from PEBB medical or PEBB dental to resolve their dual enrollment as described in (e), (f), or (g) of this subsection, but later determines that the employee did take action to resolve their dual enrollment within the required timelines, the PEBB program will reinstate coverage retroactive to the first of the month in which the individual was disenrolled.

(7) A retiree who defers enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 by enrolling as an eligible dependent in a health plan sponsored by PEBB, a Washington state educational service district, or SEBB and who loses the employer contribution for such coverage must enroll in PEBB retiree insurance coverage as described in WAC 182-12-200 or defer enrollment as described in WAC 182-12-205.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09. WSR 21-13-102 (Admin #2021-01.02), § 182-12-123, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-123, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-123, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-123, filed 10/3/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-123, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-123, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-123, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-123, filed 10/28/13, effective 1/1/14. Statutory Authority:

RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-123, filed 9/25/12, effective 11/1/12; WSR 10-20-147 (Order 10-02), § 182-12-123, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-123, filed 11/17/09, effective 1/1/10; WSR 07-20-129 (Order 07-01), § 182-12-123, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-123, filed 8/26/04, effective 1/1/05.]

WSR 22-13-165

PERMANENT RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2022-02.04—Filed June 21, 2022, 4:43 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: The purpose of this proposal is to implement policy resolutions to support the public employees benefits board (PEBB) program: Amended WAC 182-12-205 to implement Policy Resolution PEBB 2022-03 Medicare advantage prescription drug (MA-PD) plan enrollment during the gap months and Policy Resolution PEBB 2022-04 Deferring PEBB retiree insurance coverage when the subscriber becomes eligible for the employer contribution.

Citation of Rules Affected by this Order: Amending WAC 182-12-205.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy Resolutions PEBB 2022-03 and PEBB 2022-04.

Adopted under notice filed as WSR 22-10-085 on May 3, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 21, 2022.

Wendy Barcus
Rules Coordinator

OTS-3777.1

AMENDATORY SECTION (Amending WSR 21-13-104, filed 6/18/21, effective 1/1/22)

WAC 182-12-205 May a retiree or a survivor defer enrollment or voluntarily terminate enrollment under public employees benefits board (PEBB) retiree insurance coverage? (1) The following individuals may defer enrollment in public employees benefits board (PEBB) retiree insurance coverage:

(a) A retiring employee or a retiring school employee;

(b) A dependent becoming eligible as a survivor; or

(c) A retiree or a survivor enrolled in PEBB retiree insurance coverage.

(2) A subscriber described in subsection (1) of this section who defers enrollment in PEBB retiree insurance coverage also defers en-

rollment for all eligible dependents, except as described in subsection (3)(c) of this section.

(3) A subscriber described in subsection (1) of this section who chooses to defer enrollment in PEBB retiree insurance coverage must maintain continuous enrollment in one or more qualifying coverages as described in this subsection or WAC 182-12-200. A gap of (~~thirty-one~~) 31 days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period. A subscriber who chooses to defer enrollment, defers enrollment in PEBB medical and PEBB dental. A subscriber must be enrolled in PEBB medical to enroll in PEBB dental. A retiree may only defer enrollment in PEBB retiree term life insurance as described in WAC 182-12-209 (3)(b).

(a) Beginning January 1, 2001, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in employer-based group medical as an employee or the dependent of an employee, or such medical insurance continued under Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage or continuation coverage.

(b) Beginning January 1, 2001, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled as a retiree or the dependent of a retiree in a federal retiree medical plan.

(c) Beginning January 1, 2006, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in WAC 182-12-109. Dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a medicaid program.

(d) Beginning January 1, 2014, subscribers who are not eligible for Parts A and B of medicare may defer enrollment in PEBB retiree insurance coverage when the subscriber is enrolled in exchange coverage.

(e) Beginning July 17, 2018, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).

(4) To defer enrollment in PEBB retiree insurance coverage, the required forms must be submitted to the PEBB program.

(a) For a retiring employee or a retiring school employee who meets the substantive eligibility requirements as described in WAC 182-12-171(2), enrollment will be deferred the first of the month following the date their employer-paid coverage, COBRA coverage, or continuation coverage ends. The forms must be received by the PEBB program no later than (~~sixty~~) 60 days after the employer-paid coverage, COBRA coverage, or continuation coverage ends.

(b) For an official leaving public office who meets the requirements as described in WAC 182-12-180(1), enrollment will be deferred the first of the month following the date the official leaves public office. The forms must be received by the PEBB program no later than (~~sixty~~) 60 days after the official leaves public office.

(c) For an employee or a school employee determined to be retroactively eligible for disability retirement who meets the requirements as described in WAC 182-12-211 (1)(a) through (c), enrollment will be deferred as described in WAC 182-12-211 (2) or (3). The forms and formal determination letter must be received by the PEBB program no later than (~~sixty~~) 60 days after the date on the determination letter.

(d) For an eligible survivor, the dependent must meet the requirements described below and the forms must be received by the PEBB program within the time described:

(i) For a survivor of an employee or a school employee who meets the requirements as described in WAC 182-12-265 (1) or (3), enrollment will be deferred the first of the month following the later of the date of the employee's or the school employee's death or the date the survivor's PEBB insurance coverage, educational service district coverage, or school employees benefits board (SEBB) insurance coverage ends. The forms must be received by the PEBB program no later than ~~((sixty))~~ 60 days after the later of the date of the employee's or the school employee's death or the date the survivor's PEBB insurance coverage, educational service district coverage, or SEBB insurance coverage ends.

(ii) For a survivor of an official who meets the requirements as described in WAC 182-12-180(2), enrollment will be deferred the first of the month following the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends. The forms must be received by the PEBB program no later than ~~((sixty))~~ 60 days after the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends.

(iii) For a survivor of a retiree who meets the requirements as described in WAC 182-12-265(2), enrollment will be deferred the first of the month following the date of the retiree's death. The forms must be received by the PEBB program no later than ~~((sixty))~~ 60 days after the retiree's death.

(iv) For a survivor of an emergency service personnel killed in the line of duty who meets the requirements as described in WAC 182-12-250, enrollment will be deferred the first of the month following the later of one of the events described in WAC 182-12-250 (5)(a) through (d). The forms must be received by the PEBB program no later than ~~((one hundred eighty))~~ 180 days after the later of one of the events described in WAC 182-12-250 (5)(a) through (d).

(e) For an enrolled retiree or survivor who submits the required forms to defer enrollment in PEBB retiree insurance coverage, enrollment will be deferred effective the first of the month following the date the required forms are received by the PEBB program. If the forms are received on the first day of the month, enrollment will be deferred effective that day.

Exception: When a subscriber or their dependent is enrolled in a medicare advantage plan (MA), then enrollment in PEBB retiree insurance coverage will be deferred effective the first of the month following the date the ~~((medicare advantage))~~ MA plan disenrollment form is received.

(5) A retiree who meets substantive eligibility requirements in WAC 182-12-171(2) and whose employer-paid coverage, COBRA coverage, or continuation coverage ended between January 1, 2001, and December 31, 2001, was not required to have submitted the deferral form at that time, but must meet all procedural requirements as stated in this section, WAC 182-12-171, and 182-12-200.

(6) A subscriber described in subsection (1) of this section who defers enrollment while enrolled in qualifying coverage as described in subsection (3)(a) through (e) of this section may later enroll themselves and their dependents in a PEBB health plan by submitting the required forms as described below and evidence of continuous enrollment in one or more qualifying coverages as described in subsection (3)(a) through (e) of this section. A gap of ~~((thirty-one))~~ 31 days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of a qualifying coverage, and be-

tween each period of enrollment in qualifying coverages during the deferral period:

(a) A subscriber who defers enrollment while enrolled in employer-based group medical or such medical insurance continued under COBRA coverage or continuation coverage may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their employer-based group medical or such coverage under COBRA coverage or continuation coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than ~~((sixty))~~ 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after the employer-based group medical coverage, COBRA coverage, or continuation coverage ends.

(Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month the employer-based group medical, COBRA coverage, or continuation coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).))

Note: Enrollment in the PEBB program's MA or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(b) A subscriber who defers enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When the federal retiree medical plan coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than ~~((sixty))~~ 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after coverage under the federal retiree medical plan ends.

(Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month the federal retiree medical plan coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).))

Note: Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(c) A subscriber who defers enrollment while enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in WAC 182-12-109 may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day

of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their medicaid coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than (~~sixty~~) 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after the medicaid coverage ends; or

(Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month medicaid coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).))

Note: Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(iii) No later than the end of the calendar year when their medicaid coverage ends if the retiree or survivor was also determined eligible under 42 U.S.C. § 1395w-114 and subsequently enrolled in a medicare Part D plan. Enrollment in the PEBB health plan will begin January 1st following the end of the calendar year when the medicaid coverage ends. The required forms must be received by the PEBB program no later than the last day of the calendar year in which the medicaid coverage ends.

(d) A subscriber who defers enrollment while enrolled in exchange coverage will have a one-time opportunity to enroll or reenroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When exchange coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than (~~sixty~~) 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after exchange coverage ends.

(Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month exchange coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).))

Note: Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(e) A subscriber who defers enrollment while enrolled in CHAMPVA will have a one-time opportunity to enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When CHAMPVA coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than (~~sixty~~) 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after CHAMPVA coverage ends.

(Exception: Enrollment in the PEBB program's medicare advantage or medicare advantage-prescription drug plan may not be retroactive so the required forms and evidence of continuous enrollment must be received by the PEBB program no later than the last day of the month prior to the month CHAMPVA coverage ends. If the forms are received after the date enrollment in PEBB retiree insurance coverage is to begin, the subscriber may not select a medicare advantage or medicare advantage-prescription drug plan until a special enrollment period as described in WAC 182-08-198(2).)

Note: Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(7) A subscriber described in subsection (1) of this section who defers enrollment while enrolled in qualifying coverage as described in subsection (3) (a) through (e) of this section may later enroll themselves and their dependents in a PEBB health plan if they receive formal notice that the authority has determined it is more cost-effective to enroll them or their eligible dependents in PEBB medical than a medical assistance program.

(8) If a subscriber elects to enroll a dependent in PEBB health plan coverage as described in subsection (6) or (7) of this section, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the subscriber.

Exception: If a subscriber selects a medicare supplement plan or (~~medicare advantage-prescription drug~~) MA-PD plan, nonmedicare enrollees will be enrolled in the (~~Uniform Medical Plan (UMP)~~) UMP Classic. If a subscriber selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(9) An enrolled retiree or a survivor who requests to voluntarily terminate their enrollment in PEBB retiree insurance coverage must do so in writing. The written termination request must be received by the PEBB program. A retiree or a survivor who voluntarily terminates their enrollment in a PEBB health plan also terminates enrollment for all eligible dependents. Once coverage is terminated, a retiree or a survivor may not enroll again in the future unless they reestablish eligibility for PEBB insurance coverage by becoming newly eligible. Enrollment in a PEBB health plan will terminate on the last day of the month in which the PEBB program receives the termination request. If the termination request is received on the first day of the month, enrollment will terminate on the last day of the previous month.

Exception: When a subscriber or their dependent is enrolled in a (~~medicare advantage~~) MA plan, then enrollment will terminate on the last day of the month when the (~~medicare advantage~~) MA plan disenrollment form is received.

(10) When a retiree becomes eligible for the employer contribution toward PEBB benefits, PEBB retiree insurance coverage will be automatically deferred. The subscriber will be exempt from the deferral form requirement. When the subscriber is no longer eligible for the employer contribution toward PEBB benefits, they must enroll or defer PEBB retiree insurance coverage as described in WAC 182-12-171, 182-12-200, and this section.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolution PEBB 2021-14. WSR 21-13-104 (Admin #2021-01.04), § 182-12-205, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-205, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-205, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-205, filed 10/3/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-205, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), §

182-12-205, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-205, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-205, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-205, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-205, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-205, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-205, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-205, filed 10/1/08, effective 1/1/09; WSR 08-09-027 (Order 08-01), § 182-12-205, filed 4/8/08, effective 4/9/08; WSR 07-20-129 (Order 07-01), § 182-12-205, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.068. WSR 06-23-165 (Order 06-09), § 182-12-205, filed 11/22/06, effective 12/23/06. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-12-205, filed 7/27/05, effective 8/27/05. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-205, filed 8/26/04, effective 1/1/05.]

WSR 22-13-168

PERMANENT RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2022-01—Filed June 21, 2022, 5:17 p.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: The purpose of this proposal is to amend some of the existing rules and to create new rules to support the school employees benefits board (SEBB) program:

1. Make technical amendments:

- Amended WAC 182-30-060, 182-30-100, 182-30-130, 182-31-060, 182-31-150, and 182-32-2050 to implement limited purpose flexible spending arrangement (FSA).
- Amended WAC 182-30-060 to clarify SEBB medical and dental enrollment is effective the first day of the month following the date the enrollment error is identified.
- Amended WAC 182-30-090 to clarify when a dental plan is considered available and to clarify a subscriber or their dependent may change medical plans when they are no longer enrolled in a health savings account.
- Amended WAC 182-30-090, 182-30-100, 182-31-080, and 182-31-150 to clarify a special open enrollment related to a subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility.
- Amended WAC 182-30-100 to include school employees cannot enroll in a medical FSA or limited FSA in the same year and which FSA they will be enrolled in and provided a technical correction when a school employee or a school employee's dependent has a change in enrollment under an employer-based dependent care assistance program during its annual open enrollment.
- Amended WAC 182-31-080 to clarify a special open enrollment related to the school employee's dependent has a change in their employment that affects the school employee's eligibility or their dependent's eligibility.
- Amended WAC 182-31-090 to remove a WAC citation.
- Amended WAC 182-31-150 to clarify a dependent with more than one source of eligibility for enrollment in public employees benefits board and SEBB programs is limited to a single enrollment in medical, dental, and vision plans in either program, to clarify when a National Medical Support Notice requires a subscriber to cover a dependent child in health plan coverage, to clarify enrollment and disenrollment requirements for supplemental dependent life insurance or AD&D insurance, and to remove WAC references.
- Amended WAC 182-31-190 to clarify the wellness incentive's eligibility.
- Made global amendments in chapter 182-32 WAC to update the use of reviewing officer or officers.

2. Amend rules to improve the administration of the SEBB program:

- Amended WAC 182-30-020 and 182-31-020 to update the definitions of annual open enrollment, life insurance, salary reduction plan, SEBB program, special open enrollment, and to create a new definition of limited purpose flexible spending arrangement or limited purpose FSA.
- Amended WAC 182-30-040 to include a school employee who is on a leave of absence and maintains eligibility for the employer con-

tribution will have their premiums waived for their employee-paid LTD insurance for the first 90 days.

