

**WSR 14-15-154  
PROPOSED RULES  
DEPARTMENT OF HEALTH**

[Filed July 23, 2014, 11:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-24-103.

Title of Rule and Other Identifying Information: Chapter 246-790 WAC, Special supplemental nutrition program for women, infants, and children (WIC), proposed amendments to authorizing retailer rules to reflect changes in federal requirements and agency policy.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Point Plaza East Room 251, Tumwater, WA 98504, on September 16, 2014, at 1:30 p.m.

Date of Intended Adoption: September 16, 2014.

Submit Written Comments to: Daniel O'Neill, P.O. Box 47886, Olympia, WA 98504-7886, e-mail Daniel.O'Neill@doh.wa.gov, fax (360) 236-2345, by September 12, 2014.

Assistance for Persons with Disabilities: Contact Jane Basler by September 12, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amends chapter 246-790 WAC which regulates the department's food delivery system within the WIC program. The proposal provides support for the operation of the WIC nutrition program, assists in recontracting with retail partners, and maximizes agency options for determining participant access. Proposed changes will allow for necessary clarifications and consistency with federal rules and directives, including expanding the proposed definition of "full line grocery store" and updating definitions. The proposed rule also provides a solid foundation for WIC modernization, including fulfilling federal directives to implement an electronic benefit transfer system for WIC.

Reasons Supporting Proposal: Stakeholder and contractor transparency, increased accountability, and reduced costs related to the appeals process. Also, in order to continue to receive federal funding the rules need to be in compliance with federal recontracting regulations.

Statutory Authority for Adoption: RCW 43.70.120.

**Table A:**

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Receipts
445110	Washington Grocery Stores	1486	9,190	26,117

**Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or review [revenue].**

The WIC program consists of the two hundred twenty-five contractors representing approximately eight hundred individual grocery stores and supermarket chains, which is a subset of the approximate 1,486 grocery stores in Washington state.

Statute Being Implemented: RCW 43.70.120.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Daniel O'Neill, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-3681; and Enforcement: Janet Charles, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-3697.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

**Small Business Economic Impact Statement**

**Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

The proposed rule amends chapter 246-790 WAC which regulates the department's food delivery system within the WIC program. The proposal will assure support for the operation of the WIC nutrition program, assist in recontracting with our retail partners, and maximize agency options for determining participant access and applying sanctions. Proposed changes will allow for necessary clarifications and consistency with C.F.R. and FNS rules and directives, including expanding the proposed definition of "full line grocery store," updating definitions, and including a sanction table. Although 7 C.F.R. 246 describes the WIC program's purpose and scope in greater detail, there are operational areas where the state has discretion. This will also provide a solid foundation for WIC modernization, including fulfilling federal directives to implement an electronic benefit transfer system for WIC.

**Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.**

The department used the survey to get input from retailers on the potential impact of proposed changes to what constitutes a "full line grocery store." This includes four main components. The first is the minimum number of items (e.g., cans, packages, gallons of milk) for the existing required food categories. The second component is a minimum number of fresh or perishable items. The third component is having at least five linear feet of refrigerated shelf space for produce. The fourth component is having a cash register on premises that is capable of printing receipts.

**Table 1 - Summary of Survey Responses**

#	Potential cost category	Will impact operations?	Estimated impact <sup>1</sup>
1	Ten varieties <sup>2</sup> of frozen food	Yes: 2/77 (2.6%) No: 75/77 (97.4 %)	One cost estimate: \$500.00
2	Six varieties of meat	Yes: 4/77 (5.19%) No: 73/77 (94.81%)	Two cost estimates: \$60.00 and \$100.00
3	Ten varieties of whole grains	Yes: 1/76 (1.32%) No: 75/76 (98.68%)	One cost estimate: \$200.00
4	Five linear feet of refrigerated display for produce	Yes: 4/73 (5.48%) No: 69/73 (94.52%)	Department obtained costs for five linear feet of refrigerated unit, the price ranged from \$1,806 - \$3,124 <sup>3</sup>
5	At least one cash register capable of printing receipts <sup>4</sup>	Yes: 9/73 (12.33%) No: 64/73 (87.67%)	Nine respondents indicated that they will need to purchase at least one cash machine to be in compliance.  Department obtained costs for one cash register ranged \$169.99 - \$372.79

The complete survey results are attached as Appendix 2

- 1 The first three rows of the table are upfront costs that the retailer will need to pay their distributor to purchase the minimum required items. The retailer will recoup these costs when they sell the item(s).
- 2 The department defines "variety" as "similar, but not identical, foods and products that may include different brands, sizes or flavors of similar foods or products."
- 3 The department did a price search for 60" refrigeration units on the internet. The five cost estimates ranged from \$1,806 to \$3,124.
- 4 Of these nine respondents, some indicated that they would elect to purchase more than the one register required by the department.

**Analyze whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

The department's assumption is that the proposed rule will not cause businesses to lose sales [or] revenue.

**Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.**

Over ninety percent of the stores that responded to the survey indicated that they already comply with proposed rules. There were, however, a few grocery stores that indicated they would incur costs to comply with the proposed rule. For these few stores, collectively, the potential cost of the rule is significantly lower than the \$9,190.00 minor cost threshold. Although not required, the department is electing to complete this analysis.

**Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule.**

The proposed rules set consistent requirements for all sizes of full line grocery stores. Consistent requirements were

needed to assure that applicant grocery stores are aware of program requirements for authorization, which facilitates a consistent shopping experience for WIC clients.

Given that some of the estimated costs will be incurred by small grocery stores, these costs will have a disproportionate impact, largely because the costs are consistent (e.g., cost for minimum inventory, refrigeration, fresh/perishable produce and cash machines).

**Describe how small businesses were involved in the development of the proposed rule.**

The department facilitates a WIC retailer advisory committee. The committee has representatives from the Washington Food Industry Association, and retailers representing a wide range of both size and types of retailers (see Appendix 1 - Full list of Peer Groups). The department created a draft rule and forwarded the draft to the retailer advisory committee in March for review and comment. The committee submitted comments and met with program staff to recommend changes to the draft rules. The department incorporated many of their recommendations. To further gauge the potential impact of the proposed rules on WIC authorized vendors, the department elected to send a survey to all WIC vendors, which included all small businesses that are currently WIC authorized.

