

**WSR 08-04-044****EXPEDITED RULES****HEALTH CARE AUTHORITY**

(Public Employees Benefits Board)

[Order 08-01—Filed January 31, 2008, 10:52 a.m.]

Title of Rule and Other Identifying Information: Amendments are proposed to three rules: WAC 182-12-128 Employee waiver, 182-12-205 Retiree deferral, and 182-08-198, the health plan change. A new rule to govern when and how eligible dependents are enrolled, waived, and removed from the public employees benefits board (PEBB) benefits is proposed.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Barbara Scott or Ashley DeMoss, Health Care Authority, PEBB Benefits Services Program, P.O. Box 42684, Olympia, WA 98504-2684, AND RECEIVED BY April 7, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this expedited rule making is to bring PEBB rules into closer alignment with HIPAA portability, IRS regulation of pretax salary reduction for benefits, and COBRA. In addition, the rule making will also incorporate a provision from the Governor's Omnibus Health Care Reform Act passed during the 2007 legislative session. Given that these changes are inspired and required by federal and state laws, they are not policy decisions for decision by the PEBB or subject to the Administrative Procedure Act public engagement processes required for policy rule making.

This expedited rule making proposes amendments to three current rules and creates one new rule.

Statutory Authority for Adoption: RCW 41.05.160.

Statute Being Implemented: RCW 48.43.008.

Rule is necessary because of federal law, IRC, HIPAA, and COBRA.

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Barbara Scott, 676 Woodland Square Loop, Lacey, WA, (360) 923-2642; Implementation: Ashley DeMoss, 676 Woodland Square Loop, Lacey, WA, (360) 923-2644; and Enforcement: Mary Fliss, 676 Woodland Square Loop, Lacey, WA, (360) 923-2640.

January 31, 2008

Jason Siems  
Rules Coordinator

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

**WAC 182-08-198 When may a subscriber change health plans?** (1) Subscribers may change health plans during the annual open enrollment. The subscriber must ~~((request))~~ submit the appropriate enrollment form(s) to change health plan ((change)) no later than the end of the annual open enrollment ((period)). Enrollment in the new health plan will begin ~~((the first day of))~~ January ((after open enrollment)) of the following year.

(2) Subscribers may change health plans outside of the annual open enrollment ~~((period under the circumstances indicated below))~~ if a special open enrollment event occurs. The change in enrollment must be based on and related to the change in status that created the special enrollment opportunity for the subscriber and the subscriber's dependents. To make a health plan change, the subscriber must ~~((send a completed))~~ submit the appropriate enrollment form(s) (and a completed disenrollment form, if required) ((to the PEBB benefits services program)) no later than sixty days after the event occurs. Employees submit the enrollment form(s) to their employing agency. All other subscribers submit the enrollment form(s) to the PEBB benefits services program. Enrollment in the new health plan will begin the first day of the month ~~((after))~~ following the ((PEBB benefits services program receives the form(s). These are the circumstances)) event that created the special open enrollment; or in cases where the event occurs on the first day of the month, enrollment will begin on that date. If the special open enrollment is due to the birth or adoption of a child, enrollment will begin the month in which the event occurs. The following events create a special open enrollment:

(a) ~~((Enrollees move and their current health plan is not available in their new location.))~~ Subscriber acquires a new eligible dependent through marriage, domestic partnership, birth, adoption or placement for adoption, guardianship;

(b) Subscriber's dependent child becomes eligible by fulfilling PEBB dependent eligibility criteria;

(c) Subscriber loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;

(d) Subscriber has a change in marital status, including legal separation documented by a court order;

(e) Subscriber or a dependent loses comprehensive group insurance coverage;

(f) Subscriber or a dependent has a change in employment status that affects whether enrollment in PEBB insurance coverage will benefit the subscriber or the subscriber's dependent(s). This includes beginning or end of employment, beginning or returning from an unpaid leave of absence, strike or lockout, change in worksite, becoming eligible for benefits or eligibility ending.

(g) Subscriber's or their dependent's residence changes affecting the health plan availability or the benefits or the cost of their insurance coverage. If the subscriber ((does)) moves and their current health plan is not available in their new location but they do not select a new health plan, the PEBB benefits services program may enroll them in the Uniform Medical Plan Preferred Provider Organization or Uniform Dental Plan.

~~((b))~~ Enrollees move and a health plan that was not available to them before is available to them in the new location. The subscriber may only choose a newly available health plan.

~~((e))~~ ~~(h)~~ Subscriber ~~((s may change health plans if))~~ receives a court order ~~((requires))~~ or medical support order requiring the subscriber, their spouse, or qualified domestic partner to provide insurance coverage for an eligible ~~((spouse, qualified domestic partner, or child and the subscriber adds the))~~ dependent ~~((to their insurance coverage))~~.

~~((f))~~ ~~(i)~~ Subscriber receives formal notice that the department of social and health services has determined it is more cost-effective to enroll the eligible subscriber or eligible dependent in PEBB medical than a medical assistance program.