- Amended WAC 182-30-090 to clarify that a dental plan is available if it is located within 50 miles of the subscriber's residence.
- Amended WAC 182-31-070 to include additional WAC references, to clarify specific timelines when an employee must resolve their dual enrollment, and to add new language related to reinstating coverage retroactively.
- Amended WAC 182-31-150 to include a notification requirement for subscribers when a dependent is no longer eligible for supplemental dependent life insurance or AD&D insurance coverage and methods of submitting a request to remove an eligible dependent from supplemental dependent life insurance or AD&D insurance coverage.
- Amended WAC 182-32-020 to update the definitions of life insurance and salary reduction plan, and to create a new definition of limited purpose flexible spending arrangement or limited purpose FSA.
- Amended WAC 182-32-058 to clarify when service is complete.
- Amended WAC 182-32-066 to use preponderance of the evidence instead of substantial evidence when addressing presumptions.
- Amended WAC 182-32-2000 to clarify the authority may use the brief adjudicative proceedings for issues identified in the chapter.
- Amended WAC 182-32-2100 to include both the appellant and the authority may request review of an initial order and the appellant may request review of the initial order by filing a written request or making an oral request with the SEBB appeals unit.
- Created WAC 182-32-2135 to address petitions for judicial review - service on the authority.
- Amended WAC 182-32-2150 to include a reviewing officer or officers must make any inquiries necessary to ascertain whether the proceeding must be converted to a formal administrative hearing, and to remove the reviewing officer or officers [who] will issue a final order that will convert the matter to a formal administrative hearing.
- Amended WAC 182-32-2160 to clarify the presiding officer or the reviewing officer or officers may convert a brief adjudicative proceeding to a formal administrative hearing at any time before the final order is issued on motion by the appellant and their representative and reviewing officer or officers.
- Amended WAC 182-32-3170 to include required information when the office of administrative hearings is holding a formal administrative hearing on behalf of the authority and to clarify the final order will only be issued by the authority.
- Created WAC 182-32-3175 on how to request a review of an initial order issued by the office of administrative hearings.
- Created WAC 182-32-3210 to address petitions for judicial review -Service on the authority.

Citation of Rules Affected by this Order: New WAC 182-32-2135, 182-32-3175 and 182-32-3210; and amending WAC 182-30-020, 182-30-040, 182-30-060, 182-30-090, 182-30-100, 182-30-130, 182-31-020, 182-31-060, 182-31-070, 182-31-080, 182-31-090, 182-31-150, 182-31-190, 182-32-020, 182-32-058, 182-32-064, 182-32-066, 182-32-2000, 182-32-2005, 182-32-2050, 182-32-2080, 182-32-2085, 182-32-2100, 182-32-2105, 182-32-2110, 182-32-2120, 182-32-2150, 182-32-2160, and 182-32-3170.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-10-079 on May 3, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 6, 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 23, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 29, Repealed 0.

Date Adopted: June 21, 2022.

Wendy Barcus
Rules Coordinator

OTS-3739.1

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

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 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 in coverage, or waive enrollment (see definition of "waive" in this section). 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), ~~((or))~~ the medical flexible spending arrangement (FSA), or limited purpose FSA. They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Benefits administrator" means any person or persons designated by the SEBB organization that trains, communicates, and interacts with school employees as the subject matter expert for eligibility, enrollment, and appeals for SEBB benefits.

"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 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 SEBB benefits 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 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.

"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-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC 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 board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insignificant shortfall" means a premium balance owed that is less than or equal to the lesser of \$50 or (~~ten~~) 10 percent of the premium required by the health plan as described in Treasury Regulation 26 C.F.R. 54.4980B-8.

"Life insurance" means basic life insurance paid for by the SEBB organization, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by school employees for themselves and their dependents.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and any employee-paid long-term disability insurance offered by the SEBB program.

"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 chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"PEBB" means the public employees benefits board.

"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 premium is less than (~~ninety-five~~) 95 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~~) 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, limited purpose 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 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.

"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 (see definition of "waive" in this section). School employees eligible to participate in the salary reduction((s)) plan may enroll in or revoke their election under the DCAP, medical FSA, limited purpose 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 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 or accidental death and dismemberment (AD&D) insurance 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 SEBB medical because the school employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-31-080. A school employee may waive enrollment in SEBB medical to enroll in PEBB medical only if they are enrolled in PEBB dental. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

"Week" means a seven-day period starting on Sunday and ending on Saturday.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-30-020, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-020, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin

#2019-01), § 182-30-020, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-30-020, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 21-13-116, filed 6/21/21, effective 1/1/22)

WAC 182-30-040 Premium payments and premium refunds. School employees benefits board (SEBB) insurance coverage 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 (4) or (5).

(1) **Premium payments.** SEBB insurance coverage premiums and applicable premium surcharges for all subscribers become due the first of the month in which SEBB insurance coverage is effective.

Premiums and applicable premium surcharges are due from the subscriber for the entire month of SEBB insurance coverage 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, 182-31-100, 182-31-120, or 182-31-130, the first premium payment and applicable premium surcharges are due to the health care authority (HCA) or the contracted vendor no later than (~~forty-five~~) 45 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, premiums and applicable premium surcharges are due to the SEBB organization or contracted vendor. If a school employee elects supplemental coverage or employee-paid long-term disability (LTD) insurance, or is enrolled in employee-paid LTD insurance, as described in WAC 182-30-080 (1) (a) or (3) (a) or is enrolled in employee-paid LTD insurance as described in WAC 182-30-080 (1) (b) the school employee is responsible for payment of premiums from the month the supplemental coverage or employee-paid LTD insurance begins.

Exception: A school employee who is on a leave of absence and maintains eligibility for the employer contribution, will have their premiums waived for their employee-paid LTD insurance for the first 90 days. For this purpose, "leave of absence" is defined as a paid or unpaid temporary or indefinite administrative leave, involuntary leave, sick leave, or insurance continued under the federal Family and Medical Leave Act, or paid family and medical leave program as described in WAC 182-31-110.

(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 HCA or the contracted vendor. For subscribers not eligible for the employer contribution, monthly premiums or applicable premium surcharges that remain unpaid for (~~thirty~~) 30 days will be considered delinquent. A subscriber is allowed a grace period of (~~thirty~~) 30 days from the date the monthly premiums or applicable premium surcharges become delinquent to pay the unpaid premium balance or applicable premium sur-

charges. If a subscriber, who is not eligible for the employer contribution, has monthly premiums or applicable premium surcharges remain unpaid for (~~sixty~~) 60 days from the original due date, the subscriber's SEBB insurance coverage 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~~) 12 months in duration with the subscriber or the subscriber's legal representative upon request.

(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 or the contracted vendor and the monthly premiums or applicable premium surcharges remain unpaid for (~~thirty~~) 30 days; or

(ii) Premium payments or applicable premium surcharges received by the HCA or the contracted vendor are underpaid by an amount greater than an insignificant shortfall and the monthly premiums or applicable premium surcharges remain underpaid for (~~thirty~~) 30 days past the date the monthly premiums or applicable premium surcharges were due.

(2) **Premium refunds.** SEBB insurance coverage 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 (~~sixty~~) 60 day 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, and provides clear and convincing evidence of extraordinary circumstances, such that the subscriber could not timely submit the necessary information to accomplish an allowable enrollment change within (~~sixty~~) 60 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~~) 12 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 the 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 (4) and (5).

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions SEBB 2021-11 and 2021-12. WSR 21-13-116 (Admin #2021-01.03), § 182-30-040, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW

41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-040, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-040, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-30-040, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 21-13-116, filed 6/21/21, effective 1/1/22)

WAC 182-30-060 How do school employees benefits board (SEBB) organizations and contracted vendors correct enrollment errors? (1) A school employees benefits board (SEBB) organization or contracted vendor that makes one or more of the following enrollment errors must correct the error as described in subsections (2) through (5) of this section.

(a) Failure to timely notify a school employee of their eligibility for SEBB benefits and the employer contribution as described in WAC 182-31-030;

(b) Failure to enroll a school employee or their dependents in SEBB benefits as elected by the school employee, if the election was timely;

(c) Failure to enroll a school employee and their dependents in SEBB benefits as described in WAC 182-30-080 (1)(b);

(d) Failure to accurately reflect a school employee's premium surcharge attestation on the school employee's account;

(e) Enrolling a school employee or their dependents in SEBB insurance coverage when they are not eligible as described in WAC 182-31-040 or 182-31-140 and it is clear there was no fraud or intentional misrepresentation by the school employee involved; or

(f) Providing incorrect information, via a benefits administrator or contracted vendor, regarding SEBB benefits to the employee that they relied upon.

(2) The SEBB organization or the applicable contracted vendor must enroll the school employee and the school employee's dependents, as elected, or terminate enrollment in SEBB benefits as described in subsection (3) of this section, reconcile premium payments and applicable premium surcharges as described in subsection (4) of this section, and provide recourse as described in subsection (5) of this section.

(3) Enrollment or termination.

(a) SEBB medical, vision, and dental enrollment is effective ((at a minimum)) the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (5) of this section;

(b) Basic life, basic accidental death and dismemberment (AD&D), employer-paid long-term disability (LTD) insurance, and employee-paid LTD insurance (unless the school employee declines the employee-paid LTD insurance as described in WAC 182-30-080(1)) enrollment is retroactive to the first day of the month following the day the school employee became newly eligible, or the first day of the month the school employee regained eligibility, as described in WAC 182-30-080;

(c) Supplemental life, supplemental AD&D, and employee-paid LTD insurance enrollment is retroactive to the first day of the month fol-

lowing the day the school employee became newly eligible if the school employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date on the school employee's application for this coverage). If a SEBB organization enrollment error occurred when the school employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-30-080(3):

(i) Supplemental life and supplemental AD&D is enrolled the first day of the month the school employee regained eligibility, at the same level of coverage the school employee continued during the period of leave, without evidence of insurability.

(ii) If the school employee was eligible to continue supplemental life insurance and supplemental AD&D insurance during the period of leave but did not, the school employee must provide evidence of insurability and receive approval from the contracted vendor.

(iii) School employees may not continue employee-paid LTD insurance while on leave without pay as described in WAC 182-31-100. Employee-paid LTD insurance is reinstated the first day of the month the employee regains eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(d) If the school employee is eligible and elects (or elected) to enroll in the medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP), enrollment is limited to (~~sixty~~) 60 days prior to the date enrollment is processed, but not earlier than the current plan year. If a school employee was not enrolled in a medical FSA, limited purpose FSA, or DCAP as elected, the school employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect;

(e) If the school employee or their dependent was not eligible but still enrolled as described in subsection (1)(e) of this section, the employee's or their dependent's SEBB benefits will be terminated prospectively effective as of the last day of the month.

(4) Premium payments.

(a) The SEBB organization must remit to the authority the employer contribution and the school employee contribution for health plan premiums, applicable premium surcharges, basic life, basic AD&D, and employer-paid LTD insurance starting the date SEBB benefits begin as described in subsections (3) and (5)(a)(i) of this section. If a SEBB organization failed to notify a newly eligible school employee of their eligibility for SEBB benefits, the SEBB organization may only collect the school employee contribution for health plan premiums and applicable premium surcharges for coverage for the months after the school employee was notified.

(b) When a SEBB organization fails to correctly enroll the amount of employee-paid LTD insurance elected by the school employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the school employee is responsible for premiums for the most recent (~~twenty-four~~) 24 months of coverage. The SEBB organization is responsible for additional months of premiums; and

(ii) When a premium refund is due to the school employee, the LTD insurance contracted vendor is responsible for premium refunds for the most recent (~~twenty-four~~) 24 months of coverage. The SEBB organiza-

tion is responsible for additional months of premium refunds after the ((twenty-four)) 24 months of coverage and the overall refunding process to the school employee.

(c) When a SEBB organization mistakenly enrolls a school employee or their dependents as described in subsection (1)(e) of this section, premiums and any applicable premium surcharges will be refunded by the SEBB organization to the school employee without rescinding the insurance coverage.

(5) **Recourse.**

(a) School employee eligibility for SEBB benefits begins on the first day of the month following the date eligibility is established or the first day of work for school employees who start on or before the first day of school as described in WAC 182-31-040. Dependent eligibility is described in WAC 182-31-140, and dependent enrollment is described in WAC 182-31-150. When retroactive correction of an enrollment error is limited as described in subsection (3)(b), (c), and (d) of this section, the SEBB organization must work with the school employee, and receive approval from the authority, to implement retroactive SEBB benefits within the following parameters:

- (i) Retroactive enrollment in a SEBB insurance coverage;
- (ii) Reimbursement of claims paid;
- (iii) Reimbursement of amounts paid by the school employee or dependent for medical, vision, and dental premiums;
- (iv) Reimbursement of amounts paid by the school employee for the premium surcharges;
- (v) Other legal remedy received or offered; or
- (vi) Other recourse, upon approval by the authority.

(b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for noncovered services or in the case of an individual who is not eligible for SEBB benefits.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions SEBB 2021-11 and 2021-12. WSR 21-13-116 (Admin #2021-01.03), § 182-30-060, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolution 2020-06. WSR 20-16-066 (Admin #2020-03), § 182-30-060, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-060, filed 7/1/19, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

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. 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 a school employee gaining initial eligibility for SEBB benefits as described in WAC 182-31-040 or regaining eligibility for SEBB benefits as described in WAC 182-30-080. 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, a subscriber must submit the required enrollment forms. The forms must be received no later than (~~sixty~~) 60 days after the event occurs. A school employee submits the enrollment forms to their SEBB organization. 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 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. If the special open enrollment is due to the enrollment of an extended dependent or a dependent with a disability, the change in health plan coverage will begin the first day of the month following the later of the event date or the eligibility certification. 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.

Note: A subscriber may not change their health plan if their state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(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) Subscriber has a change in employment from a SEBB organization to a public school district that results in the subscriber having different medical plans available. The subscriber may change their election if the change in employment causes:

(i) The subscriber's current medical plan to no longer be available, in this case the subscriber may select from any available medical plan; or

(ii) The subscriber has one or more new medical plans available, in this case the subscriber may select to enroll in a newly available plan.

(iii) As used in this subsection the term "public school district" shall be interpreted to not include charter schools and educational service districts.

(e) The subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's 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 26 C.F.R. 54.9801-6.

(f) 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 accessibility to network providers and covered services;

Exception: A dental plan is considered available if a provider is ~~((available))~~ located within ~~((fifty))~~ 50 miles of the subscriber's new residence.

(g) 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);

(h) Subscriber or a subscriber's dependent enrolls in 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;

(i) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(j) Subscriber or a subscriber's dependent enrolls in coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare. If the subscriber's current medical plan becomes unavailable due to the subscriber's or a subscriber's dependent's enrollment in medicare, the subscriber must select a new medical plan as described in WAC 182-30-085(2);

(k) Subscriber or a subscriber's dependent's current ~~((health))~~ medical 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;

(l) 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. 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;

(ii) Treatment following a recent organ transplant;

(iii) A scheduled surgery;

(iv) Recent major surgery still within the postoperative period;

or

(v) Treatment for a high-risk pregnancy.