In May 2014, the department sent all two hundred twenty-five contractors an opinion [opinion] survey request via e-mail with a response window of ten days. Eighty-seven respondents submitted responses, representing a 38.6 percent response rate. This included fifty-one respondents from Peer Group 1, which are retailers with 1-4 cash registers, which the department assumes are small businesses (i.e., grocery stores with fifty or fewer employees).

**Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.**

The department's assumption is that the proposed rule will not impact the number of jobs in this industry. Grocery stores will not have to hire of [or] fire any employees because of this rule.

**Appendix 1**

**Special Supplemental Nutrition Program for Women, Infant and Children (WIC)**

**WIC Authorized Vendor Peer Groups in Washington State**

- Peer Group 1 1-4 Cash Registers**
- Peer Group 2 5-10 Cash Registers**
- Peer Group 3 11-16 Cash Registers**
- Peer Group 4 17-24 Cash Registers**
- Peer Group 5 25 or more Cash Registers**
- Peer Group 6 Tribal Owned Stores**
- Peer Group 7 Military Stores**
- Peer Group 8 (No Peer Group 8)**
- Peer Group 9 Island Stores**

**Appendix 2**  
**Comment Report**

*Lists all the questions in the survey and displays all the comments made to these questions, if applicable.*

**Table of Contents**

Report info . . . . .

**Question 1:** Please indicate your peer group or the number of cash registers in your store . . . . .

**Question 2:** My store stocks at least 20 varieties of canned foods. . . . .

**Question 3:** My store stocks at least 10 varieties of frozen foods . . . . .

**Question 4:** My store stocks at least 10 varieties of dairy products . . . . .

**Question 5:** My store stocks at least 6 varieties of fresh and frozen meats . . . . .

**Question 6:** My store stocks at least 20 varieties of fresh fruits and vegetables. . . . .

**Question 7:** My store stocks at least 10 varieties of breads and tortillas . . . . .

**Question 8:** My store stocks at least 10 varieties of grains, pasta and dried beans . . . . .

**Question 9:** My store stocks at least 10 varieties of baby products . . . . .

**Question 10:** My store stocks at least 10 varieties of household cleaners . . . . .

**Question 11:** My store stocks at least 20 varieties of healthcare products . . . . .

**Question 12:** With the proposed minimum varieties for perishable items (dairy products, fresh fruits and vegetables)

**Question 13:** Does your store currently have a minimum of five linear feet of refrigerated display space . . . . .

**Question 14:** Are your electronic cash registers capable of producing receipts that include a description of . . . . .

**Report Info**

**Report date:** Tuesday, June 10, 2014 1:39:26 PM PDT

**Start date:** Wednesday, May 7, 2014 10:43:00 AM PDT

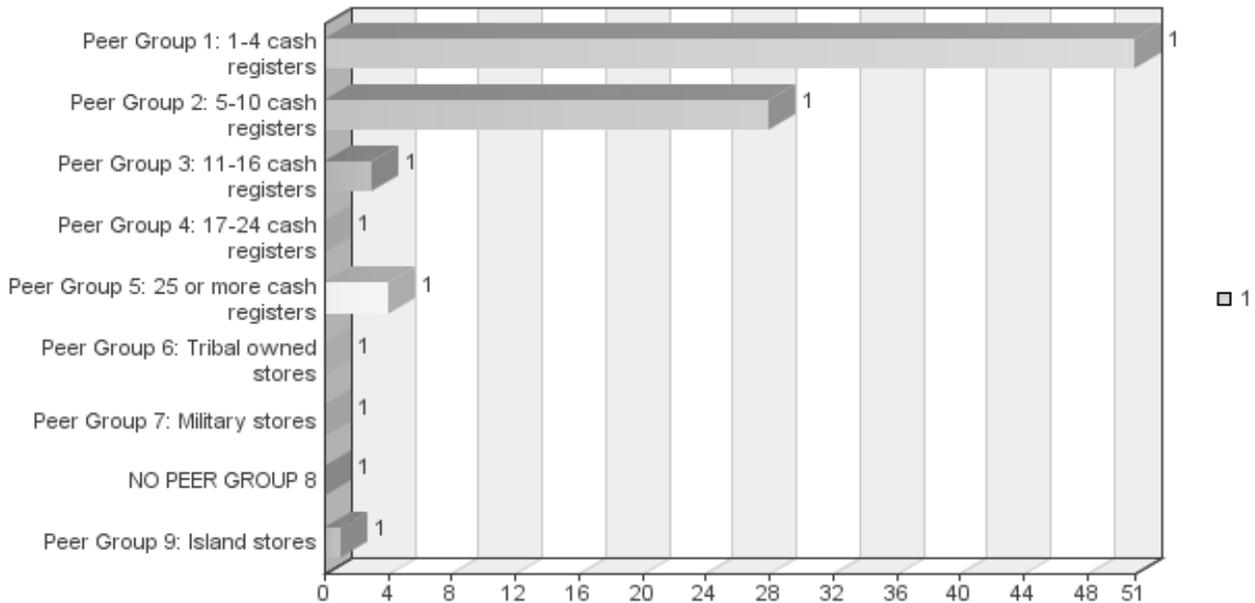
**Stop date:** Sunday, June 8, 2014 11:59:00 PM PDT

**Stored responses:** 94

**Number of completed responses:** 73

**Question 1**

Please indicate your peer group or the number of cash register in your store. My store is in (check the appropriate row below):



	<b>1</b>	<b>Sum</b>
<b>Peer Group 1: 1-4 cash registers</b>	51 100% 58.62%	51 100% 58.62%
<b>Peer Group 2: 5-10 cash registers</b>	28 100% 32.18%	28 100% 32.18%