~~(j)~~ Seasonal employees whose off-season ~~((is))~~ occurs during the annual open enrollment ~~((period))~~. They may select a new health plan upon their return to work.

~~((e))~~ ~~(k)~~ Subscriber ~~((s may change health plans when they))~~ enrolls in PEBB retiree insurance coverage.

~~((f))~~ ~~(l)~~ Subscriber ~~((s may change health plans when they))~~ or an eligible dependent becomes entitled to Medicare ~~((or))~~, enrolls in or disenrolls from a Medicare Part D plan.

~~((g))~~ ~~(m)~~ Subscriber ~~((s))~~ experiences a disruption that could function as a reduction in benefits for the subscriber or the subscriber's dependent(s) due to a specific condition or ongoing course of treatment. A subscriber may not change their health plan if their or an enrolled dependent's physician stops participation with the subscriber's health plan unless the PEBB appeals manager determines that a continuity of care issue exists. ~~((However, if the employee is having premiums taken from payroll on a pretax basis a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.))~~ The PEBB appeals manager will use criteria that include but are not limited to the following in determining if a continuity of care issue exists:

- (i) Active cancer treatment; or
- (ii) Recent transplant (within the last twelve months); or
- (iii) Scheduled surgery within the next sixty days; or
- (iv) Major surgery within the previous sixty days; or
- (v) Third trimester of pregnancy; or
- (vi) Language barrier.

If the employee is having premiums taken from payroll on a pretax basis, a plan change will not be approved if it would conflict with provisions of the salary reduction plan authorized under RCW 41.05.300.

AMENDATORY SECTION (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

**WAC 182-12-128** ~~((When))~~ May an employee waive health plan enrollment ((for their self or their eligible dependent))? (1) Employees must enroll in dental, life and long-term disability insurance (unless the employing agency does not participate in these PEBB insurance coverages). However, employees may waive PEBB medical if they have other comprehensive group medical coverage. ((To waive medical, the employee must complete an enrollment/change form. If an employee waives medical, then medical is auto-

matically waived for all eligible dependents.)) Employees may waive enrollment in PEBB medical by submitting the appropriate enrollment form to their employing agency during the following times:

(a) Employees may waive medical when they become eligible for PEBB benefits. The employee must indicate they are waiving medical on the appropriate enrollment form they submit to their employing agency no later than thirty-one days after the date they become eligible (see WAC 182-08-197). Medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) Employees may waive medical during the annual open enrollment if they submit the appropriate enrollment form to their employing agency before the end of the annual open enrollment. Medical will be waived beginning January of the following year.

(c) Employees may waive medical during a special open enrollment as described in subsection (4) of this section.

(2) If an employee ((may only)) waives medical, medical is automatically waived for all eligible dependents. ((The employee must remain enrolled in dental, life and long-term disability-))

(3) ((An employee may waive medical or dental, or both, for any or all eligible dependents.

(4)) Once ((health plan enrollment)) medical is waived, enrollment is only allowed during the following times:

(a) The ((next)) annual open enrollment period;

(b) ((After losing other health insurance-)) A special open enrollment created by an event that allows for enrollment outside of the annual open enrollment as described in subsection (4) of this section. In addition to the appropriate enrollment form(s), the PEBB benefits services program may require the employee ((must)) to provide evidence(=

(i) Other health insurance was comprehensive group coverage;

(ii) Enrollment was continuous from the most recent PEBB open enrollment period; and

(iii) The date when coverage was lost.

Application to enroll in a PEBB health plan must be made no later than sixty days after the date the other health insurance was lost;

(e) After acquiring a new dependent. Application for enrollment must be made no later than sixty days after acquiring the new dependent through marriage, establishment of a qualified domestic partnership, birth, adoption or placement for adoption)) of eligibility and evidence of the event that creates a special open enrollment.

(4) Employees may waive enrollment in medical or enroll in medical if one of these special open enrollment events occur. The change in enrollment must be based on and related to the change in status that creates the special open enrollment. The following changes are events that create a special open enrollment:

(a) Employee acquires a new eligible dependent through marriage, domestic partnership, birth, adoption or placement for adoption, guardianship;

(b) Employee's dependent child becomes eligible by fulfilling PEBB dependent eligibility criteria;

(c) Employee loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;

(d) Employee has a change in marital status, including legal separation documented by a court order;

(e) Employee or a dependent loses comprehensive group insurance coverage;

(f) Employee or one of the employee's dependents has a change in employment status that affects whether enrollment in PEBB insurance coverage will benefit the subscriber or the subscriber's dependent. This includes beginning or end of employment, beginning or returning from an unpaid leave of absence, strike or lockout, change in worksite, becoming eligible or ceasing to be eligible for employer benefits;

(g) Employee or a dependent has a change in place of residence that affects the subscriber's or the dependent's health plan eligibility or the benefits or cost of the insurance coverage;

(h) Employee receives a court order or medical support enforcement order requiring the employee, their spouse, or qualified domestic partner to enroll an eligible dependent;

(i) Employee receives formal notice that the department of social and health services has determined it is more cost-effective to enroll the employee or an eligible dependent in PEBB medical than a medical assistance program.