(3) If the school employee is having premiums taken from payroll on a pretax basis, a medical plan change will not be approved if it

would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-30-090, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-090, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160 and 2018 c 260. WSR 20-01-082, § 182-30-090, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-090, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-30-090, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

WAC 182-30-100 When may a school employee enroll, or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP)? A 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), limited purpose 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 school employee may elect to enroll in or opt out of participation under the premium payment plan during the annual open enrollment by submitting the required form to their school employees benefits board (SEBB) organization. An eligible school employee may elect to enroll or reenroll in the medical FSA, limited purpose FSA, DCAP, or both an FSA and DCAP during the annual open enrollment by submitting the required forms to their SEBB organization 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:

1. School employees (~~enrolled~~) cannot enroll in a medical FSA and a limited purpose FSA in the same year.

2. School employees enrolled in a high deductible health plan (HDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. School employees who elect (~~both will only be enrolled~~) enrollment in the HDHP with a HSA and a medical FSA will instead be enrolled in a limited purpose FSA.

3. School employees who are not enrolled in a HDHP with a HSA and elect both a medical FSA and a limited purpose FSA will be enrolled in the medical FSA.

(3) **During a special open enrollment:** A 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, limited purpose 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 to their SEBB organization. The SEBB organization must receive the re-

quired form and evidence of the event that created the special open enrollment no later than ((~~sixty~~)) 60 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 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 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) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;
- Birth, adoption, or when the 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) School employee's dependent no longer meets SEBB eligibility criteria because:

- School employee has a change in marital status;
- 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~~)) 26 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) School employee or a 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) School employee has a change in employment status that affects the school employee's eligibility for their employer contribution toward their employer-based group health plan;

(v) The school employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution toward their employer-based group health plan;

Exception: As used in (a)(v) 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.

(vi) School employee or a 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) School employee or a school employee's dependent has a change in residence that affects health plan availability;

(viii) 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 school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(x) School employee or a school employee's dependent enrolls in 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;

(xi) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(xii) School employee or a school employee's dependent enrolls in coverage under medicare or the school employee or a school employee's dependent loses eligibility for coverage under medicare;

(xiii) School employee or a school employee's dependent's current medical plan becomes unavailable because the school employee or enrolled dependent is no longer eligible for a HSA. The HCA may require evidence that the school employee or a school employee's dependent is no longer eligible for a HSA;

(xiv) School employee or a school employee's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the school employee or a school employee's dependent. The school employee may not change their health plan election if the school employee's or dependent's physician stops participation with the 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;

- Treatment following a recent organ transplant;

- A scheduled surgery;

- Recent major surgery still within the postoperative period; or

- Treatment for a high-risk pregnancy.

(xv) School employee or school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

(xvi) Subscriber has a change in employment from a SEBB organization to a public school district that results in the subscriber having different medical plans available, and the subscriber changes their election. The subscriber may change their election if the change in employment causes:

- The subscriber's current medical plan to no longer be available, in this case the subscriber may select from any available medical plan; or

- The subscriber has one or more new medical plans available, in this case the subscriber may select to enroll in a newly available plan.

• As used in this subsection the term "public school district" shall be interpreted to not include charter schools and educational service districts.

If the school employee is having premiums taken from payroll on a pretax basis, a medical 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 and limited purpose FSA.** A school employee may enroll or revoke their election and make a new election under the medical FSA or limited purpose 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 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. 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) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;
- Birth, adoption, or when the 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) School employee's dependent no longer meets SEBB eligibility criteria because:

- School employee has a change in marital status;
- 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)~~) 26 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) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by HIPAA;

(iv) School employee or a 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 or limited purpose FSA;

(v) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) School employee or a school employee's dependent enrolls in coverage under medicaid or CHIP, or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) School employee or a school employee's dependent enrolls in coverage under medicare.

(c) **DCAP.** A 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 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. 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) School employee acquires a new dependent due to:

- Marriage;
- Registering a state registered domestic partnership if the state registered domestic partner qualifies as a tax dependent of the school employee;
- Birth, adoption, or when the 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) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for DCAP;

(iii) School employee or school employee's dependent has a change in enrollment under an employer-based (~~group health plan~~) DCAP during its annual open enrollment that does not align with the SEBB annual open enrollment;

(iv) School employee changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) 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) School employee's dependent care provider imposes a change in the cost of dependent care; 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 school employee as defined in IRC 26 U.S.C. Sec. 152.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-30-100, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-100, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160 and 2018 c 260. WSR 20-01-082, § 182-30-100, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-100, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-30-100, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

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~~) 180 hours but less 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) or limited purpose FSA;

- (c) Dependent care assistance program (DCAP);
- (d) Supplemental life insurance; and
- (e) Supplemental accidental death and dismemberment 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.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-30-130, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions 2020-04. WSR 20-16-065 (Admin #2020-02), § 182-30-130, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-130, filed 7/1/19, effective 8/1/19.]

OTS-3741.1

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

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 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 in coverage, or waive enrollment (see definition of "waive" in this section). School employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), ~~((or))~~ the medical flexible spending arrangement (FSA), or limited purpose 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 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 SEBB benefits 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 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.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"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-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a school employees benefits board (SEBB) organization for its eligible school employees as described under WAC 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 board 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's lack of funds or a SEBB organization's organizational change.

"Life insurance" means basic life insurance paid for by the SEBB organization, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by school employees for themselves and their dependents.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the SEBB program.

"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 chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"PEBB" means the public employees benefits board.

"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.

"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~~) 95 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~~) 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Salary reduction plan" means a benefit plan whereby school employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, limited purpose 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 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.

"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 (see definition of "waive" in this section). School employees eligible to participate in the salary reduction((s)) plan may enroll in or revoke their election under the DCAP, medical FSA, limited purpose 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 or accidental death and dismemberment (AD&D) insurance 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 SEBB medical because the school employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-31-080. A school employee may waive enrollment in SEBB medical to enroll in PEBB medical only if they are enrolled in PEBB dental. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

"Week" means a seven-day period starting on Sunday and ending on Saturday.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-31-020, filed 6/21/21, effective 1/1/22. Stat-

utory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-020, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-020, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-31-020, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

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. School employees eligible for SEBB benefits as described in WAC 182-31-040 may also elect to participate in the medical FSA, limited purpose FSA, or DCAP programs provided they elect participation within the time frames described in WAC 182-30-100.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-060, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-31-060, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 21-13-115, filed 6/21/21, effective 1/1/22)

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 only 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 school employee who waives enrollment in SEBB medical must enroll in SEBB dental, SEBB vision, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, and employer-paid long-term disability (LTD) insurance. A school employee will also be enrolled in employee-paid LTD insurance automatically unless the school employee declines their employee-paid LTD insurance as described in WAC 182-30-080.

Exception: A school employee may waive their enrollment in SEBB medical to enroll in public employees benefits board (PEBB) medical only if they are enrolled in PEBB dental. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

(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)~~) 31 days after the date the school employee becomes eligible for SEBB 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 only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (4) of this section. A special open enrollment event must be an event other than a school employee gaining initial eligibility or regaining eligibility for SEBB benefits.

The school employee must submit the required form to their SEBB organization. The SEBB organization must receive the form no later than (~~(sixty)~~) 60 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)~~) 60 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 for the school employee will begin on the first day of the month in which the event occurs. SEBB medical for the newly born child, newly adopted child, spouse, or

state-registered domestic partner will begin as described in WAC 182-31-150 (3) (a) (iv).

If a school employee who is eligible for the employer contribution toward SEBB benefits was enrolled as a dependent in PEBB medical and PEBB dental and is removed by the PEBB subscriber, the health care authority will notify the school employee of their removal from the PEBB subscriber's account and that they have experienced a special enrollment event. The school employee will be required to return from waived enrollment and elect SEBB medical, SEBB dental, and SEBB vision. If the school employee's SEBB organization does not receive the school employee's required forms indicating their medical, dental, and vision elections within (~~sixty~~) 60 days of the school employee losing PEBB medical and PEBB dental, they will be defaulted into employee-only SEBB medical, SEBB dental, and SEBB vision as described in WAC 182-30-080 (1) (b) (i) through (iii).

(4) **Special open enrollment:** Any one of the events in (a) through (k) of this subsection may create a special open enrollment that allows the school employee to enroll in SEBB medical after having waived 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 a state registered 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 or their dependent's 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 enrolls in 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;

Note: A school employee may only return from having waived SEBB medical for the events described in (h) of this subsection. A school employee may not waive their SEBB medical for the events described in (h) of this subsection.

(i) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or 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.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions SEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09, 2021-11. WSR 21-13-115 (Admin #2021-01.02), § 182-31-080, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-080, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-080, filed 7/1/19, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

WAC 182-31-090 When is an enrollee eligible to continue school employees benefits board (SEBB) benefits under Consolidated Omnibus Budget Reconciliation Act (COBRA)? (1) 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 SEBB medical, dental, or vision.

(2) A school employee or a school employee's dependent who loses eligibility for continuation coverage described in WAC 182-31-100(~~(, 182-31-110,~~) or 182-31-120 but who has not used the maximum number of months allowed under COBRA may continue any combination of SEBB medical, dental, or vision for the remaining difference in months.

(3) An enrollee may continue SEBB medical, dental, or vision under COBRA by self-paying the premium and applicable premium surcharges set by the health care authority (HCA):

(a) The election must be received by the SEBB program no later than (~~(sixty)~~) 60 days from the date the enrollee'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 first premium payment under COBRA coverage and applicable premium surcharges are due to the HCA no later than (~~(forty-five)~~) 45 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 (1) (c);

(c) COBRA continuation coverage enrollees who voluntarily terminate their COBRA coverage will not be eligible to reenroll 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 COBRA 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;

(d) A school employee enrolled in a medical flexible spending arrangement (FSA) or limited purpose FSA and the school employee's dependents will have an opportunity to continue making contributions to their medical FSA or limited purpose 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 or limited purpose 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~~) 60 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 first premium payment under COBRA coverage is due to the contracted vendor no later than (~~forty-five~~) 45 days after the election period ends as described above.

(4) A subscriber's state registered domestic partner and the state registered domestic partner's children may continue SEBB medical, dental, or vision on the same terms and conditions as spouses and other eligible dependents under COBRA as described under RCW 26.60.015.

(5) Medical, dental, and vision coverage under COBRA begin on the first day of the month following the day the COBRA enrollee loses eligibility for SEBB health plan coverage as described in WAC 182-31-050, 182-31-100, 182-31-120, or 182-31-140.

(6) An enrollee's COBRA coverage will terminate at the end of the month when they become eligible for medicare due to turning age (~~sixty-five~~) 65 or older, or when enrolled in medicare due to a disability.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-31-090, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-090, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-090, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-31-090, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

WAC 182-31-150 When may subscribers enroll or remove eligible dependents? (1) **Enrolling dependents in school employees benefits board (SEBB) health plan coverage (~~and the effective date of~~), sup-**

plemental dependent life insurance, and accidental death and dismemberment (AD&D) insurance. A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled in health plan coverage to enroll their dependent in health plan coverage. A dependent with more than one source of eligibility for enrollment in the public employees benefits board (PEBB) and SEBB programs is limited to a single enrollment in medical, dental, and vision plans in either the PEBB or SEBB program. Subscribers must satisfy the enrollment requirements as described in subsection (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 the dependent's effective date will be as follows:

(i) SEBB health plan coverage will be the same as the subscriber's effective date;

(ii) Supplemental dependent life insurance or AD&D insurance, if elected, will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least ~~((fourteen))~~ 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) **During the annual open enrollment.** SEBB health plan coverage begins January 1st of the following year;

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section;

(d) **When a National Medical Support Notice (NMSN)** requires a subscriber to cover a dependent child in health plan coverage as described in WAC 182-31-160; or

(e) **Any time during the calendar year for supplemental dependent life insurance or AD&D insurance** by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance. Supplemental dependent life insurance or AD&D insurance will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(2) **Removing dependents from SEBB health plan coverage or supplemental dependent life insurance or AD&D insurance.**

(a) **A dependent's eligibility for enrollment in SEBB health plan coverage or supplemental dependent life insurance or AD&D insurance ends the last day of the month the dependent** meets the eligibility criteria as described in WAC 182-31-140. Subscribers must 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). For supplemental dependent life insurance or AD&D insurance, subscribers must notify the contracted vendor on the required form, in writing, or by telephone when a dependent is no longer eligible. Contact information for the contracted vendor may be found at hca.wa.gov/sebb-employee-contact-plan. For SEBB health plan coverage, the notice must be received within ~~((sixty))~~ 60 days of the last day of the month the dependent loses eligibility ~~((for SEBB health plan coverage))~~. School employees must notify their SEBB organization when a dependent is no longer eligible for SEBB health plan coverage, 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))~~ 60 days include, but are not limited to:

(i) The dependent may lose eligibility to continue SEBB medical, dental, or vision under one of the continuation coverage options described in WAC 182-31-130;

(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 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 from SEBB health plan coverage the last day of December;

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section;

(iii) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in SEBB coverage, and that health plan coverage is in fact provided as described in WAC 182-31-160(2); or

(iv) Any time during the calendar year from supplemental dependent life insurance or AD&D insurance by submitting ~~((the required form))~~ a request to the contracted vendor on the required form, in writing, or by telephone. Contact information for the contracted vendor may be found at hca.wa.gov/sebb-employee-contact-plan.

(c) Enrollees with SEBB continuation coverage as described in WAC 182-31-090 and 182-31-100 may remove dependents from their SEBB health plan coverage 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 health plan coverage prospectively. SEBB health plan coverage 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, SEBB health plan coverage will end on the last day of the previous month. SEBB continuation coverage enrollees may remove dependents from supplemental dependent life insurance or AD&D insurance any time during the calendar year by submitting ~~((the required form))~~ a request to the contracted vendor on the required form, in writing, or by telephone. Contact information for the contracted vendor may be found at hca.wa.gov/sebb-employee-contact-plan.

(3) Special open enrollment.

(a) Subscribers may enroll or remove their eligible dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code 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) SEBB health plan coverage will begin the first of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment begins on that day.

(ii) SEBB health plan coverage for an extended dependent or a dependent with a disability will begin the first day of the month following the later of the event date or eligibility certification.

(iii) The dependent will be removed from the subscriber's SEBB health plan 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, SEBB health plan coverage will begin or end as follows:

- For the newly born child, SEBB health plan coverage will begin the date of birth;
- For a newly adopted child, SEBB health plan coverage will begin on the date of placement or the date a legal obligation is assumed in anticipation of adoption, whichever is earlier;

- For a spouse or state registered domestic partner of a subscriber, SEBB 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 SEBB health plan coverage the last day of the month in which the event occurred.