	1	Sum
<b>Peer Group 3: 11-16 cash registers</b>	3 100% 3.45%	3 100% 3.45%
<b>Peer Group 4: 17-24 cash registers</b>	0 0% 0%	0 0% 0%
<b>Peer Group 5: 25 or more cash registers</b>	4 100% 4.6%	4 100% 4.6%
<b>Peer Group 6: Tribal owned stores</b>	0 0% 0%	0 0% 0%
<b>Peer Group 7: Military stores</b>	0 0% 0%	0 0% 0%
<b>NO PEER GROUP 8</b>		0 0% 0%
<b>Peer Group 9: Island stores</b>	1 100% 1.15%	1 100% 1.15%
<b>Sum</b>	87 - 100%	87 - 100%

\* Sequence of numbers in a cell

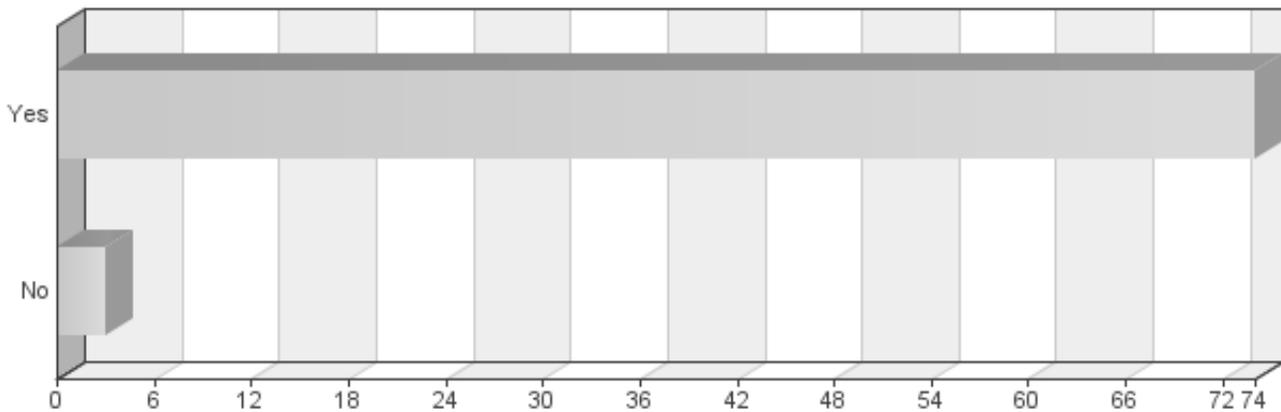
Absolute frequency

Relative frequency row

Relative frequency

**Question 2**

My store stocks at least 20 varieties of canned foods.



**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	74	78.72%	96.1%
No	3	3.19%	3.9%

**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Sum:	77	81.91%	100%
Not answered:	17	18.09%	-

**Total answered: 77**

Text input

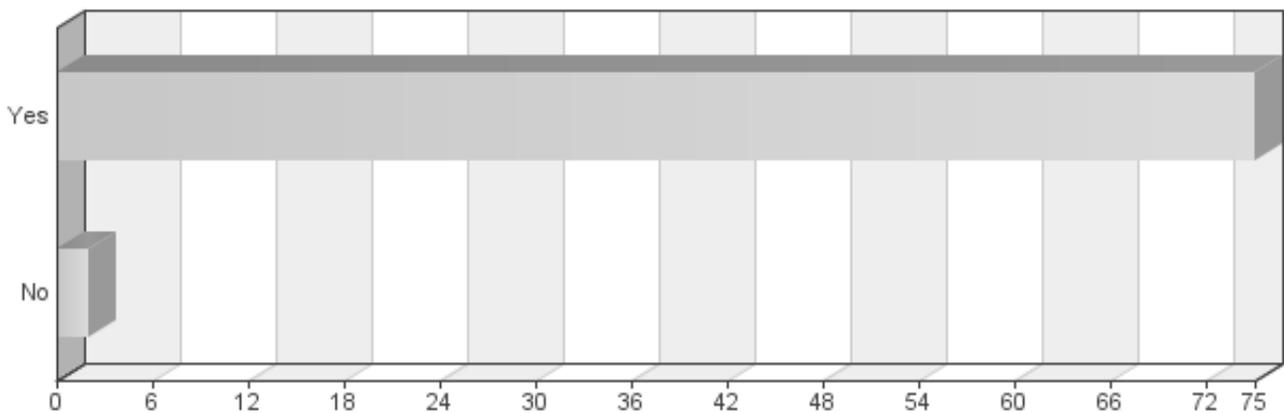
Canned beans,vegetable, chili, sauce, dates.

7

We do not stock twenty varieties of canned [foods]. We have less than ten varieties of canned foods and drinks altogether.

**Question 3**

My store stocks at least 10 varieties of frozen foods.



**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	75	79.79%	97.4%
No	2	2.13%	2.6%
Sum:	77	81.91%	100%
Not answered:	17	18.09%	-

**Total answered: 77**

Text input

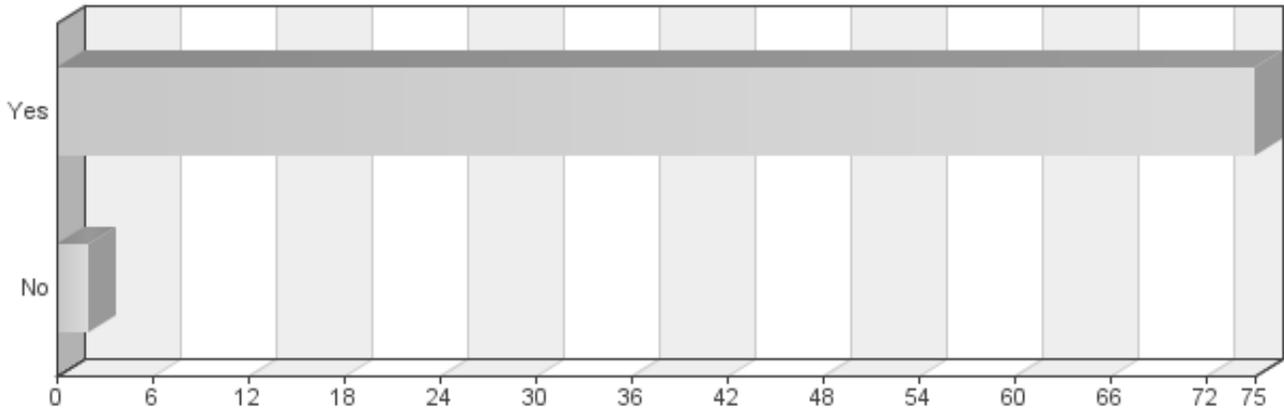
500.00

Hot dog, chicken parties [parts], gyro bread and green vegetable.