To change enrollment during a special open enrollment, the employee must submit the appropriate enrollment form(s) to their employing agency no later than sixty days after the event that creates the special open enrollment.

Enrollment in insurance coverage will begin the first of the month following the event that created the special open enrollment; or in cases where the event occurs on the first day of a month, enrollment will begin on that date. If the special open enrollment is due to the birth or adoption of a child, insurance coverage will begin the month in which the event occurs.

**AMENDATORY SECTION** (Amending Order 07-01, filed 10/3/07, effective 11/3/07)

**WAC 182-12-205 May a retiree defer enrollment in a PEBB health plan at or after retirement?** Except as stated in subsection (1)(c) of this section, if a retiree defers enrollment in a PEBB health plan, they also defer enrollment for all eligible dependents. Retirees may not defer their retiree term life insurance, even if they have other life insurance.

(1) Retirees may defer enrollment in a PEBB health plan at or after retirement if continuously enrolled in other comprehensive medical as identified below:

(a) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in comprehensive employer-sponsored medical as an employee or the dependent of an employee.

(b) Beginning January 1, 2001, retirees may defer enrollment if they are enrolled in medical as a retiree or the dependent of a retiree enrolled in a federal retiree plan.

(c) Beginning January 1, 2006, retirees may defer enrollment if they are enrolled in Medicare Parts A and B and a Medicaid program that provides creditable coverage as defined in this chapter. The retiree's dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a Medicaid program.

(2) To defer health plan enrollment, the retiree must send a completed election form to the PEBB benefits services program requesting to defer. The PEBB benefits services program must receive the form before health plan enrollment is deferred or no later than sixty days after the date the retiree becomes eligible to apply for PEBB retiree insurance coverage.

(3) Retirees who defer may enroll in a PEBB health plan as follows:

(a) Retirees who defer while enrolled in employer-sponsored medical may enroll in a PEBB health plan by sending a completed election form and evidence of continuous enrollment in comprehensive employer-sponsored medical to the PEBB benefits services program:

(i) During annual open enrollment. (Enrollment in the PEBB health plan will begin the first day of January after the open enrollment period.); or

(ii) No later than sixty days after their employer-sponsored medical ends. (Enrollment in the PEBB health plan will begin the first day of the month after the employer-sponsored medical ends.)

(b) Retirees who defer enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by sending a completed election form and evidence of continuous enrollment in a federal retiree medical plan to the PEBB benefits services program:

(i) During annual open enrollment. (Enrollment in the PEBB health plan will begin the first day of January after the open enrollment period.); or

(ii) No later than sixty days after the federal retiree medical ends. (Enrollment in the PEBB health plan will begin the first day of the month after the federal retiree medical ends.)

(c) Retirees who defer enrollment while enrolled in Medicare Parts A and B and Medicaid may enroll in a PEBB health plan by sending a completed election form and evidence of continuous enrollment in creditable coverage to the PEBB benefits services program:

(i) During annual open enrollment. (Enrollment in the PEBB health plan will begin the first day of January after the open enrollment period.); or

(ii) No later than sixty days after their Medicaid coverage ends (Enrollment in the PEBB health plan will begin the first day of the month after the Medicaid coverage ends.); or

(iii) No later than the end of the calendar year when their Medicaid coverage ends if the retiree was also determined eligible under 42 USC § 1395w-114 and subsequently enrolled in a Medicare Part D plan. (Enrollment in the PEBB health plan will begin the first day of January following the end of the calendar year when the Medicaid coverage ends.)

(d) Retirees who defer enrollment may enroll in a PEBB health plan if the retiree receives formal notice that the department of social and health services has determined it is more cost-effective to enroll the retiree or the retiree's eligible dependent(s) in PEBB medical than a medical assistance program.

NEW SECTION

**WAC 182-12-262 When may subscribers enroll, waive or remove eligible dependents?** (1) **Subscribers may enroll or waive eligible dependents when the subscriber becomes eligible** and enrolls in PEBB insurance coverage. If enrolled, the dependent's effective date will be the same as the subscriber's effective date. Unless a dependent is independently eligible for PEBB insurance coverage, the subscriber must be enrolled to enroll their dependent.

(2) **Subscribers may enroll eligible dependents during the annual open enrollment** with insurance coverage beginning January of the following year.

(3) **Subscribers may enroll a newly acquired dependent or a dependent that becomes eligible.**

(a) A spouse may be enrolled upon marriage. If the date of marriage is the first day of the month, insurance coverage will begin on that date; otherwise, it will begin the first of the following month.