(v) Supplemental dependent life insurance or AD&D insurance will begin the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) The events described in this subsection (3)(b)(i) of this section create a special open enrollment to enroll eligible dependents in supplemental dependent life insurance or AD&D insurance. Any one of the following events may create a special open enrollment to enroll or remove eligible dependents from SEBB health plan coverage:

(i) Subscriber acquires a new dependent due to:

- Marriage or registering a state registered domestic partnership;
- Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or
- A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) 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);

(iii) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(iv) The subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (iv) 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.

(v) 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;

(vi) 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;

(vii) 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);

(viii) Subscriber or a subscriber's dependent enrolls in 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;

(ix) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(x) Subscriber's dependent enrolls in medicare, or loses eligibility for medicare.

(4) Enrollment requirements. A subscriber must submit the required forms within the time frames described in this subsection. For SEBB health plan coverage, a school employee must submit the required forms to their SEBB organization, a subscriber on continuation coverage must submit the required forms to the SEBB program. In addition to the required forms indicating dependent enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment. All required forms and documents must be received within the required time frames. A school employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval within the required time frames.

Note: When enrolling a state registered domestic partner or a state registered domestic partner's child, a subscriber must certify that the state registered domestic partner or state registered domestic partner's child is a tax dependent on the required form; otherwise, the SEBB program will assume the state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(a) If a subscriber wants to enroll their eligible dependents in SEBB health plan coverage or supplemental dependent life insurance or AD&D insurance 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 required time frame as described in WAC 182-30-060 and 182-30-080.

(b) If a subscriber wants to enroll eligible dependents in SEBB health plan coverage 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~~) 60 days after the dependent becomes eligible. A school employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval. A school employee may enroll a dependent in supplemental dependent life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required form is submitted to the contracted vendor as required. Evidence of insurability will be required for supplemental dependent life insurance over the guaranteed issue coverage amount. Evidence of insurability is not required for supplemental AD&D insurance.

(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 in SEBB health plan coverage, 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))~~ 60 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. A school employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval no later than 60 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. A newly born child must be at least ~~((fourteen))~~ 14 days old before supplemental dependent life insurance or AD&D insurance coverage can become effective.

(e) If the subscriber wants to enroll a child age ~~((twenty-six))~~ 26 or older as a child with a disability in SEBB health plan coverage, the required forms must be received no later than ~~((sixty))~~ 60 days after the child reaches age ~~((twenty-six))~~ 26 or within the relevant time frame described in (a), (b), and (f) of this subsection. 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 health plan coverage termination date.

(f) If the subscriber wants to change a dependent's enrollment status in SEBB health plan coverage during a special open enrollment, the required forms must be received no later than ~~((sixty))~~ 60 days after the event that creates the special open enrollment.

(g) A school employee may enroll a dependent in supplemental dependent life insurance or AD&D insurance at any time during the calendar year by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-31-150, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-150, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-150, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-31-150, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-190 School employees benefits board (SEBB) wellness incentive program eligibility and procedural requirements. The board annually determines the design of the SEBB wellness incentive program.

(1) All subscribers are eligible to participate in the SEBB wellness incentive program.

(2) 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, eligible 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.

(3) Subscribers who do not complete the requirements according to subsection (2) of this section within the time frame described are not eligible to receive a SEBB wellness incentive the following plan year.

Note: All eligible subscribers can earn a wellness incentive. Subscribers who cannot complete the wellness incentive program requirements may be able to earn the same incentive by different means. The contracted vendor will work with enrollees (and their physician, if they wish) to define an individual wellness program that provides the opportunity to qualify for the same incentive in light of the enrollee's health status.

(4) A SEBB wellness incentive will be provided only if:

(a) For the wellness incentive described in subsection (2) of this section the subscriber is still eligible (~~for~~) to participate in the SEBB wellness incentive program, and is enrolled in a SEBB medical plan 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.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-190, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-190, filed 7/1/19, effective 8/1/19.]

OTS-3742.2

AMENDATORY SECTION (Amending WSR 21-13-115, filed 6/21/21, effective 1/1/22)

WAC 182-31-070 Is dual enrollment in school employees benefits board (SEBB) and public employees benefits board (PEBB) prohibited?

School employees benefits board (SEBB) medical, dental, and vision coverage is limited to a single enrollment per individual as described in subsections (1) through (5) of this section. Effective January 1, 2022, individuals are limited to a single enrollment in medical, dental, and vision plans in either the SEBB program or public employees benefits board (PEBB) program as described in subsection (6) of this section.

(1) An individual who has more than one source of eligibility for enrollment in SEBB medical, SEBB dental, and SEBB vision 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 SEBB medical plan of their spouse, state registered domestic partner, or parent as described in WAC 182-31-080.

(3) A dependent enrolled in SEBB medical, SEBB dental, or SEBB vision 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 take action to remove the school employee (who is enrolled as a dependent) from their subscriber account, the SEBB program will automatically disenroll 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 medical, dental, and vision 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 medical as a dependent.

(4) A child who is eligible for SEBB medical, SEBB dental, and SEBB vision under two subscribers may be enrolled under both subscribers but is limited to a single enrollment in SEBB medical, a single enrollment in SEBB dental, and a single enrollment in SEBB vision.

(5) When a school employee is eligible for the employer contribution toward 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 must notify their other SEBB organization no later than ~~((sixty))~~ 60 days from the date of loss of the first SEBB benefits 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.

(6) An individual who has more than one source of eligibility for enrollment in the SEBB and PEBB programs is limited to a single enrollment in medical, dental, and vision plans in either the SEBB or PEBB program. A school employee must elect to enroll in SEBB benefits as described in WAC 182-30-080, waive enrollment as described in WAC 182-31-080, or remove eligible dependents as described in WAC 182-31-150. If the ~~((individual))~~ school employee takes no action to resolve the dual enrollment, the SEBB program or the PEBB program will automatically enroll or automatically disenroll the individual as described in (c) through (g) of this subsection.

(a) An eligible school employee may waive enrollment in SEBB medical to enroll in PEBB medical only if they are enrolled in PEBB dental as described in WAC 182-31-080. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

(b) An employee in the PEBB program who waives PEBB medical and PEBB dental for SEBB medical must be enrolled in SEBB dental and SEBB vision. If ~~((necessary))~~ the employee is not already enrolled in SEBB dental and SEBB vision, the SEBB program will automatically enroll the ~~((individual))~~ employee in the associated subscriber's SEBB dental and SEBB vision.

(c) If the school employee is enrolled only in SEBB dental and SEBB vision, and is also enrolled in PEBB medical, and no action is taken to resolve their dual enrollment, the school employee will remain in PEBB medical. The SEBB program will automatically disenroll the school employee from SEBB dental and SEBB vision in which they are enrolled. If the school employee is not already enrolled in PEBB dental, the PEBB program will automatically enroll them in PEBB dental as described in WAC 182-12-123 (6) (h). The school employee's enrollment in SEBB program life insurance, accidental death and dismemberment (AD&D) insurance, and long-term disability (LTD) insurance will remain.

(d) If the school employee is enrolled in SEBB medical and is also an employee in the PEBB program enrolled in PEBB medical, and the school employee has been enrolled in PEBB medical longer than they have been enrolled in SEBB medical, and no action is taken by the school employee to resolve their dual enrollment, they will remain in PEBB medical. The SEBB program will automatically disenroll the school employee from SEBB medical, SEBB dental, and SEBB vision. The school employee's enrollment in SEBB program life insurance, AD&D insurance, and LTD insurance will remain. ~~If the school employee ((eligible under both the SEBB program as a school employee and the PEBB program as an employee is not enrolled in any medical,))~~ is not enrolled in medical under either the PEBB or SEBB program but is enrolled only in PEBB dental, SEBB dental, and SEBB vision, the school employee will remain in SEBB dental and SEBB vision. The PEBB program will automatically disenroll the school employee from PEBB dental.

(e) If the school employee's dependent is enrolled in any SEBB medical, SEBB dental, or SEBB vision plan, and the dependent is also an employee in the PEBB program and enrolled in PEBB medical, and no action is taken by either the school employee or the dependent to resolve the dependent's dual enrollment, the school employee's dependent will remain in PEBB medical. The SEBB program will automatically disenroll the school employee's dependent from SEBB medical, SEBB dental, and SEBB vision in which they are enrolled.

(f) If the school employee's dependent is enrolled in both SEBB medical and PEBB medical as a dependent and has been enrolled in PEBB medical longer than they have been enrolled in SEBB medical, and no action is taken to resolve the dual enrollment, the school employee's dependent will remain in PEBB medical. The SEBB program will automatically disenroll the school employee's dependent from SEBB medical, SEBB dental, and SEBB vision if they are enrolled. If the school employee's dependent who is eligible as a dependent in both the SEBB and PEBB programs is not enrolled in any medical but is enrolled only in PEBB dental and SEBB vision (with or without SEBB dental) as a dependent, the dependent will remain in SEBB vision and if enrolled, SEBB

dental. The PEBB program will automatically disenroll the dependent from PEBB dental.

Exception: If there is a National Medical Support Notice (NMSN) or a court order in place, enrollment will be in accordance with the NMSN or order.

(g) If the school employee's dependent, who is also an employee in the PEBB program who the PEBB program automatically disenrolled from PEBB dental, the SEBB program will automatically enroll the school employee's dependent in SEBB vision. The SEBB program will also automatically enroll the school employee's dependent in SEBB dental, if they are not already enrolled.

(h) If the school employee who is eligible for the employer contribution toward SEBB benefits was enrolled as a dependent in PEBB medical and PEBB dental and is removed by the PEBB subscriber, the school employee will be required to return from waived enrollment as described in WAC 182-31-080 (3)(b).

(i) If the SEBB program automatically disenrolls an individual from SEBB medical, SEBB dental, or SEBB vision to resolve their dual enrollment as described in (d), (e), or (f) of this subsection, but later determines that the school employee did take action to resolve their dual enrollment within the required timelines, the SEBB program will reinstate coverage retroactive to the first of the month in which the individual was disenrolled.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions SEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09, 2021-11. WSR 21-13-115 (Admin #2021-01.02), § 182-31-070, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-070, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-070, filed 7/1/19, effective 8/1/19.]

OTS-3743.1

AMENDATORY SECTION (Amending WSR 21-13-117, filed 6/21/21, effective 1/1/22)

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 organization, 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 brief adjudicative proceeding with the SEBB appeals unit about the action of the SEBB organization, the HCA, or its contracted vendor.

"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.

"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 state 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, 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.

"Dispositive motion" is a motion made to a presiding officer, ((~~review~~)) reviewing 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.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage or government-sponsored programs such as medicare or medicaid.

"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~~)) reviewing officer, or hearing officer. A document is considered filed when it is received by the authority or its designee. A document may be filed by one or more of the following:

- Personal delivery to the authority at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, Washington 98501;
- First class, registered, or certified mail to the authority to the following mailing address:

Health Care Authority
Attn: SEBB Appeals Unit
P.O. Box 45504
Olympia, WA 98504-5504;

- Fax: 360-763-4709; or
- Submission online through the designated submission portal.

The identified methods are the exclusive methods for a document to be filed, and submission of documents by any other fashion to the authority shall not constitute filing unless agreed to in advance by the authority.

"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 34.05.476 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 board 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" means any basic life insurance paid for by the SEBB organization, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by school employees for themselves and their dependents.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible school employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the SEBB program.

"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 chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"PEBB" means the public employees benefits board.

"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~~) 95 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~~) 95 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.

"(~~Review~~) Reviewing 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 pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, limited purpose 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 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.

"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 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).

"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.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-117 (Admin #2021-01.04), § 182-32-020, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-020, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-020, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-020, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-32-058 Service or serve. (1) When the rules in this chapter or in other school employees benefits board (SEBB) program rules or statutes require a party to serve copies of documents on other parties, a party must send copies of the documents to all other parties or their representatives as described in this chapter. In this section, requirements for service or delivery by a party apply also when service is required by the presiding officer or (~~review~~) reviewing officer or officers, or hearing officer.

(2) Unless otherwise stated in applicable law, documents may be sent only as identified in this chapter to accomplish service. A party may serve someone by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail sent via the United States Postal Service or Washington state consolidated mail services;

(c) Fax;

(d) Commercial delivery service; or

(e) Legal messenger service.

(3) A party must serve all other parties or their representatives whenever the party files a motion, pleading, brief, or other document with the presiding officer, (~~review~~) reviewing officer or officers, or hearing officer's office, or when required by law.

(4) Unless otherwise stated in applicable law, service is complete when:

(a) Personal service is made;

(b) Mail is properly stamped, addressed, and deposited in the United States Postal Service;

(c) Mail is properly addressed, and deposited in the Washington state consolidated mail services;

(d) Fax produces proof of transmission;

(e) A parcel is delivered to a commercial delivery service with charges prepaid; or

(f) A parcel is delivered to a legal messenger service with charges prepaid.

(5) A party may prove service by providing any of the following:

(a) A signed affidavit of mailing or certificate of service;

(b) The certified mail receipt signed by the person who received the parcel;

(c) A signed receipt from the person who accepted the commercial delivery service or legal messenger service parcel;

(d) Proof of fax transmission.

(6) Service cannot be made by electronic mail unless mutually agreed to in advance and in writing by the parties.

(7) If the document is a subpoena, follow the compliance procedure as described in WAC 182-32-3130.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-058, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-058, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

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~~) reviewing officer or officers, or hearing officer must first apply the applicable SEBB program rules adopted in the WAC. If no SEBB program rule applies, the presiding officer, (~~review~~) reviewing 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.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-064, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-064, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

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~~) reviewing 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 to prove a party's position. Unless stated otherwise in rules or law, the standard of proof in a brief adjudicative proceeding or formal admin-

istrative 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~~) preponderance of the evidence to the contrary is presented. A party challenging this presumption bears the burden of proof.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-066, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-066, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-066, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

WAC 182-32-2000 Brief adjudicative proceedings. Pursuant to RCW 34.05.482, the authority (~~will~~) may 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 34.05.476 which govern formal administrative hearings.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2000, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2000, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 19-01-055, filed 12/14/18, effective 1/14/19)

WAC 182-32-2005 Record—Brief adjudicative proceeding. The record in a brief adjudicative proceeding consists of any documents regarding the matter, considered or prepared by the presiding officer for the brief adjudicative proceeding or by the (~~review~~) reviewing officer or officers for any review. The authority's record does not have to constitute the exclusive basis for agency action, unless otherwise required by law.

[Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2005, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

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)~~) 30 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 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 must render a written decision within (~~(thirty)~~) 30 days of receiving the written request for administrative review. The written decision must be sent to the school employee who submitted the written request for review and must include a description of appeal rights. The SEBB organization 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)~~) 30 days of receiving the written request for administrative review, the request for administrative review may be considered denied as of the (~~(thirty-first)~~) 31st 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)~~) 30 days after the date of the SEBB organization's written decision on the request for administrative review. If a SEBB organization fails to render a written decision within (~~(thirty)~~) 30 days of receiving a written request for administrative review, the SEBB appeals unit must receive the request for a brief adjudicative proceeding no later than (~~(thirty)~~) 30 days after the date the request for administrative review was deemed denied. 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 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 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, the SEBB organization's prior written decision becomes the authority's final order without further action.