Only frozen fruits and vegetables.

**Question 4**

My store stocks at least 10 varieties of dairy products.



**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	75	79.79%	97.4%
No	2	2.13%	2.6%
Sum:	77	81.91%	100%
Not answered:	17	18.09%	-

**Total answered: 77**

Text input

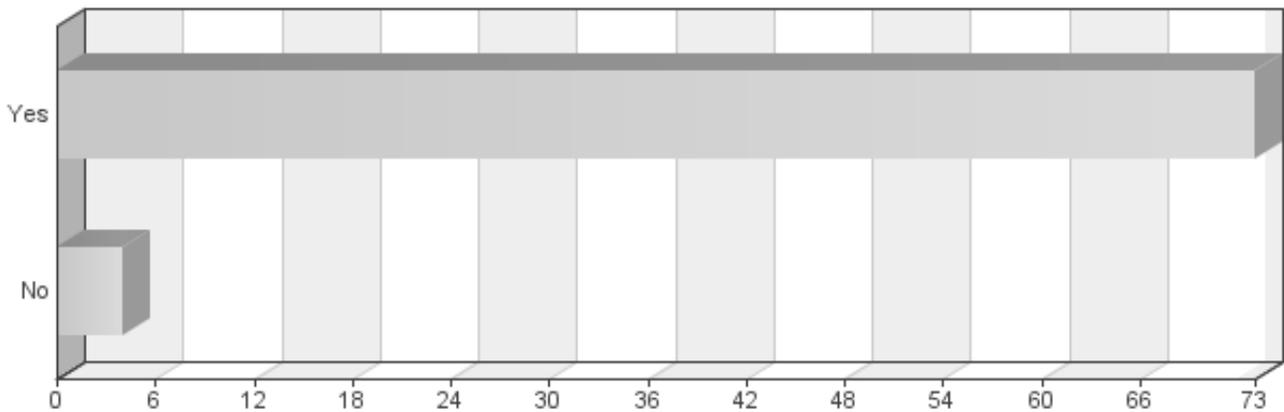
Yogurt, cream cheese.

6

We stock at least one case of yogurt or whipped cream or sour cream.

**Question 5**

My store stocks at least 6 varieties of fresh and frozen meats.



**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	73	77.66%	94.81%
No	4	4.26%	5.19%

Frequency Table

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Sum:	77	81.91%	100%
Not answered:	17	18.09%	-

**Total answered: 77**

Text input

Hot dog, chicken parties [parts], gyro bread, goat meat, chicken legs, chicken breast.

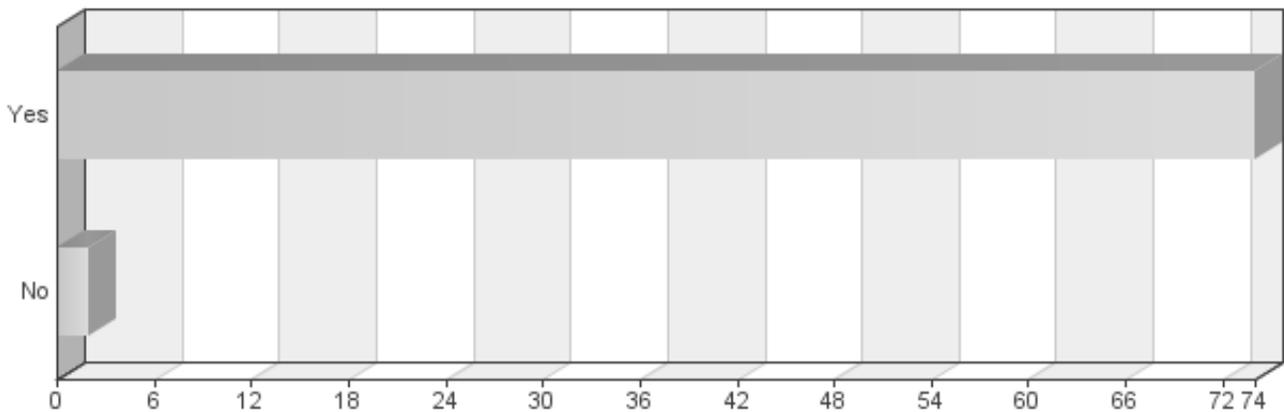
Two varieties cost \$60

Goat, lamb, beef, thigh and breast chicken, chicken drums, tilapia and salmon fish.

Stock three cost \$100.00 +/-

**Question 6**

My store stocks at least 20 varieties of fresh fruits and vegetables.



Frequency Table

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	74	78.72%	97.37%
No	2	2.13%	2.63%
Sum:	76	80.85%	100%
Not answered:	18	19.15%	-

**Total answered: 76**

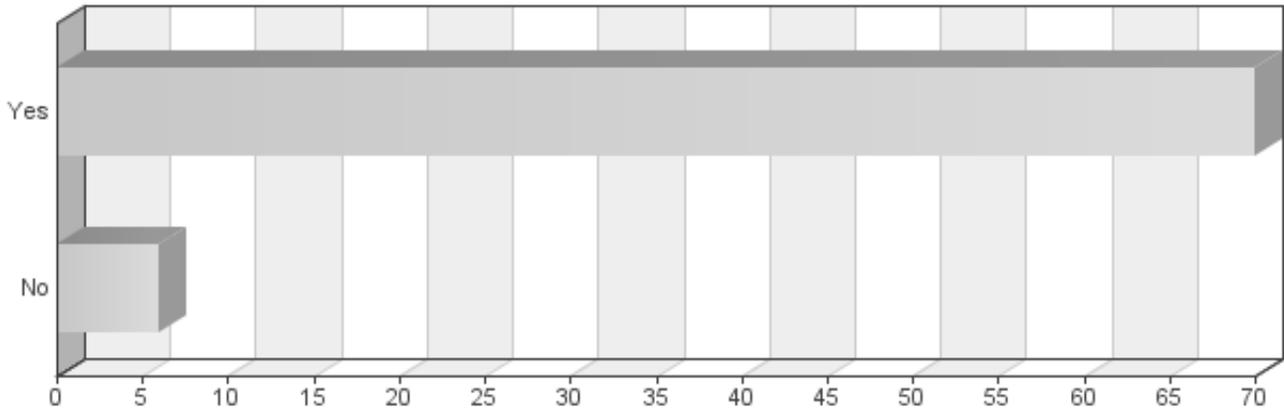
Text input

Banana, apple, tomato, onion, cabbage, green pepper, orange, mango, lettuce, lemon. ten total varieties based on seasonal availability.