(b) A qualified domestic partner may be enrolled upon declaration or registration of the domestic partnership (see WAC 182-12-260). If the date of declaration or registration is the first day of the month, insurance coverage will begin on that date; otherwise, it will begin the first of the following month.

(c) Newborn children may be enrolled upon birth and adopted children may be enrolled when the subscriber assumes legal responsibility for the child in anticipation of adoption. The child's insurance coverage will begin on the date of birth or the date the subscriber assumes legal responsibility for the child in anticipation of adoption. The subscriber must submit the appropriate enrollment form(s) as described in subsection (7) of this section no later than sixty days after birth or assuming legal responsibility for the child.

(d) Children acquired through marriage or a qualified domestic partnership may be enrolled upon marriage or declaration or registration of the domestic partnership as described in (a) or (b) of this subsection.

(e) Children acquired through legal guardianship or custody (see WAC 182-12-260 (4)(c)) may be enrolled upon issuance of a court order granting such responsibility to the subscriber, their spouse, or qualified domestic partner. If legal guardianship or custody begins on the first day of the month, insurance coverage will begin on that date; otherwise, it will begin the first of the following month.

(f) Children twenty years or older who become eligible as a student or as a child with disabilities may be enrolled after the child's eligibility is certified by the PEBB benefits services program. If enrolled, the child's insurance coverage will begin as follows:

(i) Insurance coverage for a student will begin on the first day of the month of the quarter or semester for which the student is registered.

(ii) Insurance coverage for a child with disabilities will begin on the first day of the month that eligibility is certified by the PEBB benefits services program.

(4) **Subscribers may enroll, waive or remove their dependents outside of the annual open enrollment if a special open enrollment event occurs.** The change in enrollment must be based on and related to the change in status that creates the special open enrollment for the subscriber

and the subscriber's dependents. Enrollment in insurance coverage will begin the first of the month following the event that created the special open enrollment; or in cases where the event occurs on the first day of a month, enrollment will begin on that date. If the special open enrollment is due to the birth or adoption of a child, insurance coverage will begin the month in which the event occurs. The following changes are events that create a special open enrollment:

(a) Subscriber acquires a new eligible dependent through marriage, domestic partnership, birth, adoption or placement for adoption, guardianship;

(b) Subscriber loses an eligible dependent or a dependent no longer meets PEBB eligibility criteria;

(c) Subscriber has a change in marital status, including legal separation documented by a court order;

(d) Subscriber or a dependent loses comprehensive group insurance coverage;

(e) Subscriber or one of the subscriber's dependents has a change in employment status that affects whether enrollment in PEBB insurance coverage will benefit the subscriber or the subscriber's dependent: This includes beginning or end of employment, beginning or returning from an unpaid leave of absence, strike or lockout, change in worksite, becoming eligible for or ceasing to be eligible for employer benefits;

(f) Subscriber or a dependent has a change in place of residence that affects the subscriber's or the dependent's health plan eligibility or the benefits or cost of the insurance coverage;

(g) Subscriber receives a court order or medical support enforcement order requiring the subscriber, their spouse, or qualified domestic partner to provide insurance coverage for an eligible dependent. (A former spouse is not an eligible dependent.);

(h) Subscriber receives formal notice that the department of social and health services has determined it is more cost-effective to enroll an eligible dependent in PEBB medical than a medical assistance program.

(5) **Subscribers may waive (interrupt or postpone) enrollment of an eligible dependent.**

(a) Employees may only waive dependents if those dependents are enrolled in other comprehensive group insurance coverage. Employees may only waive an eligible dependent's enrollment at the following times:

(i) When the employee is first eligible and enrolls in PEBB benefits. (The dependent's enrollment will be waived beginning with the employee's effective date.);

(ii) During the annual open enrollment. (The dependent's enrollment will be waived beginning January of the following year.);

(iii) No later than sixty days after the dependent becomes eligible as described in subsection (3) of this section. (The dependent's enrollment will be waived beginning the date enrollment would have begun.); or

(iv) During a special open enrollment as described in subsection (4) of this section. (The dependent's enrollment will be waived as of the date corresponding to the change in status that created the special open enrollment.)

(b) Retirees, survivors or individuals continuing PEBB insurance coverage under WAC 182-12-133 or 182-12-270 may waive enrollment of an eligible dependent outside of the

annual open enrollment or a special open enrollment. Unless otherwise approved by the PEBB benefits services program, enrollment will be waived prospectively.

(c) Subscribers may enroll eligible dependents that were waived as stated in subsections (2) and (4) of this section.

(6) **Subscribers must remove dependents from the subscriber's insurance coverage within sixty days of the date the dependent no longer meets eligibility criteria** in WAC 182-12-250 or 182-12-260. Insurance coverage enrollment ends the last day of the month in which the dependent is eligible.