(3) Any school employee aggrieved by a decision regarding a claim for benefits under the medical flexible spending arrangement or limited purpose flexible spending arrangement (FSA) or dependent care assistance program (DCAP) offered under the salary reduction plan may appeal that decision to the authority's 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, limited purpose 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~~) 30 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 must 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, the contracted vendor's prior written decision becomes the authority's final order without further action.

(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 authority 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~~) 30 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 must 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, the SEBB program's prior written decision becomes the authority's final order without further action.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-2050, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2050, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2050, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

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~~) reviewing 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 nonattorney 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 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 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~~) reviewing officer or officer's office and serve all parties with the notice.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2080, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2080, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-32-2085 Continuances. The presiding officer, (~~review~~) reviewing officer or officers may grant, in their sole discretion, a request for a continuance on motion of the appellant, the authority, or on their own. The continuance may be up to (~~thirty~~) 30 calendar days.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-2085, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2085, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2085, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-32-2100 How to request a review of an initial order resulting from a brief adjudicative proceeding. (1) Both the appellant and the authority may request review of an initial order. 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 a SEBB program contracted vendor, may request review of the initial order by the authority. The appellant (~~(must file)~~) may request review of the initial order by filing a written request (~~(for review of the initial order or make an oral request for review of the initial order)~~) or making an oral request with the SEBB appeals unit within (~~(twenty-one)~~) 21 days after service of the initial order. The written or oral request for review of the initial order must be made by using the contact information included in the initial order. If the appellant fails to request review of the initial order within (~~(twenty-one)~~) 21 days, the initial order becomes the authority's final order without further action.

(2) Upon timely request by the appellant, a review of an initial order will be performed by one or more (~~(review))~~ reviewing officers designated by the director of the authority.

(3) If the appellant has not requested review, the authority may review an order resulting from a brief adjudicative proceeding on its own, 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.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-2100, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2100, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2100, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 19-14-093, filed 7/1/19, effective 8/1/19)

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))~~ reviewing 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))~~ reviewing officer or officers must enter and serve a written order dismissing the 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 rein-

state the request for a brief adjudicative proceeding or review of an initial order unless time remains on their original appeal period.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2105, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2105, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-32-2110 Final order. (1) A final order issued by the ((review)) reviewing officer or officers will be in writing and include a brief statement of the reasons for the decision.

(2) The final order must be served within ((twenty)) 20 days of the date of the initial order or of the date the request for review of the initial order was received by the SEBB appeals unit, whichever is later.

(3) The final order will include a notice that reconsideration and judicial review may be available.

(4) A request for review of the initial order is deemed denied if the authority does not issue a final order within ((twenty)) 20 days after the request for review of the initial order is filed.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-2110, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2110, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-32-2120 Request for reconsideration. (1) A request for reconsideration asks the ((review)) reviewing officer or officers to reconsider the final order because the party believes the ((review)) reviewing 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 ((re-view)) reviewing officer or officers who entered the final order.

(4) If a party files a request for reconsideration:

(a) The ((review)) reviewing 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)) reviewing 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~~)) reviewing officer or officers no later than seven business days after the service date of the ((~~review~~)) reviewing 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~~)) reviewing 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~~)) reviewing 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 request and setting the matter for further hearing.

(9) If the ((~~review~~)) reviewing officer or officers do not send an order on the request for reconsideration within ((~~twenty~~)) 20 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 request 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 prior to the final order being issued.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-2120, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2120, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2120, filed 12/14/18, effective 1/14/19.]

NEW SECTION

WAC 182-32-2135 Petitions for judicial review—Service on the authority. Delivery pursuant to RCW 34.05.542(4) shall be deemed to have been made when a copy of the petition for judicial review has been received by the school employees benefits board (SEBB) appeals unit at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA 98501 or received by mail at the SEBB appeals unit, P.O. Box 45504, Olympia, WA 98504-5504.

[]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-32-2150 ((Review)) Reviewing officer or officers—Designation and authority. (1) The designation of a ((~~review~~)) reviewing officer or officers must be consistent with the requirements of RCW 34.05.491 and the ((~~review~~)) reviewing officer or officers must not have personally participated in the decision made by the school employees benefits board (SEBB) organization or SEBB program.

(2) The ((~~review~~)) reviewing officer or officers must review the initial order and the record to determine if the initial order was correctly decided and make any inquiries necessary to ascertain whether the proceeding must be converted to a formal administrative hearing.

(3) The ((~~review~~)) reviewing 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) ~~((Convert the matter to a formal administrative hearing; or~~
- ~~(d))~~ Remand to the presiding officer in whole or in part.

(4) A ((~~review~~)) reviewing officer or officers are limited to those powers granted by the state constitution, statutes, rules, or applicable case law.

(5) A ((~~review~~)) reviewing officer or officers may not decide that a rule is invalid or unenforceable.

(6) In addition to the record, the ((~~review~~)) reviewing officer or officers may employ the authority's expertise as a basis for the decision.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-2150, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2150, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2150, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-32-2160 Conversion of a brief adjudicative proceeding to a formal administrative hearing. (1) The presiding officer or the ~~((review))~~ reviewing officer or officers, in their sole discretion, may convert a brief adjudicative proceeding to a formal administrative hearing at any time before the final order is issued on motion by ~~((the subscriber or enrollee or their representative, the authority, or on))~~ :

(a) The appellant;

(b) The representative of the appellant;

(c) The authority; or

(d) The presiding officer or ~~((review))~~ reviewing officer or ~~((officers' own))~~ officers.

(2) The presiding officer or ~~((review))~~ reviewing 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 RCW 34.05.413 through 34.05.476 that govern formal administrative hearings.

(3) When a brief adjudicative proceeding is converted to a formal administrative hearing, the director designates a hearing officer to conduct the formal administrative hearing upon notice to the ~~((subscriber or enrollee))~~ appellant 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.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-2160, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-32-2160, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-2160, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-32-3170 Office of administrative hearings—Initial or final order ((deadline))—Required information. (1) ~~((Within ninety days after the formal administrative hearing record is closed, the hearing officer must serve a copy of the final order to all parties.~~

~~((2)))~~ **Initial order:** When the office of administrative hearings is holding a formal administrative hearing on behalf of the authority, the hearing officer must render a written initial order that addresses the issue or issues raised by the appellant in their appeal. The hearing officer must serve a copy of the initial order on all parties and

the initial order must contain information on how the appellant may request review of the initial order.

(2) **Final order:** The final order will only be issued by the authority. After the reviewing officer or officers receives a request for review, the reviewing officer or officers has 20 calendar days to enter and serve a final order to all parties unless the reviewing officer serves notice allowing more time.

(3) In the written final order, the hearing officer must:

(a) Identify the order as a final order of the school employees benefits board (SEBB) program;

(b) List the name and docket number of the case and the names of all parties and representatives;

(c) Enter findings of fact used to resolve the dispute based on the evidence admitted in the record;

(d) Explain why evidence is, or is not, credible when describing the weight given to evidence related to disputed facts;

(e) State the law that applies to the dispute;

(f) Apply the law to the facts of the case in the conclusions of law;

(g) Discuss the reasons for the decision based on the facts and the law;

(h) State the result and remedy ordered; and

(i) Include any other information required by law or program rules.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-32-3170, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-32-3170, filed 12/14/18, effective 1/14/19.]

NEW SECTION

WAC 182-32-3175 How to request a review of an initial order by the office of administrative hearings. (1) Both the appellant and the authority may request review of an initial order. An appellant who has received an initial order upholding a school employees benefits board (SEBB) organization decision, a SEBB program decision, or a decision made by a SEBB program contracted vendor, may request review of the initial order by filing a written request or making an oral request with the SEBB appeals unit within 20 days after service of the initial order. The written or oral request for review of the initial order must be made by using the contact information included in the initial order. If such review is requested, the hearing officer or their designee from the authority, shall issue a final order in accordance with WAC 182-32-3030. If the appellant fails to request review of the initial order within 20 days, the initial order becomes the authority's final order without further action.

(2) Upon timely request by the appellant, a review of an initial order will be performed by one or more reviewing officers designated by the director of the authority.

(3) If the appellant has not requested review of the initial order, the authority may review an initial order issued by the office of administrative hearings on its own, 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.

[]

NEW SECTION

WAC 182-32-3210 Petitions for judicial review—Service on the authority. Delivery pursuant to RCW 34.05.542(4) shall be deemed to have been made when a copy of the petition for judicial review has been received by the school employees benefits board (SEBB) appeals unit at Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA 98501 or received by mail at the SEBB appeals unit, P.O. Box 45504, Olympia, WA 98504-5504.

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WSR 22-13-170

PERMANENT RULES

HEALTH CARE AUTHORITY

(School Employees Benefits Board)

[Admin #2022-02—Filed June 22, 2022, 7:52 a.m., effective January 1, 2023]

Effective Date of Rule: January 1, 2023.

Purpose: The purpose of this proposal is to implement a policy resolution to support the school employees benefits board (SEBB) program: Amended WAC 182-30-080 to implement Policy Resolution SEBB 2022-01 School employees returning to work from active duty.

Citation of Rules Affected by this Order: Amending WAC 182-30-080.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy Resolution SEBB 2022-01.

Adopted under notice filed as WSR 22-10-080 on May 3, 2022.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 22, 2022.

Wendy Barcus
Rules Coordinator

OTS-3740.1

AMENDATORY SECTION (Amending WSR 21-13-116, filed 6/21/21, effective 1/1/22)

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 enrollment provided the school employee is eligible to waive as described in WAC 182-31-080. The required forms must be returned to the school employee's SEBB organization or contracted vendor. Their SEBB organization or contracted vendor must receive the forms no later than (~~thirty-one~~) 31 days after the school employee becomes eligible for SEBB benefits under WAC 182-31-040.

(i) The school employee may enroll in supplemental life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required forms are returned to the school employee's SEBB organization or contracted vendor as required. A school employee may apply for enrollment in supplemental life insurance over the guaranteed issue coverage amount at any time during the calendar year by submitting the required form to the contracted vendor for approval. For a school employee who requests a change in their supplemental life insurance after the election period described in this subsection, the change begins the first day of the month following the date the contracted vendor approves the request. A school employee may enroll in supplemental accidental death and dismemberment (AD&D) insurance at anytime without evidence of insurability by submitting the required form to the contracted vendor.

(ii) School employees are enrolled in employee-paid long-term disability (LTD) insurance automatically. A school employee may elect to reduce their employee-paid LTD insurance or decline their employee-paid LTD insurance by returning the form to their SEBB organization. A school employee may apply for a change in their employee-paid LTD insurance at any time during the calendar year by submitting the required form to their SEBB organization or the contracted vendor. For a school employee who requests a change in their employee-paid LTD insurance after the election period described in this subsection, the change begins the first day of the month following the date the SEBB organization receives the required form requesting to reduce or decline the employee-paid LTD insurance, or the day of the month the contracted vendor approves the required form to increase the employee-paid LTD insurance.

(iii) 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))~~ 31 days after the employee becomes eligible for SEBB benefits.

(iv) 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)),~~ limited purpose FSA, dependent care assistance program (DCAP), or both an FSA and DCAP, except as limited by subsection (4) of this section. To enroll in these 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))~~ 31 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 and 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))~~ 31 days of the school employee becoming eligible, their enrollment will be as follows for those elections not received within ~~((thirty-one))~~ 31 days:

- (i) A medical plan determined by the health care authority (HCA);
- (ii) A dental plan determined by the HCA;
- (iii) A vision plan determined by the HCA;

(iv) Basic life insurance;
 (v) Basic AD&D insurance;
 (vi) Employer-paid LTD insurance and employee-paid LTD insurance;
 (vii) Dependents will not be enrolled; and
 (viii) A tobacco use premium surcharge will be incurred as described in WAC 182-30-050 (1)(b).

(2) The employer contribution toward SEBB benefits ends according to WAC 182-31-050. When a school employee's employment ends, participation in the salary reduction plan ends.

(3) When a school employee regains eligibility for the employer contribution toward SEBB benefits, including following a period of leave as described in WAC 182-31-100(1) or 182-31-040 (4)(d), SEBB medical, dental, and vision begin the first day of the month following the school employee's return to work if the SEBB organization anticipates the school employee is eligible for the employer contribution.

Note: When a school employee who is called to active duty in the uniformed services under Uniformed Services Employment and Reemployment Rights Act (USERRA) loses eligibility for the employer contribution toward SEBB benefits, they regain eligibility for the employer contribution toward SEBB benefits the day they return from active duty. Employer-paid SEBB benefits will begin the first day of the month in which they return from active duty.

(a) A school employee must complete the required forms indicating their enrollment elections, including an election to waive enrollment if the school employee chooses to waive enrollment 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))~~ 31 days after the school employee regains eligibility except as described in (a)(i) and (b) of this subsection:

(i) A school employee who self-paid for supplemental life insurance or supplemental AD&D coverage after losing eligibility will maintain that level of coverage upon return;

(ii) A school employee who was eligible to continue supplemental life insurance but discontinued that supplemental 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 employee-paid LTD insurance elections. Their employee-paid LTD insurance will be automatically reinstated effective the first day of the month following the date 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))~~ 31 days of the school employee regaining eligibility, the school employee's enrollment for those elections not received will be as described in subsection (1)(b)(i) through (viii) of this section, except as described in (a)(i) and (b) of this subsection.

(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))~~, limited purpose FSA, DCAP, or both an FSA and DCAP, except as limited by subsection (4) of this section. To enroll in these SEBB benefits, the school employee must return the required form to the contracted vendor or their SEBB organization. The contracted vendor or school employee's SEBB organization must receive the form no later than ~~((thirty-one))~~ 31 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 that is anticipated to be eligible for SEBB benefits in the same year, the school employee may not resume participation in a DCAP ~~((or))~~, a medical FSA, or a limited purpose FSA until the beginning of the next plan year, unless the time between employments is ~~((thirty))~~ 30 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))~~ 31 days after the school 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 benefits elections also remain the same when a school employee has a break in employment that does not interrupt their employer contribution toward SEBB benefits.

(6) A school employee returning to the same SEBB organization who is anticipated to work at least ~~((six hundred thirty))~~ 630 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.

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions SEBB 2021-11 and 2021-12. WSR 21-13-116 (Admin #2021-01.03), § 182-30-080, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-080, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-080, filed 7/1/19, effective 8/1/19.]

WSR 22-13-187

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed June 22, 2022, 11:46 a.m., effective October 1, 2022]

Effective Date of Rule: October 1, 2022.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: WAC 246-455-035 will become effective on October 1, 2022, for eligible hospitals to apply for a waiver in accordance with E2SHB 1272 (chapter 162, Laws of 2021). The remaining rules will become effective on January 1, 2023.