We stock fresh fruits include [including]: Banana, mango, lemons, limes, strawberries, etc. Vegetables: Lettuce, onions, tomatoes, garlic, cucumber, green peppers, hot peppers, etc.

**Question 7**

My store stocks at least 10 varieties of breads and tortillas.



**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	70	74.47%	92.11%
No	6	6.38%	7.89%
Sum:	76	80.85%	100%
Not answered:	18	19.15%	-

**Total answered: 76**

Text input

100% wheat sliced bread, flour bread.

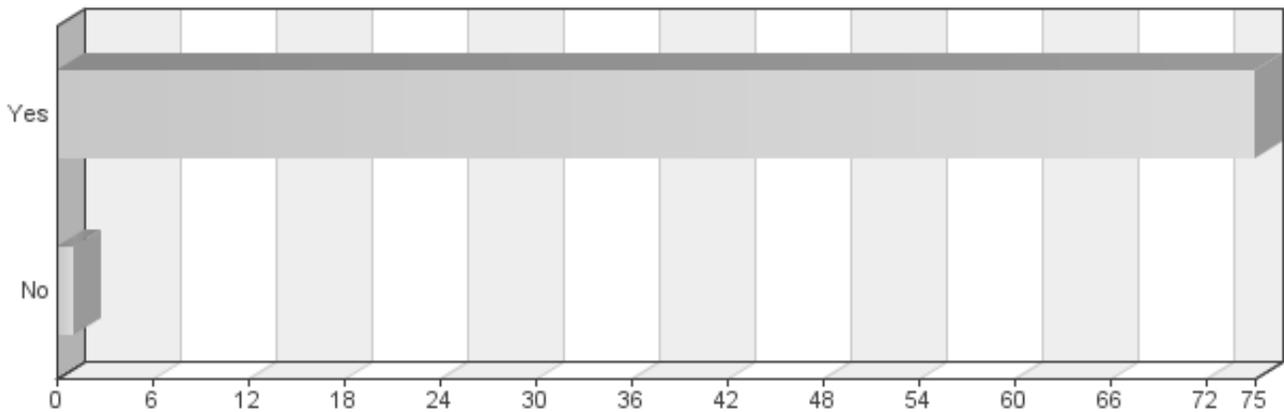
Only one brand of whole wheat bread, and some tortillas.

6

We carry at least three types sliced bread and three types of tortillas.

**Question 8**

My store stocks at least 10 varieties of grains, pasta and dried beans.



**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	75	79.79%	98.68%

**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
No	1	1.06%	1.32%
Sum:	76	80.85%	100%
Not answered:	18	19.15%	-

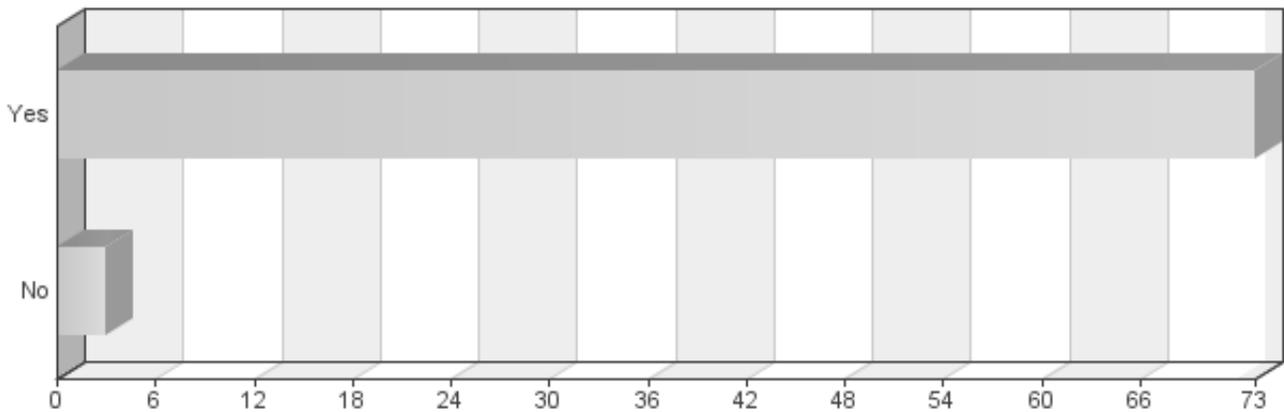
**Total answered: 76**

Text input

200.00

**Question 9**

My store stocks at least 10 varieties of baby products.