Subscribers may remove a lawful spouse from PEBB insurance coverage in the event of legal separation documented by a court order, provided the court did not order the subscriber to maintain the spouse's health plan enrollment. Subscribers must remove former spouses and former qualified domestic partners upon finalization of a divorce, annulment, or termination of a partnership, even if a court order requires the subscriber to provide health insurance for the former spouse or partner.

Consequences for not submitting notice as described in subsection (7) of this section within sixty days of any dependent ceasing to be eligible may include:

(a) The dependent's loss of eligibility to continue health plan enrollment under one of the continuation options described in WAC 182-12-270;

(b) The subscriber being billed for claims paid by the health plan for services after the dependent lost eligibility; and

(c) The subscriber being responsible for premiums paid by the state for the dependent's health plan enrollment after the dependent lost eligibility.

(7) **Subscribers must submit the appropriate enrollment form(s) within the time frames described in this subsection.** Employees submit the enrollment form(s) to their employing agency. All other subscribers submit the enrollment form(s) to the PEBB benefits services program. In addition to the appropriate forms indicating dependent enrollment, the PEBB benefits services program may require the subscriber to provide evidence of eligibility or evidence of the event that created the special open enrollment.

(a) If a subscriber wants to enroll their eligible dependent(s) when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the enrollment form(s) that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the annual open enrollment, the subscriber must submit the appropriate enrollment forms(s) no later than the end of the open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the subscriber must submit the appropriate enrollment form(s) no later than sixty days after the dependent becomes eligible.

(d) If the subscriber wants to enroll a child age twenty or older as a registered student, the subscriber must submit the appropriate enrollment form(s) required to certify the child as a student no later than sixty days after the first day of the

month of the quarter or semester that the subscriber wants to enroll the student in PEBB insurance coverage.

(e) If the subscriber wants to enroll a child age twenty or older as a child with disabilities, the subscriber must submit the appropriate enrollment form(s) required to certify the dependent's eligibility within the relevant time frame described in WAC 182-12-250(3) or 182-12-260(5).

(f) If the subscriber wants to change a dependent's enrollment status during a special open enrollment, the subscriber must submit the appropriate enrollment form(s) no later than sixty days after the event that creates the special open enrollment.

(g) If the subscriber wants to waive a dependent's enrollment, the subscriber must submit the appropriate enrollment form. Unless otherwise approved by the PEBB benefits services program, enrollment will be waived prospectively.

### WSR 08-04-099

#### EXPEDITED RULES

#### OFFICE OF

#### FINANCIAL MANAGEMENT

[Filed February 5, 2008, 4:13 p.m.]

Title of Rule and Other Identifying Information: WAC 82-50-021 Official state lagged semimonthly pay dates established.

#### NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Roselyn Marcus, Office of Financial Management (OFM), P.O. Box 43113, Olympia, WA 98504-3113, AND RECEIVED BY April 8, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 82-50-021 publishes the official lagged, semimonthly pay dates for state officers and employees. This WAC, which provides pay dates for the current and ensuing calendar years, is amended each year to add pay dates for the ensuing year and delete the pay dates for the previous year. The purpose of this filing is to establish official pay dates for state officers and employees for calendar year 2009 and delete the obsolete pay dates for calendar year 2007.

Reasons Supporting Proposal: The statute requires that OFM annually update and publish state pay dates.

Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.

Statute Being Implemented: RCW 42.16.010(1) and 42.16.017.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Nielson, 6639 Capitol Boulevard, Tumwater, (360) 664-7681; Implementation and Enforcement: Wendy Jarrett, 6639 Capitol Boulevard, Tumwater, (360) 664-7675.

February 5, 2008  
Roselyn Marcus  
Director of Legal Affairs  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-11-015, filed 5/3/07, effective 6/3/07)

**WAC 82-50-021 Official lagged, semimonthly pay dates established.** Unless exempted otherwise under the provisions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semi-monthly pay dates for calendar years (~~(2007 and)~~) 2008 and 2009:

~~((CALENDAR YEAR 2007~~  
~~Wednesday, January 10, 2007~~  
~~Thursday, January 25, 2007~~  
~~Friday, February 9, 2007~~  
~~Monday, February 26, 2007~~  
~~Friday, March 9, 2007~~  
~~Monday, March 26, 2007~~  
~~Tuesday, April 10, 2007~~  
~~Wednesday, April 25, 2007~~  
~~Thursday, May 10, 2007~~  
~~Friday, May 25, 2007~~  
~~Monday, June 11, 2007~~  
~~Monday, June 25, 2007~~  
~~Tuesday, July 10, 2007~~  
~~Wednesday, July 25, 2007~~  
~~Friday, August 10, 2007~~  
~~Friday, August 24, 2007~~  
~~Monday, September 10, 2007~~  
~~Tuesday, September 25, 2007~~  
~~Wednesday, October 10, 2007~~  
~~Thursday, October 25, 2007~~  
~~Friday, November 9, 2007~~  
~~Monday, November 26, 2007~~  
~~Monday, December 10, 2007~~  
~~Monday, December 24, 2007~~