Purpose: Chapter 246-455 WAC, Hospital patient discharge information reporting. The department of health adopted rules that prescribe new patient demographic information reported by hospitals and establishes a waiver process to implement E2SHB 1272. In addition to the implementation of E2SHB 1272, the department adopted revisions that support compliance with federal law and improve program administration. The adopted revisions strengthen protections of patient health care information to align with federal law changes; clarify and add requirements for data collection and reporting; repeal an obsolete section of rule; establish formalized procedures for requesting hospital patient discharge data; prescribe direct and indirect patient identifiers; update and add definitions; make technical updates and clarifications to existing rules; and establish fees for data files and analysis.

Citation of Rules Affected by this Order: New WAC 246-455-025, 246-455-035, 246-455-105, 246-455-200, 246-455-300, 246-455-400, 246-455-500 and 246-455-990; repealing WAC 246-455-080; and amending WAC 246-455-001, 246-455-010, 246-455-020, 246-455-040, 246-455-050, 246-455-060, 246-455-070, and 246-455-085.

Statutory Authority for Adoption: E2SHB 1272 (chapter 162, Laws of 2021).

Other Authority: RCW 43.70.052.

Adopted under notice filed as WSR 22-09-069 on April 19, 2022.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-455-025 was amended to provide clarity to the rule without changing the effect.

A final cost-benefit analysis is available by contacting Katitza Holthaus, Department of Health, Center for Health Statistics, P.O. Box 47814, Olympia, WA 98504, phone 360-236-4311, fax 360-753-4135, TTY 711, email katitza.holthaus@doh.wa.gov, website www.doh.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 7, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 8, Repealed 1.

Date Adopted: June 22, 2022.

Kristin Peterson, JD
Deputy Secretary

Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

OTS-3630.4

AMENDATORY SECTION (Amending WSR 07-09-091, filed 4/18/07, effective 5/23/07)

WAC 246-455-001 Purpose. This chapter is adopted by the Washington state department of health pursuant to RCW 43.70.040(~~(r)~~) and 43.70.052(~~(r)~~ and ~~70.170.010~~) relating to the collection and maintenance of patient discharge data, including data necessary for identification of discharges by diagnosis-related groups.

[Statutory Authority: RCW 43.70.040 and 43.70.052. WSR 07-09-091, § 246-455-001, filed 4/18/07, effective 5/23/07. Statutory Authority: RCW 43.70.040 and [43.]70.170. WSR 03-13-029, § 246-455-001, filed 6/10/03, effective 7/11/03. Statutory Authority: RCW 43.70.040 and chapter 70.170 RCW. WSR 94-12-090, § 246-455-001, filed 6/1/94, effective 7/2/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-455-001, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.39 RCW. WSR 84-20-067 (Order 84-06, Resolution No. 84-06), § 261-50-010, filed 10/1/84.]

AMENDATORY SECTION (Amending WSR 15-19-152, filed 9/22/15, effective 10/23/15)

WAC 246-455-010 Definitions. The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise:

- (1) "CHARS" means comprehensive hospital abstract reporting system.
- (2) "CHARS Companion Guide" means the written technical guidelines for creating and submitting hospital patient discharge data from the hospital to the department or the department's designee as required for CHARS.
- (3) "CHARS Procedure Manual" means the written instructions for reporting hospital discharge data to the department.
- ~~((3) "CHARS 837 Companion Guide" means the written technical guidelines for creating the ASC X12 837 Health Care Claim file for CHARS.))~~
- (4) "Custom data file" means a specialized patient discharge data file created and released by the department upon request of an individual. Custom data file does not mean standard data file.
- (5) "Data" means a data file containing multiple patient discharge records submitted to the department as required for CHARS.
- (6) "Data use agreement" means a signed agreement with the department for transmitting, receiving and using records containing individually identifiable or potentially identifiable health information. The agreement specifies, at a minimum, what information will be

exchanged, the conditions or restrictions under which the information will be used and protected, restrictions on redisclosure of data and restrictions on attempts to locate information associated with a specific individual.

~~((5))~~ (7) "Department" means Washington state department of health.

~~((6))~~ (8) "Designee" means a private entity contracted by the department to perform data collection on behalf of the department as authorized by RCW 43.70.052(1).

(9) "Diagnosis-related groups (DRG)" is a classification system that groups hospital patients according to principal and secondary diagnosis, presence or absence of a surgical procedure, age, presence or absence of significant comorbidities or complications, and other relevant criteria.

~~((7))~~ (10) "Direct patient identifier" means information that identifies a patient.

(11) "Discharge data" means a collection of patient records in which each record represents a single patient discharged from the hospital following an inpatient or observation stay.

~~((8))~~ (12) "Government agencies" include state boards, commissions, committees, departments, educational institutions, or other state agencies which are created by or pursuant to statute, other than courts and the legislature; county or city agencies, federally recognized tribes and tribal organizations, and United States federal agencies.

(13) "Hospital" means any health care institution (~~which is required to qualify for a license~~) licensed under chapter 70.41 RCW or ~~(as)~~ a psychiatric hospital licensed under chapter 71.12 RCW.

~~((9))~~ (14) "Human research review board" is the standing institutional review board operating under chapter 42.48 RCW.

(15) "Indirect patient identifier" means information that may identify a patient when combined with other information.

(16) "Office of Management and Budget" means a body within the Executive Office of the President of the United States which is tasked with coordinating United States Federal agencies and can be found at <http://www.whitehouse.gov/omb>.

~~((10))~~ (17) "Patient discharge" means the termination of an inpatient admission or observation stay, including an admission as a result of a birth, in a Washington hospital.

~~((11) Uniform Billing)~~ (18) "Research" means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this rule, whether or not they are conducted or supported under a program that is considered research for other purposes.

(19) "Standard data file" means the routine patient discharge data file created and released by the department, and does not mean custom data file.

(20) "State" means Washington state unless otherwise specified.

(21) "UB-04 data set" means the uniform billing data element specifications developed by the National Uniform Billing Committee which can be found at www.NUBC.org. (~~Data elements are completely defined in the CHARS Procedure Manual which may be obtained on the department's website or by contacting the department.~~)

[Statutory Authority: RCW 43.70.052, 2014 c 220. WSR 15-19-152, § 246-455-010, filed 9/22/15, effective 10/23/15. Statutory Authority:

RCW 43.70.040 and 43.70.052. WSR 07-09-091, § 246-455-010, filed 4/18/07, effective 5/23/07. Statutory Authority: RCW 43.70.040 and [43.]70.170. WSR 03-13-029, § 246-455-010, filed 6/10/03, effective 7/11/03. Statutory Authority: RCW 43.70.040 and chapter 70.170 RCW. WSR 94-12-090, § 246-455-010, filed 6/1/94, effective 7/2/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-455-010, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.39.180. WSR 85-17-020 (Order 85-05, Resolution No. 85-05), § 261-50-020, filed 8/13/85. Statutory Authority: Chapter 70.39 RCW. WSR 84-20-067 (Order 84-06, Resolution No. 84-06), § 261-50-020, filed 10/1/84.]

AMENDATORY SECTION (Amending WSR 15-19-152, filed 9/22/15, effective 10/23/15)

WAC 246-455-020 Reporting (~~of UB-04~~) data set information.

(1) Hospitals shall collect and report the following data set elements to the department:

(a) Patient control number: Patient's unique alpha-numeric number assigned by the hospital to facilitate retrieval of individual patient records;

(b) Patient medical record number;

(c) Type of bill;

~~((e))~~ (d) National Provider Identifier (UB-04), or department assigned identifier, as applicable;

~~((d))~~ (e) Patient last name (~~at least the first four letters~~);

~~((e))~~ (f) Patient first name (~~at least the first three letters~~);

~~((f))~~ (g) Patient middle initial;

~~((g))~~ (h) Patient Social Security number (at least the last four digits);

~~((h))~~ (i) Patient address;

(j) Patient zip code (U.S.A.);

~~((i))~~ (k) Patient country code (outside U.S.A.) International Organization for Standardization (ISO) 3166-1;

~~((j))~~ (l) Patient's date of birth;

~~((k))~~ (m) Sex assigned at birth;

~~((l))~~ (n) Admission date;

~~((m))~~ (o) Type of admission;

~~((n))~~ (p) Admitting diagnosis code;

(q) Patient's ICD code (1-3) reason for visit;

(r) Point of origin for admission;

~~((o))~~ (s) Patient discharge status;

~~((p))~~ (t) Statement covers period (from - through);

~~((q))~~ (u) Revenue code;

~~((r))~~ (v) Units of service;

~~((s))~~ (w) Total charges;

~~((t))~~ (x) Payer identification (up to three): Payer identification number per the CHARS procedure manual identifying each payer group from which the hospital may expect some payment of the bill;

~~((u))~~ (y) Principal diagnosis code;

~~((v))~~ (z) Other diagnosis codes;

~~((w))~~ (aa) External cause of injury (ECI) code;

~~((x))~~ (bb) Principal procedure code;

- ~~((y))~~ (cc) Other procedure code;
~~((z))~~ (dd) Referring provider's National Provider Identifier (NPI), as applicable;
(ee) Attending (~~provider identifier~~) provider's National Provider Identifier (NPI) according to Centers for Medicare and Medicaid Services (CMS) schedule;
~~((aa))~~ (ff) Operating (~~physician identifier~~) physician's National Provider Identifier (NPI) according to CMS schedule, as applicable;
~~((bb))~~ (gg) Other (~~provider identifiers~~) provider's National Provider Identifier (NPI) according to CMS schedule, as applicable;
~~((ee))~~ (hh) Admission hour;
~~((dd) Race - Per minimum Office of Management and Budget (OMB) standards~~
~~(ee) Ethnicity - Per minimum OMB standards~~
~~(ff))~~ (ii) Race - Until hospitals are required to report race consistent with WAC 246-455-025, race shall be reported per minimum office of management and budget (OMB) standards;
(jj) Ethnicity - Until hospitals are required to report ethnicity consistent with WAC 246-455-025, ethnicity shall be reported per minimum OMB standards;
(kk) Discharge hour;
~~((gg))~~ (ll) Procedure date;
~~((hh))~~ (mm) Present on admission status;
~~((ii))~~ (nn) Health care provider taxonomy code;
~~((jj))~~ (oo) Health care common procedure coding system (HCPCS);
~~((kk))~~ (pp) Service date;
(qq) Facility federal tax number;
(rr) Insured last name, first name, middle name, suffix;
(ss) Patient's relationship to insured code;
(tt) Insured ID.

(2) ~~The hospital shall report all patient discharge data (~~described in WAC 246-455-010 and 246-455-020~~) required in this section according to UB-04 specifications unless noted otherwise.~~

(3) If the department has a designee, the hospital shall report all patient discharge data required in this section to the designee. The designee will report the patient discharge data required in this section submitted by the hospital to the department in the format prescribed by the department.

[Statutory Authority: RCW 43.70.052, 2014 c 220. WSR 15-19-152, § 246-455-020, filed 9/22/15, effective 10/23/15. Statutory Authority: RCW 43.70.040 and 43.70.052. WSR 07-09-091, § 246-455-020, filed 4/18/07, effective 5/23/07. Statutory Authority: RCW 43.70.040 and [43.]70.170. WSR 03-13-029, § 246-455-020, filed 6/10/03, effective 7/11/03. Statutory Authority: RCW 43.70.040 and chapter 70.170 RCW. WSR 94-12-090, § 246-455-020, filed 6/1/94, effective 7/2/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-455-020, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.39 RCW. WSR 87-08-037 (Order 87-02, Resolution No. 87-02), § 261-50-030, filed 3/30/87; WSR 87-04-008 (Order 87-01, Resolution No. 87-01), § 261-50-030, filed 1/23/87. Statutory Authority: RCW 70.39.180. WSR 86-14-081 (Order 86-03, Resolution No. 86-03), § 261-50-030, filed 7/1/86; WSR 85-17-020 (Order 85-05, Resolution No. 85-05), § 261-50-030, filed 8/13/85. Statutory Authority: Chapter 70.39 RCW. WSR 84-20-067 (Order 84-06, Resolution No. 84-06), § 261-50-030, filed 10/1/84.]

NEW SECTION

WAC 246-455-025 Reporting of additional patient demographic information. (1) In addition to the data elements required by WAC 246-455-020, hospitals must collect additional information on patient's ethnicity, race, preferred language, disability, gender identity, and sexual orientation. When requesting demographic information under this section, hospitals must inform patients that providing the information is voluntary.

(2) Patient's ethnicity shall be identified by the patient and reported using one of the following categories:

- (a) Hispanic, Latino/a, Latinx;
- (b) Non-Hispanic, Latino/a, Latinx;
- (c) Patient declined to respond; or
- (d) Unknown to patient.

(3) Patient's race shall be identified by the patient and reported using one or more of the following categories. If the patient self-identifies more than one race, each race shall be reported.

- (a) Afghan;
- (b) Afro-Caribbean;
- (c) Alaska Native;
- (d) American Indian;
- (e) Arab;
- (f) Asian;
- (g) Asian Indian;
- (h) Bamar/Burman/Burmese;
- (i) Bangladeshi;
- (j) Bhutanese;
- (k) Black or African American;
- (l) Central American;
- (m) Cham;
- (n) Chicano/a or Chicanx;
- (o) Chinese;
- (p) Congolese;
- (q) Cuban;
- (r) Dominican;
- (s) Egyptian;
- (t) Eritrean;
- (u) Ethiopian;
- (v) Fijian;
- (w) Filipino;
- (x) First Nations;
- (y) Guamanian or Chamorro;
- (z) Hmong/Mong;
- (aa) Indigenous-Latino/a or Indigenous-Latinx;
- (bb) Indonesian;
- (cc) Iranian;
- (dd) Iraqi;
- (ee) Japanese;
- (ff) Jordanian;
- (gg) Karen;
- (hh) Kenyan;
- (ii) Khmer/Cambodian;
- (jj) Korean;
- (kk) Kuwaiti;
- (ll) Lao;
- (mm) Lebanese;

(nn) Malaysian;
(oo) Marshallese;
(pp) Mestizo;
(qq) Mexican/Mexican American;
(rr) Middle Eastern;
(ss) Mien;
(tt) Moroccan;
(uu) Native Hawaiian;
(vv) Nepalese;
(ww) North African;
(xx) Oromo;
(yy) Pacific Islander;
(zz) Pakistani;
(aaa) Puerto Rican;
(bbb) Romanian/Rumanian;
(ccc) Russian;
(ddd) Samoan;
(eee) Saudi Arabian;
(fff) Somali;
(ggg) South African;
(hhh) South American;
(iii) Syrian;
(jjj) Taiwanese;
(kkk) Thai;
(lll) Tongan;
(mmm) Ugandan;
(nnn) Ukrainian;
(ooo) Vietnamese;
(ppp) White;
(qqq) Yemeni;
(rrr) Other race;
(sss) Patient declined to respond; and
(ttt) Unknown to patient.