**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	73	77.66%	96.05%
No	3	3.19%	3.95%
Sum:	76	80.85%	100%
Not answered:	18	19.15%	-

**Total answered: 76**

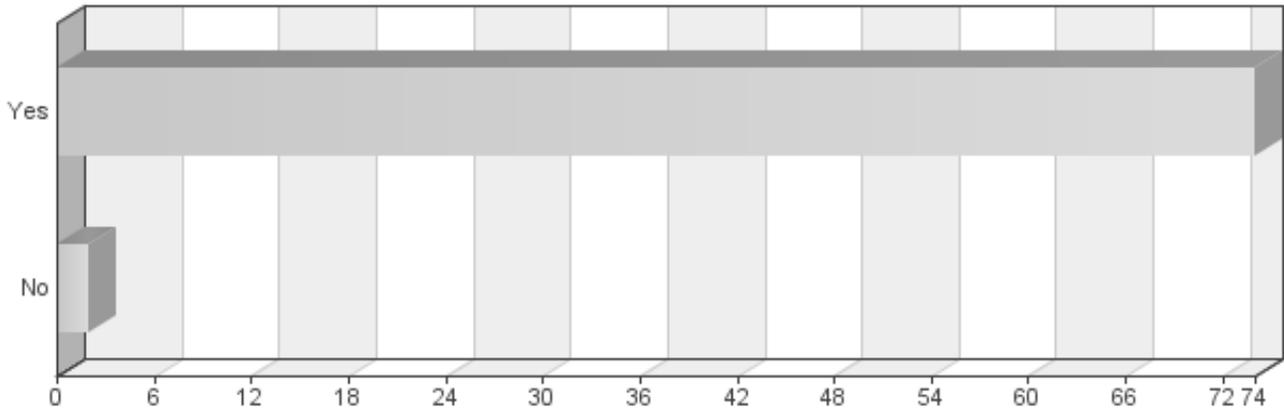
Text input

Diapers, baby wipes, baby shampoo, baby lotion.

6

**Question 10**

My store stocks at least 10 varieties of household cleaners.



**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	74	78.72%	97.37%
No	2	2.13%	2.63%
Sum:	76	80.85%	100%
Not answered:	18	19.15%	-

**Total answered: 76**

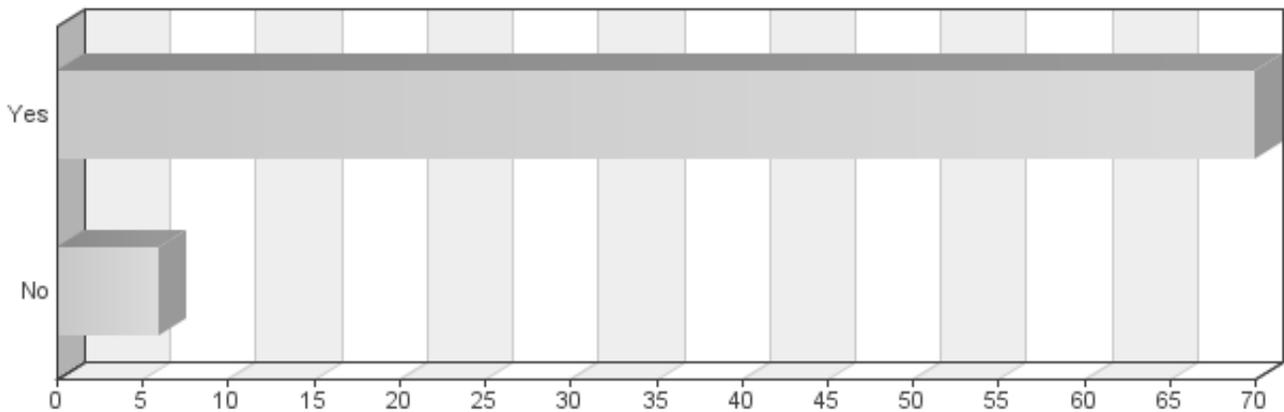
Text input

Dish detergent, bleach, window cleaner, laundry product.

3

**Question 11**

My store stocks at least 20 varieties of healthcare products.



**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	70	74.47%	92.11%
No	6	6.38%	7.89%
Sum:	76	80.85%	100%

**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Not answered:	18	19.15%	-

**Total answered: 76**

Text input

No medications, several varieties of toilet paper, tissues. Not sure if each sku of toilet paper counts toward the twenty, if so we have twenty.

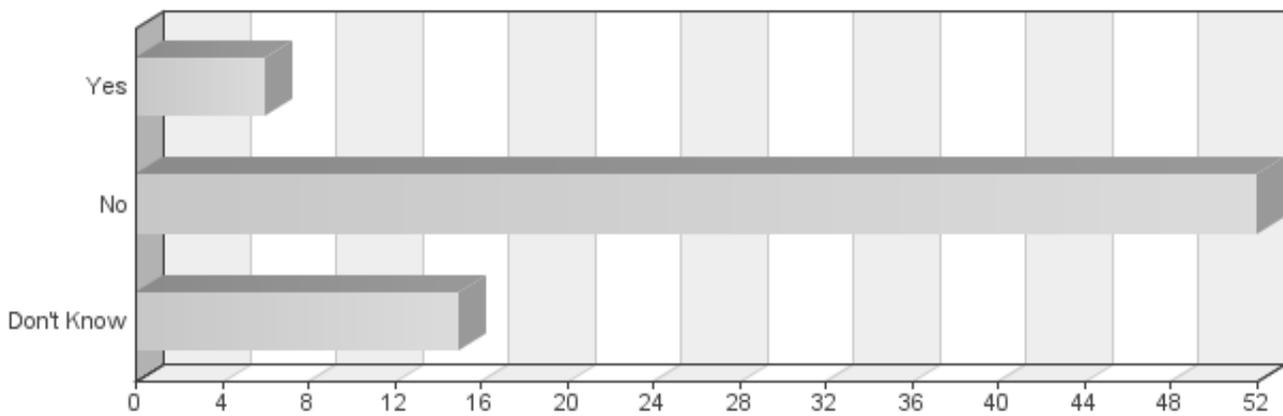
Toothbase [toothpaste], and toilet paper.

5

N/A

**Question 12**

With the proposed minimum varieties for perishable items (dairy products, fresh fruits and vegetables), do you anticipate this will increase the total weekly spoilage for your store?