CALENDAR YEAR 2008  
Thursday, January 10, 2008  
Friday, January 25, 2008  
Monday, February 11, 2008  
Monday, February 25, 2008  
Monday, March 10, 2008  
Tuesday, March 25, 2008  
Thursday, April 10, 2008  
Friday, April 25, 2008  
Friday, May 9, 2008  
Friday, May 23, 2008  
Tuesday, June 10, 2008  
Wednesday, June 25, 2008  
Thursday, July 10, 2008  
Friday, July 25, 2008  
Monday, August 11, 2008  
Monday, August 25, 2008  
Wednesday, September 10, 2008  
Thursday, September 25, 2008  
Friday, October 10, 2008  
Friday, October 24, 2008  
Monday, November 10, 2008  
Tuesday, November 25, 2008  
Wednesday, December 10, 2008  
Wednesday, December 24, 2008))

CALENDAR YEAR 2008  
Thursday, January 10, 2008  
Friday, January 25, 2008  
Monday, February 11, 2008  
Monday, February 25, 2008  
Monday, March 10, 2008  
Tuesday, March 25, 2008  
Thursday, April 10, 2008  
Friday, April 25, 2008  
Friday, May 9, 2008  
Friday, May 23, 2008

CALENDAR YEAR 2009  
Friday, January 9, 2009  
Monday, January 26, 2009  
Tuesday, February 10, 2009  
Wednesday, February 25, 2009  
Tuesday, March 10, 2009  
Wednesday, March 25, 2009  
Friday, April 10, 2009  
Friday, April 24, 2009  
Monday, May 11, 2009  
Friday, May 22, 2009

CALENDAR YEAR 2008  
Tuesday, June 10, 2008  
Wednesday, June 25, 2008  
Thursday, July 10, 2008  
Friday, July 25, 2008  
Monday, August 11, 2008  
Monday, August 25, 2008  
Wednesday, September 10, 2008  
Thursday, September 25, 2008  
Friday, October 10, 2008  
Friday, October 24, 2008  
Monday, November 10, 2008  
Tuesday, November 25, 2008  
Wednesday, December 10, 2008  
Wednesday, December 24, 2008

CALENDAR YEAR 2009  
Wednesday, June 10, 2009  
Thursday, June 25, 2009  
Friday, July 10, 2009  
Friday, July 24, 2009  
Monday, August 10, 2009  
Tuesday, August 25, 2009  
Thursday, September 10, 2009  
Friday, September 25, 2009  
Friday, October 9, 2009  
Monday, October 26, 2009  
Tuesday, November 10, 2009  
Wednesday, November 25, 2009  
Thursday, December 10, 2009  
Thursday, December 24, 2009

**WSR 08-04-105**  
**EXPEDITED RULES**  
**MARINE EMPLOYEES' COMMISSION**

[Filed February 6, 2008, 9:16 a.m.]

Title of Rule and Other Identifying Information: Chapter 316-85 WAC, Surveys—Compensation—Benefits—Employment, WAC 316-85-001 Scope—Contents—Other rules, 316-85-010 Policy—Purpose, 316-85-020 (~~(Fact finding)~~) Salary survey(s)—Content—Coverage, 316-85-030 (~~(Fact finding)~~) Salary survey(s)—Geographic limits, 316-85-040 (~~(Fact finding)~~) Salary survey(s)—Timing, 316-85-050 Washington state ferry system employee data required, 316-85-060 (~~(Fact finding)~~) Salary survey—Conduct, 316-85-070 (~~(Fact finding)~~) Preliminary salary survey findings—(~~(Hearings)~~) Public review, 316-85-080 (~~(Fact finding)~~) Salary survey—Final report, 316-85-090 Additional (~~(fact)~~) salary survey findings, and 316-85-100 (~~(Fact finding)~~) Salary survey report(s)—Public documents.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kathy Marshall, Marine Employees' Commission, P.O. Box 40902, Olympia, WA 98504-0902, AND RECEIVED BY April 7, 2008.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Due to changes in chapter 47.64 RCW during the 2006 and 2007 legislative session, chapter 316-85 WAC required modifications to reflect those changes in chapter 47.64 RCW.

Reasons Supporting Proposal: In compliance with Executive Order 97-02, these rules were reviewed and required changes made to these rules.

Statutory Authority for Adoption: RCW 34.05.230.

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

Name of Proponent: Marine employees' commission, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy J. Marshall, 711 Capitol Way South, Suite 104, (360) 586-6354; Implementation and Enforcement: John R. Swanson, Chairman, 711 Capitol Way South, Suite 104, (360) 586-6354.