(4) Patient's preferred language either written or spoken or both shall be identified by the patient and reported to the department. Preferred language shall be reported using the following categories:

(a) Amharic;
(b) Arabic;
(c) Balochi/Baluchi;
(d) Burmese;
(e) Cantonese;
(f) Chinese (unspecified);
(g) Chamorro;
(h) Chuukese;
(i) Dari;
(j) English;
(k) Farsi/Persian;
(l) Fijian;
(m) Filipino/Pilipino;
(n) French;
(o) German;
(p) Hindi;
(q) Hmong;
(r) Japanese;
(s) Karen;
(t) Khmer/Cambodian;
(u) Kinyarwanda;

- (v) Korean;
- (w) Kosraean;
- (x) Lao;
- (y) Mandarin;
- (z) Marshallese;
- (aa) Mixteco;
- (bb) Nepali;
- (cc) Oromo;
- (dd) Panjabi/Punjabi;
- (ee) Pashto;
- (ff) Portuguese;
- (gg) Romanian/Rumanian;
- (hh) Russian;
- (ii) Samoan;
- (jj) Sign languages;
- (kk) Somali;
- (ll) Spanish/Castilian;
- (mm) Swahili/Kiswahili;
- (nn) Tagalog;
- (oo) Tamil;
- (pp) Telugu;
- (qq) Thai;
- (rr) Tigrinya;
- (ss) Ukrainian;
- (tt) Urdu;
- (uu) Vietnamese;
- (vv) Other language;
- (ww) Patient declined to respond; or
- (xx) Unknown.

(5) Patient's disability shall be identified by the patient and reported consistent with the categories in this subsection. If the patient self-identifies more than one disability, each disability shall be reported.

(a) The patient experiences any of the following in their daily living:

- (i) Difficulty hearing;
- (ii) Difficulty seeing, even when wearing glasses;
- (iii) Limitations in any activities because of a physical, mental, or emotional condition;
- (iv) Uses a cane, a wheelchair, a trained service animal, adaptive bed, adaptive telephone, or some other device;
- (v) Difficulty concentrating, remembering, or making decisions because of a physical, mental, or emotional condition;
- (vi) Difficulty walking or climbing stairs;
- (vii) Difficulty dressing or bathing;
- (viii) Difficulty doing errands alone such as visiting a doctor's office or shopping;
- (ix) Not listed above;
- (x) Not applicable (no limitations);
- (xi) Patient declined to respond; or
- (xii) Unknown.

(b) The patient has any of the following disabilities or conditions:

- (i) Intellectual disability;
- (ii) Developmental disability;
- (iii) Physical disability;
- (iv) Brain injury;

- (v) Mental health disability;
- (vi) Neurocognitive disability;
- (vii) Deaf, d/Deaf, or hard of hearing;
- (viii) Blind, low vision, or visually impaired;
- (ix) Chronic medical condition;
- (x) Not listed above;
- (xi) Not applicable (no disability or condition);
- (xii) Patient declined to respond; or
- (xiii) Unknown.

(6) Patient's gender identity shall be identified by the patient and reported using one or more of the following options. If the patient self-identifies more than one gender, each gender shall be reported.

- (a) Male;
- (b) Female;
- (c) Man or Masculine/Masc;
- (d) Woman or Feminine/Femme;
- (e) Trans* or transgender;
- (f) Cis or cisgender;
- (g) Genderqueer;
- (h) Nonbinary;
- (i) Two spirit;
- (j) Gender fluid;
- (k) Bigender;
- (l) Agender;
- (m) Demigirl;
- (n) Demiboy;
- (o) Gender not listed above, please specify;
- (p) Patient declined to respond; or
- (q) Unknown.

(7) Patient's sexual orientation shall be identified by the patient and reported using one or more of the following categories. If the patient self-identifies more than one sexual orientation, each sexual orientation shall be reported.

- (a) Straight;
- (b) Gay;
- (c) Lesbian;
- (d) Queer;
- (e) Bisexual;
- (f) Pansexual/Bi+;
- (g) Asexual;
- (h) Sexual orientation not listed above, please specify;
- (i) Patient declined to respond; or
- (j) Unknown.

[]

NEW SECTION

WAC 246-455-035 Waiver for reporting the additional patient demographic information. (1) Beginning October 1, 2022, a hospital that is certified by the Centers for Medicare and Medicaid Services as a critical access hospital, is certified by the Centers of Medicare and Medicaid Services as a sole community hospital, or qualifies as a medicare dependent hospital must comply with this section.

(2) (a) A hospital subject to the additional patient demographic information reporting requirements in RCW 43.70.052 (6) (a) and WAC 246-455-025, and is experiencing an economic hardship, technological limitations that are not reasonably in the control of the hospital, or other exceptional circumstance demonstrated by the hospital, may submit an attestation to the department requesting a waiver of the additional patient demographic information reporting requirements in RCW 43.70.052 (6) (a) and WAC 246-455-025.

(b) The waiver attestation with supporting documentation must be submitted on forms provided by the department. The waiver is deemed granted upon written or electronic approval from the department. The department may request additional information to complete the attestation. The department, in its discretion, may deny the waiver request if the hospital fails to comply with the requirements in RCW 43.70.052(6) and this section.

(c) A hospital that has been granted a waiver shall be exempt from reporting the additional patient discharge information outlined by WAC 246-455-025 for one calendar year. The one calendar year starts at the beginning of the next calendar month after the waiver is approved. The waiver is effective when the department sends written or electronic approval to the hospital.

(d) A hospital seeking an extension on its approved waiver must apply for an extension before the waiver expires. If the hospital does not apply for an extension before the waiver expires, the hospital must collect and report the additional patient discharge information in RCW 43.70.052 (6) (a) and WAC 246-455-025 and will not be eligible for an additional waiver.

(e) For economic hardship or technological limitations that are not reasonably in the control of the hospital, a hospital may only submit up to a total of three waiver attestations to the department.

(f) For other exceptional circumstances, there is no limit on the number of waiver attestations that a hospital may submit to the department.

(g) The hospital must begin collecting the additional patient discharge information in RCW 43.70.052 (6) (a) and WAC 246-455-025 immediately following the waiver expiration.

(h) Data collected under a waiver must be reported consistent with WAC 246-455-020, and data collected after the waiver expiration must be reported consistent with both WAC 246-455-020 and 246-455-025. Data must be submitted according to the deadline for submission required by WAC 246-455-050.

(3) For the purposes of this section:

(a) Economic hardship means:

(i) A hospital with less than 30 days of operating days in cash as of December 31st based on audited financial statements;

(ii) A hospital with a net loss or a negative change in net assets for two consecutive years based on audited financial statements;

(iii) A bankruptcy in the previous year or a waiver submitted under this section due to bankruptcy in the previous year;

(iv) Opening a new hospital after January 1, 2022;

(v) Operating a low-income hospital, that is defined as a hospital serving a minimum of 30 percent medicaid patients; or

(vi) Intent to discontinue operating in Washington prior to January 1, 2023.

(b) Technological limitation that is not reasonable in the control of the hospital means the integration of electronic health records system changes, switching electronic health record system ven-

dors, or updating the hospital's current electronic health record system to comply with the requirements of this section and is in progress but has not yet been completed; and

(c) Other exceptional circumstance means unforeseen circumstances that stress the hospital in such a way that compliance is not possible. Examples may include, but are not limited to, natural disasters, widespread health care emergencies, unforeseen barriers to integration, or unforeseen events that results in a statewide emergency.

[]

AMENDATORY SECTION (Amending WSR 07-09-091, filed 4/18/07, effective 5/23/07)

WAC 246-455-040 Acceptable media for submission of data. (1) A hospital((s)) shall submit data in the ((form)) format prescribed by the department. The data must comply with the requirements in the CHARS Procedure Manual and CHARS ((837)) Companion Guide. Additional information not listed in WAC 246-455-020 and 246-455-025 may be required by the department to successfully process data submission files. Copies of the CHARS Procedure Manual and CHARS ((837)) Companion Guide may be obtained on the department's website or by contacting the department.

(2) A department designee shall submit data to the department in the format prescribed by the department.

[Statutory Authority: RCW 43.70.040 and 43.70.052. WSR 07-09-091, § 246-455-040, filed 4/18/07, effective 5/23/07. Statutory Authority: RCW 43.70.040 and [43.]70.170. WSR 03-13-029, § 246-455-040, filed 6/10/03, effective 7/11/03. Statutory Authority: RCW 43.70.040 and chapter 70.170 RCW. WSR 94-12-090, § 246-455-040, filed 6/1/94, effective 7/2/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-455-040, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.39 RCW. WSR 88-16-043 (Order 88-05, Resolution No. 88-05), § 261-50-040, filed 7/29/88; WSR 87-04-008 (Order 87-01, Resolution No. 87-01), § 261-50-040, filed 1/23/87. Statutory Authority: RCW 70.39.180. WSR 86-14-081 (Order 86-03, Resolution No. 86-03), § 261-50-040, filed 7/1/86; WSR 85-17-020 (Order 85-05, Resolution No. 85-05), § 261-50-040, filed 8/13/85. Statutory Authority: Chapter 70.39 RCW. WSR 84-20-067 (Order 84-06, Resolution No. 84-06), § 261-50-040, filed 10/1/84.]

AMENDATORY SECTION (Amending WSR 07-09-091, filed 4/18/07, effective 5/23/07)

WAC 246-455-050 Time deadline for submission of data. (1) A hospital((s)) shall submit data to the department or ((its)) the department's designee within ((forty-five)) 45 calendar days following the end of each calendar month.

(2) The department designee shall submit the data to the department after receiving the data from the hospital in the time frame prescribed by the department.

[Statutory Authority: RCW 43.70.040 and 43.70.052. WSR 07-09-091, § 246-455-050, filed 4/18/07, effective 5/23/07. Statutory Authority: RCW 43.70.040 and chapter 70.170 RCW. WSR 94-12-090, § 246-455-050, filed 6/1/94, effective 7/2/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-455-050, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.39 RCW. WSR 88-16-043 (Order 88-05, Resolution No. 88-05), § 261-50-050, filed 7/29/88; WSR 87-04-008 (Order 87-01, Resolution No. 87-01), § 261-50-050, filed 1/23/87; WSR 84-20-067 (Order 84-06, Resolution No. 84-06), § 261-50-050, filed 10/1/84.]

AMENDATORY SECTION (Amending WSR 94-12-090, filed 6/1/94, effective 7/2/94)

WAC 246-455-060 Edits to data. The department or the department's designee shall edit the data as follows:

- (1) Record layout compatibility edits on data submitted in accordance with WAC 246-455-020 and 246-455-025; and
- (2) Verification of the data set elements set forth in WAC 246-455-020 and 246-455-025.

[Statutory Authority: RCW 43.70.040 and chapter 70.170 RCW. WSR 94-12-090, § 246-455-060, filed 6/1/94, effective 7/2/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-455-060, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.39 RCW. WSR 88-16-043 (Order 88-05, Resolution No. 88-05), § 261-50-060, filed 7/29/88; WSR 87-04-008 (Order 87-01, Resolution No. 87-01), § 261-50-060, filed 1/23/87; WSR 84-20-067 (Order 84-06, Resolution No. 84-06), § 261-50-060, filed 10/1/84.]

AMENDATORY SECTION (Amending WSR 15-19-152, filed 9/22/15, effective 10/23/15)

WAC 246-455-070 Revisions to submitted data. (1) All data revisions required as a result of the edits performed pursuant to WAC ((246-455-020)) 246-455-060 shall be corrected by the hospital and returned to the department or ((its)) the department's designee within ((fourteen)) 14 working days after the submission deadline in WAC 246-455-050.

(2) The department's designee shall submit the data to the department after receiving the revised data from the hospital in the time frame prescribed by the department.

[Statutory Authority: RCW 43.70.052, 2014 c 220. WSR 15-19-152, § 246-455-070, filed 9/22/15, effective 10/23/15. Statutory Authority: RCW 43.70.040 and chapter 70.170 RCW. WSR 94-12-090, § 246-455-070, filed 6/1/94, effective 7/2/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-455-070, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.39.180. WSR 85-17-020 (Order 85-05, Resolution No. 85-05), § 261-50-065, filed 8/13/85. Statutory Authority: Chapter 70.39 RCW. WSR 84-20-067 (Order 84-06, Resolution No. 84-06), § 261-50-065, filed 10/1/84.]

AMENDATORY SECTION (Amending WSR 15-19-152, filed 9/22/15, effective 10/23/15)

WAC 246-455-085 Data files—Release of data files and data use agreements. (1) The department may create and release data files with patient discharge information as allowed under RCW 43.70.052 and this chapter. The type of information contained in the file, including direct and indirect patient identifiers, determines the category and permitted release of the data file.

~~((1) Confidential data files contain one or more direct patient identifiers.~~

~~(a))~~ (2) The department may aggregate data from patient discharge information, and may release such aggregated data with either direct patient identifiers or indirect patient identifiers, or both, in accordance with RCW 43.70.052 and this chapter.

(3) In order to maintain the confidentiality of patient discharge data, for individual requests for data the department in its discretion may designate any of the patient discharge data collected under RCW 43.70.052 and this chapter as either a direct patient identifier or an indirect patient identifier in addition to the elements already designated by the department in subsection (6) of this section.

(4) The department may distribute a ~~((confidential))~~ data file with direct patient identifiers only to:

~~((i))~~ (a) Government agencies after entering into a data use agreement; or

~~((ii))~~ (b) Researchers with approval from the Washington state ~~((IRB))~~ institutional review board and a signed confidentiality agreement with the department.

(5) The department may distribute a data file that contains indirect patient identifiers only to agencies, researchers, and other persons upon receipt of a signed data use agreement with the department.