**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	6	6.38%	8.22%
No	52	55.32%	71.23%
Don't Know	15	15.96%	20.55%
Sum:	73	77.66%	100%
Not answered:	21	22.34%	-

**Total answered: 73**

Text input

[\$]90.00

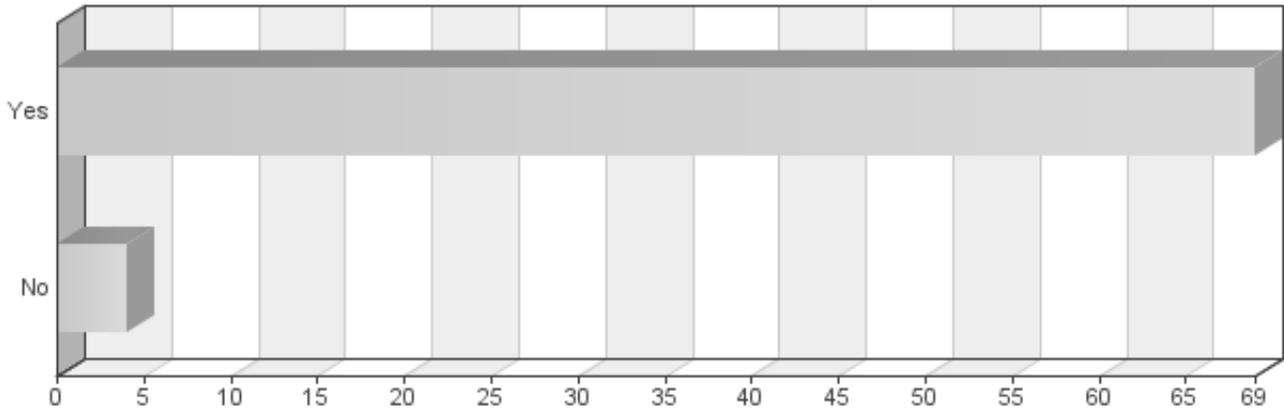
\$120-\$180 pre [per] week

\$90/week

\$50-\$100

**Question 13**

Does your store currently have a minimum of five linear feet of refrigerated display space that may be used for fresh fruits and vegetables?



**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	69	73.4%	94.52%
No	4	4.26%	5.48%
Sum:	73	77.66%	100%
Not answered:	21	22.34%	-

**Total answered: 73**

Text input

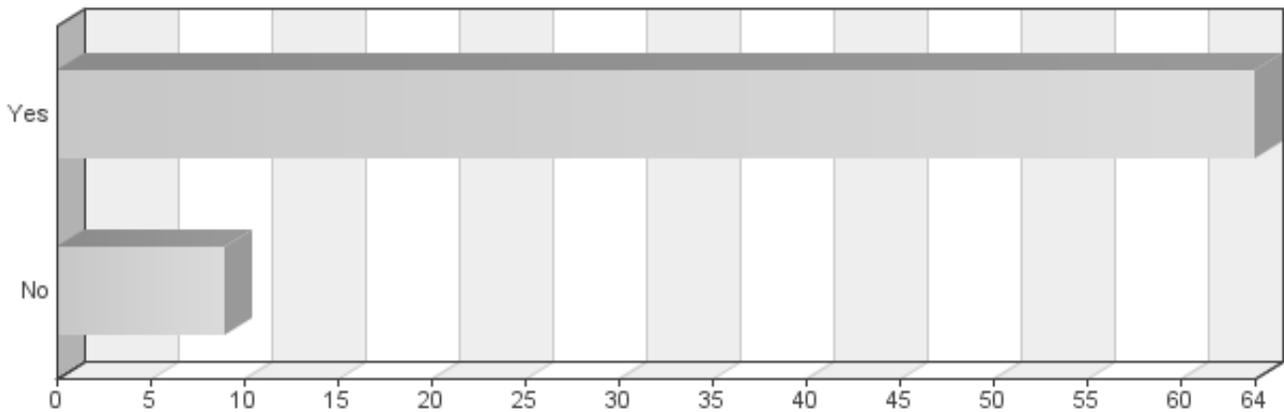
Four linear feet. Three shelves available.

Approximately three feet for one location.

Three feet. Yes I do have fresh fruits and vegetables.

**Question 14**

Are your electronic case [cash] registers capable of producing receipts that include a description of the food product, and the total actual purchase price in addition to the already required information?



**Frequency Table**

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
Yes	64	68.09%	87.67%

Frequency Table

Choices	Absolute frequency	Relative frequency	Adjusted relative frequency
No	9	9.57%	12.33%
Sum:	73	77.66%	100%
Not answered:	21	22.34%	-

**Total answered: 73**

Text input

2

Not programmed for that.

1

7

3

I may need one.

2

Main till does backup does not.

2

A copy of the statement may be obtained by contacting Daniel O'Neill, 310 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-3681, fax (360) 236-2345, e-mail daniel.o'neill@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Daniel O'Neill, 310 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-3681, fax (360) 236-2345, e-mail daniel.o'neill@doh.wa.gov

July 22, 2014

John Wiesman, DrPH, MPH  
Secretary

NEW SECTION

**WAC 246-790-001 Purpose.** (1) The federal Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides supplemental foods and nutrition education to pregnant, postpartum and breastfeeding women, infants and young children from families with inadequate income through payment of cash grants to states that operate WIC food delivery systems. The department operates a WIC retail food delivery system in which WIC participants obtain authorized supplemental foods by submitting a food instrument to a retail business that has entered into a contract with the department to provide such service. The department's WIC operations comply with the most current version of 7 C.F.R. 246. Copies are available from the Department of Health, P.O. Box 47886, Olympia, WA 98504-7886, or by calling the WIC nutrition program at 800-841-1410.

(2) The purpose of this chapter is to establish:

(a) Qualifications a store must meet before the department will consider its application to be a WIC authorized vendor;

(b) Requirements of all WIC authorized vendors;

(c) A sanction table;

(d) Administrative appeal processes; and  
(e) An advisory committee.

AMENDATORY SECTION (Amending WSR 11-23-125, filed 11/21/11, effective 12/22/11)

**WAC 246-790-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly (~~requires~~) indicates otherwise.

~~((1) "C.F.R." means Code of Federal Regulations.~~

~~(2) "Contract" means a written legal document binding the contractor and the department to designated terms and conditions. Terms and conditions include those stated in 7 C.F.R. 246.12 (h)(3) under "Retail food delivery systems: Vendor agreements, Vendor agreement provisions."~~

~~(3) "Department" means the Washington state department of health.~~

~~(4) "Retailer" means "vendor" as defined in 7 C.F.R. 246.2.~~

~~(5) "Wholesale supplier" means a business licensed to sell food and other goods at prices lower than retail to a retail vendor for resale to customers.~~

~~(6) "WIC" means the federally funded special supplemental nutrition program for women, infants, and children as described in 7 C.F.R. 246 and defined in 7 C.F.R. 246.2.~~

~~(7) "WIC check" means "food instrument" and "cash-value voucher" as defined in 7 C.F.R. 246.2.) (1) "Administrative appeal" means a formal proceeding where a vendor who has received a notice of violation from the department has the opportunity to present his or her case in an impartial setting and be heard by the department.~~

(2) "Applicant" means any vendor, or person representing a vendor, requesting authorization to participate in the WIC program by submitting a completed application for authorization and all corresponding documentation.