February 6, 2008  
Kathy J. Marshall  
Administrator

AMENDATORY SECTION (Amending WSR 90-06-046, filed 3/2/90, effective 4/2/90)

**WAC 316-85-001 Scope—Contents—Other rules.**

This chapter governs proceedings before the marine employees' commission relating to ~~((fact-finding))~~ a survey((s)) of compensation, benefits, and conditions of employment. This chapter does not contemplate, and does not provide procedures for, investigation and/or settlement of contested cases between parties. ~~((Therefore,))~~ Hearings held in reaching conclusions in the ~~((fact-finding))~~ salary survey required by RCW 47.64.220 are not ~~((deemed))~~ considered to be adjudicatory in nature and not governed by RCW 34.05.425 or 34.12.020 or chapter 10-08 WAC. However, ~~((insofar as))~~ where additional ~~((fact-finding))~~ salary survey findings may be requested by parties involved in dispute or impasse in accordance with RCW 47.64.220, the provisions of this chapter should be read ~~((in conjunction))~~ together with the provisions of:

(1) Chapter 316-02 WAC, which ~~((contains))~~ lists rules of practice and procedure applicable to all types of proceedings before the marine employees' commission;

(2) Chapter 316-45 WAC, which ~~((contains))~~ lists rules relating to proceedings on complaints charging unfair labor practices in the Washington state ferry system;

(3) Chapter 316-55 WAC, which ~~((contains))~~ lists rules relating to the resolution of impasses occurring in ferry system collective bargaining; and

(4) Chapter 316-65 WAC, which ~~((contains))~~ lists rules relating to arbitration of grievance disputes arising out of the interpretation or application of a collective bargaining agreement in the Washington state ferry system.

AMENDATORY SECTION (Amending WSR 90-06-046, filed 3/2/90, effective 4/2/90)

**WAC 316-85-010 Policy—Purpose.** Prior to collective bargaining between the Washington state ferry system and the ferry employee organizations, the commission shall conduct ~~((certain fact-finding))~~ a survey((s)) as ~~((hereinafter))~~ described in this chapter. ~~((Such))~~ This survey((s)) shall be used to guide generally but not to define or limit collective bargaining between the parties.

AMENDATORY SECTION (Amending WSR 01-01-124, filed 12/19/00, effective 1/19/01)

**WAC 316-85-020 ~~((Fact-finding))~~ Salary survey((s))—Content—Coverage.** In conducting its prebargaining survey, and publishing the findings, the commission shall make comparisons of wages, hours, employee benefits, and conditions of employment of Washington state ferry employees with those of public and private sector employees doing directly comparable but not necessarily identical work. In making its comparisons between and among employers, the commission shall recognize the principle that the greater the degree of comparability between work requirements and conditions of employment, the greater will be the validity of comparisons of wages and employee benefits. The commission shall give consideration to factors peculiar to the area and the classifications involved.

In determining the scope of the survey and in selecting the ferry systems or other employers to be included in the survey, the commission shall consider the size, tonnage, and horsepower of the vessels operated by the Washington state ferry system and by the employers to be included in the survey. The commission shall not include those classifications of employees exempted ~~((pursuant to))~~ as outlined in RCW 41.06.079.

Except as provided in the following subsection of this section, salary and employee benefit information collected from private employers that identifies a specific employer with the salary and employee benefit rates which that employer pays to its employees is not subject to public disclosure under chapter ~~((42.17))~~ 42.56 RCW.

A person or entity, having reason to believe that the salary survey results are inaccurate, may submit a petition to the state auditor requesting an audit of the data ~~((upon))~~ on which the salary survey results are based. The state auditor shall review and analyze all data collected for the salary survey, including proprietary information, but is prohibited from disclosing the salary survey data to any other person or entity, except by court order.

AMENDATORY SECTION (Amending WSR 90-06-046, filed 3/2/90, effective 4/2/90)

**WAC 316-85-030 ~~((Fact-finding))~~ Salary survey((s))—Geographic limits.** The commission shall limit its prebargaining ~~((fact-finding))~~ salary survey((s)) to ferry systems and other employers located in states along the west coast, including Alaska, and in British Columbia.

AMENDATORY SECTION (Amending WSR 90-06-046, filed 3/2/90, effective 4/2/90)

**WAC 316-85-040 ~~((Fact-finding))~~ Salary survey((s))—Timing.** (1) ~~((No later than September 10 of each even-numbered))~~ In the fall of each odd-numbered year the commission shall notify the department of transportation and the ferry employee organizations that the commission is starting ~~((a fact-finding))~~ the salary survey required by RCW 47.64.220.

(2) No later than ~~((the following))~~ October 1 of each odd-numbered year, the department and the ferry employee

organizations shall each inform the commission of any particular personnel positions or classifications which may be expected to receive extraordinary attention during the next renewal of agreements.