~~((b))~~ (6) Direct and indirect patient identifiers ~~((means information that identifies a patient. Direct identifiers include:~~

- ~~(i) Patient first name;~~
- ~~(ii) Patient middle name(s);~~
- ~~(iii) Patient last name;~~
- ~~(iv) Social Security number;~~
- ~~(v) Patient control number or medical record number;~~
- ~~(vi) Patient zip code + four digits;~~
- ~~(vii) Dates that include day, month, and year; and~~
- ~~(viii) Admission and discharge dates in combination.~~

~~(c) Government agencies include: Washington state boards, commissions, committees, departments, educational institutions, or other Washington state agencies which are created by or pursuant to statute, other than courts and the legislature; Washington county or city agencies, U.S. federal agencies.~~

~~(d) In order to comply with RCW 70.02.240 protecting mental health information for youth, for patients under age eighteen, the confidential data file will not include mental health related diagnosis or procedure codes or any diagnosis related groups or major diagnosis category.~~

~~(e))~~ are as follows:

<u>Patient Discharge Data Element</u>	<u>Direct or Indirect Patient Identifier</u>
<u>Patient control number</u>	<u>Direct</u>

<u>Patient Discharge Data Element</u>	<u>Direct or Indirect Patient Identifier</u>
<u>Patient medical record number</u>	<u>Direct</u>
<u>Patient first name</u>	<u>Direct</u>
<u>Patient middle initial</u>	<u>Direct</u>
<u>Patient last name</u>	<u>Direct</u>
<u>Patient Social Security number</u>	<u>Direct</u>
<u>Patient address</u>	<u>Direct</u>
<u>Patient city</u>	<u>Indirect</u>
<u>Patient county</u>	<u>Indirect</u>
<u>Patient zip code and four digits</u>	<u>Direct</u>
<u>Patient zip code (five digits only)</u>	<u>Indirect</u>
<u>Patient state</u>	<u>Indirect</u>
<u>Patient country code</u>	<u>Indirect</u>
<u>Patient's date of birth (month, day, year)</u>	<u>Direct</u>
<u>Age in years</u>	<u>Indirect</u>
<u>Sex assigned at birth</u>	<u>Indirect</u>
<u>Race</u>	<u>Indirect</u>
<u>Ethnicity</u>	<u>Indirect</u>
<u>Gender identity</u>	<u>Indirect</u>
<u>Sexual orientation</u>	<u>Indirect</u>
<u>Preferred language</u>	<u>Indirect</u>
<u>Disability</u>	<u>Indirect</u>
<u>Admission date (month, day, year)</u>	<u>Direct</u>
<u>Admission hour</u>	<u>Indirect</u>
<u>Type of admission</u>	<u>Indirect</u>
<u>Point of origin for admission</u>	<u>Indirect</u>
<u>Patient discharge status</u>	<u>Indirect</u>
<u>Discharge hour</u>	<u>Indirect</u>
<u>Statement covers period (from... through...)</u>	<u>Direct</u>
<u>Type of bill</u>	<u>Indirect</u>
<u>Revenue code</u>	<u>Indirect</u>
<u>Units of service</u>	<u>Indirect</u>
<u>Total charges</u>	<u>Indirect</u>
<u>Payer identification</u>	<u>Indirect</u>
<u>Principal diagnosis code</u>	<u>Indirect</u>
<u>Other diagnosis code</u>	<u>Indirect</u>
<u>External cause of injury code</u>	<u>Indirect</u>
<u>Principal procedure code</u>	<u>Indirect</u>
<u>Other procedure code</u>	<u>Indirect</u>
<u>Admitting diagnosis code</u>	<u>Indirect</u>
<u>Patient's reason for visit ICD code (1-3)</u>	<u>Indirect</u>
<u>Procedure date (month, day, year)</u>	<u>Direct</u>
<u>Present on admission status</u>	<u>Indirect</u>

<u>Patient Discharge Data Element</u>	<u>Direct or Indirect Patient Identifier</u>
<u>Service date (month, day, year)</u>	<u>Direct</u>
<u>Insured last name, first name, middle name, suffix</u>	<u>Direct</u>
<u>Patient's relationship to insured (code)</u>	<u>Indirect</u>
<u>Insured ID</u>	<u>Direct</u>
<u>Facility federal tax number</u>	<u>Indirect</u>
<u>National Provider Identifier for provider(s)</u>	<u>Indirect</u>
<u>First and last name of provider(s)</u>	<u>Indirect</u>
<u>Health care provider taxonomy code</u>	<u>Indirect</u>
<u>Health care common procedure coding system</u>	<u>Indirect</u>

(7) In order to comply with 42 U.S.C. Sec. 290dd-2 and 42 C.F.R. Part 2, for any hospitalization that includes substance abuse disorder related diagnosis or procedure codes or any diagnosis related groups or major diagnosis category to the extent collected by the department, the department will remove substance abuse disorder related diagnosis or procedure codes or any diagnosis related groups or major diagnosis category from the direct patient identifier data file.

(8) Information and records related to mental health services will be disclosed consistent with both RCW 43.70.052 and chapter 70.02 RCW.

(9) In order to comply with WAC 246-490-110 protecting the identity of facilities that provide abortions, for any hospitalization that includes a diagnosis or procedure code indicating an induced termination of pregnancy, the ~~((confidential))~~ data file with direct patient identifiers will not include patient name, facility ID, provider identifiers, or geographic identifiers less than state.

~~((f))~~ (10) The department may provide the fewest data elements necessary for the stated purpose of the project.

~~((2))~~ Potentially identifiable data files contain indirect patient identifiers.

~~(a) The department may distribute a potentially identifiable data file to anyone after entering into a data use agreement with the requestor or requesting organization.~~

~~(b) Indirect patient identifier means information that may identify a patient when combined with other information. Identification of a specific patient is more likely when a file contains a group of ten or fewer similar hospitalizations.~~

~~(c) Indirect patient identifiers include the following data elements, in combination or individually, when they create a group of ten or fewer similar hospitalizations in a file:~~

- ~~(i) Hospital or provider identifiers;~~
- ~~(ii) Five digit zip code;~~
- ~~(iii) County, state, and country of residence;~~
- ~~(iv) Dates that include month and year;~~
- ~~(v) Admission and discharge hour;~~
- ~~(vi) Secondary diagnosis, procedure, present on admission, external cause of injury, and payer codes;~~
- ~~(vii) Age in years;~~
- ~~(viii) Race and ethnicity.~~

~~(d) The potentially identifiable data file does not contain any direct identifiers listed in subsection (1)(b)(i) through (viii) of this section.~~

~~(3) Public data file with no patient identifiers:~~

~~(a) The department may release an unrestricted public data file that does not contain information that alone or in combination with other information identifies a patient.~~

~~(b)) (11) The department may release an unrestricted public data file that does not contain direct or indirect patient identifiers to anyone. The department may create a public file by:~~

~~((i)) (a) Removing all data elements ((identified)) designated as indirect in subsection ((2)(e)(i) through (viii)) (6) of this section; or~~

~~((ii) By) (b) Aggregating or anonymizing data ((identified)) designated as indirect in subsection ((2)(e)(i) through (v), (vii), and (viii)) (6) of this section so that each combination of indirect patient identifiers remaining in the public file must appear at least ((ten)) 10 times((-)); and~~

~~(c) ((The public data file does not contain any)) Removing all data elements designated as direct ((identifiers listed)) in subsection ((1)(b)(i) through (viii)) (6) of this section.~~

[Statutory Authority: RCW 43.70.052, 2014 c 220. WSR 15-19-152, § 246-455-085, filed 9/22/15, effective 10/23/15.]

NEW SECTION

WAC 246-455-105 Requests from government agencies for patient discharge data files containing direct patient identifiers. (1) A government agency requesting data files that contain direct patient identifiers for nonresearch purposes must comply with the requirement of RCW 43.70.052 and this section. The department will not release data to a government agency requesting data from the department pursuant to this section until all requirements of this section have been completed to the satisfaction of the department.

(2) A government agency submitting a data request under this section for nonresearch purposes must submit all of the following to the department in the form or format required by the department:

(a) A completed application on the form provided by the department;

(b) A signed data use agreement with the department that conforms with WAC 246-455-400;

(c) All information required in subsection (3) of this section; and

(d) All fees required by WAC 246-455-990.

(3) A government agency submitting a data request under this section for nonresearch purposes must submit to the department all of the following information:

(a) Name, title, organizational affiliation, and contact information (mailing address, telephone number, and email address) of the requestor, the organization official authorized to execute agreements, the organization information technology security officer, and organization privacy officer;

(b) Purpose or intended use of the data being requested, including any proposed redisclosure of the data;

- (c) Length of time and frequency of the data being requested;
 - (d) Physical and electronic security measures to be taken to assure confidentiality and security of identifying information, including stored information;
 - (e) Provision for return or destruction of the information at the conclusion of use;
 - (f) Population of interest;
 - (g) Names and titles of all persons who will have access to the data;
 - (h) The plan for use of the data and certification to abide by the department's small numbers guidelines;
 - (i) Patient discharge data elements needed to achieve the purpose; and
 - (j) Years of the requested data.
- (4) The department may request additional information regarding the request for patient discharge data containing direct identifiers. If additional information is requested, the government agency must submit the information within 30 days of the department's request or the request for data may be denied.
- (5) If the department determines the request for data submitted pursuant to this section is in fact for research purposes, the department will require the government agency to comply with the provisions of WAC 246-455-200.
- (6) If the department suspects or is unsure if the request for data submitted pursuant to this section is for research purposes, the department may require the government agency to comply with the provisions of WAC 246-455-200.
- (7) The department may deny a request for data if the government agency submitting a data request under this section fails to meet any of the requirements of this chapter or RCW 43.70.052.

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NEW SECTION

WAC 246-455-200 Requests for patient discharge data files containing direct patient identifiers for research. (1) A researcher requesting data files that contains direct patient identifiers for research must comply with the requirements of RCW 43.70.052 and this section. The department will not release data to a researcher requesting data from the department until all the requirements of this section have been completed to the satisfaction of the department.

(2) A researcher submitting a data request under this section must submit all of the following to the department:

- (a) A completed records request form associated with the human research review board application that contains all the information required in subsection (3) of this section;
- (b) Approval from the human research review board of the research proposal for which the data is being requested;
- (c) A signed confidentiality agreement with the department; and
- (d) All fees required by WAC 246-455-990.

(3) A researcher submitting a data request under this section must submit all of the following information on the records request forms provided by the human research review board to the department for review and approval:

- (a) Project title;
 - (b) Principal investigator name, title, and contact information (telephone number and email address);
 - (c) Study abstract that includes:
 - (i) Description of the proposed research study and objectives;
 - (ii) Research study design and analysis plan;
 - (iii) Duration of research study;
 - (iv) The plan for dissemination of the results and a certification that the researcher will abide by the department's small numbers guidelines in the dissemination of results; and
 - (v) A plan for the return or destruction of the information at the conclusion of the research study.
 - (d) Patient discharge data elements needed to complete the research study;
 - (e) Years of the requested data; and
 - (f) Geographic area of interest of the research study.
- (4) The department may request additional information regarding the research proposal. If additional information is requested, the researcher must submit the information within 30 days of the department's request or the request for data may be denied.
- (5) If the researcher submitting a data request under this section receives an exempt determination letter from the human research review board, the researcher may:
- (a) If the researcher is a governmental agency, comply with the provisions of WAC 246-455-105; or
 - (b) Submit a request to receive data pursuant to WAC 246-455-300.
- (6) The department may deny a request for data for research purposes if the researcher submitting a data request under this section fails to meet any of the requirements of this chapter or RCW 43.70.052.

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NEW SECTION

- WAC 246-455-300 Requests from individuals or entities for patient discharge data files containing indirect patient identifiers.**
- (1) All requests for data under this section must comply with the requirements of RCW 43.70.052 and this section. The department will not release data to an individual or entity requesting data from the department pursuant to this section until all the requirements of this section have been completed to the satisfaction of the department.
- (2) The data released pursuant to this section will only be in the data file format prescribed by the department.
- (3) An individual or entity submitting a data request under this section must submit all of the following on the form or in the format required by the department:
- (a) A completed application on the form provided by the department;
 - (b) A signed data use agreement with the department that conforms with WAC 246-455-400;
 - (c) All information required in subsection (4) of this section; and
 - (d) All fees required by WAC 246-455-990.

(4) An individual or entity submitting a data request under this section must submit all of the following information to the department:

(a) Name, title, organizational affiliation, and contact information (mailing address, telephone number, and email address) of the requestor, the organization official authorized to execute agreements, the organization information technology security officer, and the organization privacy officer;

(b) Purpose or intended use of the data being requested, including any proposed redisclosure of the data;

(c) Length of time data is needed or length of the project;

(d) Physical and electronic security measures to be taken to assure confidentiality and security of identifying information including storage of data, and provision for return or destruction of the information at the conclusion of use;

(e) Names and titles of all persons who will have access to the data;

(f) The plan for dissemination of the results and certification to abide by the department's small numbers guidelines; and

(g) Years of data requested.

(5) The department may request additional information regarding the request for data under this section. If additional information is requested, the individual or entity must submit the information within 30 days of the department's request or the request for data may be denied.

(6) The individual or entity must download the data from the secured file transfer site within two weeks. If after the two weeks, the requestor has not retrieved the data, the individual or entity must submit a new request and payment.

(7) The department may deny a request for data if the individual or entity submitting a data request under this section fails to meet any of the requirements of this chapter or RCW 43.70.052.

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NEW SECTION

WAC 246-455-400 Patient discharge data use agreements. (1) All written data use agreements with the department for the release of patient discharge data must comply with the requirements of RCW 43.70.052 and this section.

(2) A data use agreement with the department is required for the following:

(a) Government agencies requesting data that contains direct patient identifiers for nonresearch purposes; and

(b) Individuals or entities requesting data that contains only indirect patient identifiers.

(3) The department may use standard form data use agreements for all data requests, consistent with the provisions of this section and RCW 43.70.052. If the department chooses to use a standard form data use agreement for data requests, the requestor shall sign the standard form data use agreement prepared by the department pursuant to this subsection. If the department chooses to negotiate the terms of the standard form data use agreement for data requests, the ultimate deci-

sion to modify the standard form data use agreement to accommodate a data request lies solely with the department.

(4) An individual or entity requesting data under this section must comply with all the terms and conditions of the data use agreement. If the individual or entity violates the data use agreement, it will result in the immediate termination of the data use agreement and result in denial of patient discharge data in the future.

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NEW SECTION

WAC 246-455-500 Data file production. (1) The department retains the discretion to determine what form or format is most appropriate to provide to a particular requestor. Where the department provides data files on a routine schedule, the department may automate file production. The department may manually produce data files when deemed appropriate. Nothing in this chapter should be deemed to entitle any requestor to receive data in a particular form or format, and nothing in this chapter should be deemed to require the department to produce the data in a particular form or format.

(2) Where the department provides data files on a routine schedule, the department may allow a requestor to update their original data request with the department. If the department permits a requestor to update their data request, the requestor must pay the fee required by WAC 246-455-990(4).

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NEW SECTION

WAC 246-455-990 Data file fees. (1) The department may not charge a fee for state officials and agencies receiving data funded through the state general appropriation.

(2) The department shall collect nonrefundable fees as follows:

(a) One hundred ten dollars per standard data file;

(b) Fifty dollars per standard data file for students with proof of valid student status; and

(c) One hundred ten dollars per custom data file.

(3) For data requests where data files are provided on a routine schedule to an entity, the department may enter into an agreement with that entity and charge a fee equivalent to the actual costs incurred by the department for reimbursement of the data request.

(4) Updates to data requests allowed by WAC 246-455-500(2) will be assessed a fee by the department equivalent to the actual costs incurred by the department to update the data request.

(5) The department may waive fees for the following:

(a) Local health jurisdictions receiving standard data files;

(b) Tribes, tribal organization within the state, and Indian health service designated tribal epidemiology centers serving tribes within the state receiving standard data files; and

(c) Patient discharge data sharing initiated by the department.

[]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-455-080 Security of the data.