AMENDATORY SECTION (Amending WSR 90-06-046, filed 3/2/90, effective 4/2/90)

**WAC 316-85-050 Washington state ferry system employee data required.** ~~((In order))~~ To assure maximum effectiveness and minimal error in its ~~((fact-finding))~~ salary survey~~((s))~~, no later than October 1 of each ~~((even-numbered))~~ odd-numbered year, the department shall also provide the commission with the following data:

(1) A complete and current set of specifications for each position classification occupied by ferry employees except those exempted ~~((pursuant to))~~ as outlined in RCW 41.06.-079. Each classification specification shall include as a minimum:

- (a) Classification title;
- (b) General definition;
- (c) Typical duties and responsibilities;
- (d) Special or extraordinary but recurring conditions of employment, if any;
- (e) Direction/supervision received;
- (i) Degree of closeness and frequency;
- (ii) Source of direction/supervision;
- (f) Direction/supervision exercised;
- (i) Over which classifications;
- (ii) Number(s) of personnel;
- (g) Minimum requirements for initial appointment;
- (i) Licensure or certificate;
- (ii) Education;
- (iii) Work experience;
- (h) Additional desirable qualifications, knowledge abilities;

(2) Wages/salaries currently paid to personnel described in foregoing specifications for regular hours worked;

(3) Current premium pay;

(a) Overtime;

(b) Other irregular hours;

(c) Hazards;

(4) Employee benefits currently paid or furnished by the department and, where appropriate, the proportion paid by the employee by payroll deduction or by reduction of compensation ~~((pursuant to))~~ as outlined in RCW 47.64.270.

AMENDATORY SECTION (Amending WSR 90-06-046, filed 3/2/90, effective 4/2/90)

**WAC 316-85-060 ((Fact-finding)) Salary survey— Conduct.** (1) After receiving the information required in WAC 316-85-040(2) and 316-85-050, the commission shall make inquiry of other ferry systems and other employers by U.S. mail ((or in person)), by voice mail, electronically, by facsimile, or in person. The commission shall then conduct ~~((such))~~ field audits or desk audits ~~((as))~~ deemed necessary for valid comparisons~~((;))~~ and analyze the accumulated salary and benefit data ~~((thus accumulated))~~.

(2) In conducting its survey and in analyzing its data, the commission shall consider factors ~~((peculiar))~~ unique to the

areas from which the data were accumulated ~~((pursuant to))~~ as outlined in RCW 47.64.220 ((and 47.64.240 (9)(b))) and WAC 316-85-020, including but not limited to:

(a) Comparison of rates of monetary exchange;

(b) Differential costs of living in each area compared with the Seattle cost of living index, and employer compensation therefor, if any;

(c) The cost effect of universal health care coverage provided by British Columbia or a state, if any, as compared with the fee for service and/or health maintenance organization health care coverage provided by the state of Washington.

(3) The commission shall not include in its survey any employer who is involved in a strike or lockout or whose wage-benefit package is indeterminate for any other known reason.

(4) ~~((No later than December 15))~~ At the December public commission meeting, the commission shall compile a preliminary draft of findings regarding wages, employee benefits, and other compensation being paid to other employees as compared with wages, employee benefits, and other compensation being paid by the Washington state ferry system. The preliminary draft of findings shall be distributed to the department and to the ferry employee organizations.

AMENDATORY SECTION (Amending WSR 90-06-046, filed 3/2/90, effective 4/2/90)

**WAC 316-85-070 ((Fact-finding)) Preliminary salary survey findings—((Hearings)) Public review.** (1) ~~((No later than January 10 of))~~ At the January public commission meeting each ((odd-numbered)) even-numbered year, the commission shall conduct a public review of its preliminary survey findings, after soliciting comments and suggestions for improvement of validity of ~~((said))~~ the preliminary survey findings from the department and from the ferry employee organizations.

(2) The commission shall immediately ~~((thereafter))~~ investigate and/or reanalyze all comments and questions raised by the department or ferry employee organizations. If necessary to resolve doubts raised about validity, the commission shall perform ~~((such))~~ additional field or desk audits as may be necessary and feasible.

AMENDATORY SECTION (Amending WSR 90-06-046, filed 3/2/90, effective 4/2/90)

**WAC 316-85-080 ((Fact-finding)) Salary survey— Final report.** ~~((No later than March 1 of each odd-numbered year, the commission shall publish and distribute to all parties its final prebargaining fact-finding survey report.))~~ At the February public commission meeting each even-numbered year, the final report will be presented by the commission for commission approval.

The final report shall be published and distributed to all parties within one month of approval of the final salary survey report.



AMENDATORY SECTION (Amending WSR 90-06-046, filed 3/2/90, effective 4/2/90)

**WAC 316-85-090 Additional ((~~fact~~) salary survey findings.** In addition to the prebargaining survey((s)) described in this chapter, the commission shall make such other findings ((~~of fact~~)) as the parties may request during bargaining or impasse.

AMENDATORY SECTION (Amending WSR 90-06-046, filed 3/2/90, effective 4/2/90)

**WAC 316-85-100 ((~~Fact finding~~) Salary survey report((s))—Public documents.** All ((~~fact finding~~)) salary survey reports issued by the commission shall be in writing and shall be public documents.