(3) "Approved infant formula wholesaler" means the document created, maintained and supplied by the depart-

ment that lists the infant formula wholesale providers that are approved by the department.

(4) "Authorized vendor" means a vendor who has met the vendor selection criteria as required by the United States Department of Agriculture (USDA) and the department, received training on WIC program requirements, and entered into a fully executed contract with the department.

(5) "Business integrity" means the store's uncompromising commitment and adherence to honesty, truthfulness, and accuracy in interactions with customers, creditors, suppliers, associates, and the public at large.

(6) "C.F.R." means Code of Federal Regulations.

(7) "Cash value voucher" means a WIC food instrument used by a participant to obtain fresh fruits and vegetables.

(8) "Civil monetary penalty" means a sum of money imposed by the WIC program for noncompliance with program requirements.

(9) "Contract" means the department's standard WIC contract form that, once completed and signed by both parties, becomes the written legal document binding a vendor and the department to designated terms and conditions and authorizes the vendor to transact food instruments.

(10) "Cost containment" means the process of controlling expenses required to operate the WIC program.

(11) "Department" means the Washington state department of health.

(12) "Disqualification" means the act of revoking the authorization and terminating the contract of an authorized vendor for a specific period of time or permanently for non-compliance with WIC program requirements.

(13) "EBT (electronic benefits transfer)" means the electronic system that allows a participant to authorize transfer of their government food benefits from a federal account to a vendor account to pay for products they buy.

(14) "Food instrument" means the method of payment used by a participant to obtain WIC approved foods. This method may include WIC checks, cash value vouchers, or EBT payment.

(15) "Minimum inventory requirements" means the document created, maintained and supplied by the department that lists the required minimum stock levels of department authorized foods a store must maintain on premises at all times.

(16) "Notice of violation" means a written document given to a vendor when the department determines the vendor has not complied with program requirements, federal WIC regulations, this chapter, or the contract.

(17) "Participant" means a woman, infant or child receiving WIC benefits.

(18) "Participant access" means the ability of WIC participants to purchase authorized WIC foods, with consideration made to factors including, but not limited to, geography, population density and participant dietary needs, as determined by the department.

(19) "Peer group" means a group of authorized vendors which share certain characteristics and can be expected to have similar business practices and prices. Peer group criteria and assignments are determined by the department. Vendors in the same peer group are subject to the same WIC maxi-

imum reimbursement levels. Peer group criteria include, but are not limited to, characteristics such as geography or size.

(20) "SNAP" means the federal supplemental nutrition assistance program. SNAP was previously known as the food stamp program.

(21) "Variety" means a collection of similar, but not identical, foods and products. This may include different brands, sizes or flavors of similar foods and products.

(22) "Vendor," also known as "retailer" means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the state WIC program to provide WIC approved foods to WIC participants.

(23) "Vendor selection criteria" means the federally approved standards the department uses to select vendors for WIC authorization.

(24) "Wholesale supplier" means a business licensed to sell food and other goods at prices lower than retail to a retail vendor for resale to customers.

(25) "WIC" means the federally funded special supplemental nutrition program for women, infants, and children as described in 7 C.F.R. 246.

#### NEW SECTION

**WAC 246-790-061 Contract procedure.** (1) To become an authorized vendor and receive a contract, a retail business must apply to the department as provided under WAC 246-790-075.

(2) The department shall make available to the applicant vendor copies of the contract and all applicable regulations, policies, and guidelines current at the time of application.

(3) The department will consider an application only if the applicant complies with WAC 246-790-075 and 246-790-077.

(4) If the applicant vendor meets the qualifications or the department has determined that including the applicant vendor's store in the program is necessary to assure participant access, the department may offer a contract to the applicant vendor. An applicant vendor that has an application declined may appeal the department's decision as provided in WAC 246-790-125.

(5) The authorized vendor will be assigned to the department's vendor peer group system as appropriate. That assignment establishes the vendor's maximum allowable reimbursement level.

(6) If authorized, the applicant vendor will become an authorized vendor for the term of the contract, provided the authorized vendor continues to comply with requirements in WAC 246-790-086.

(7) Vendors can request an administrative appeal for certain adverse actions by the department in connection with the contract as specified in the contract and provided in WAC 246-790-125.

(8) The department may temporarily suspend acceptance of applications when in the best interest of program administration.

AMENDATORY SECTION (Amending WSR 11-23-125, filed 11/21/11, effective 12/22/11)

**WAC 246-790-075** (~~(Requirements to become an authorized retailer.)~~) **Vendor application.** (1) To ~~((become authorized in the WIC program))~~ be considered for WIC vendor authorization an applicant must:

(a) Be a food ~~((retailer))~~ vendor that meets or exceeds all selection criteria listed in WAC 246-790-077;

(b) Apply ~~((for authorization))~~ to the department using department forms;

(c) Provide complete and truthful information in the application;

~~((Meet all the retailer selection criteria stated in WAC 246-790-077;~~

~~((e))~~) Allow the department to inspect the store; and  
~~((f))~~) ~~((e))~~ Participate in training on WIC program requirements~~((; and~~

~~((g))~~ Agree to follow WIC program requirements stated in the contract)).

(2) ~~((The effective date of authorization is the date on which the last party to sign the contract signs it. The department and the retailer are the parties to the contract.))~~ If the department declines an application, the applicant may reapply no sooner than six months afterwards.

(3) Before declining an application, the department shall give an applicant thirty days notice to ~~((correct their application when it is incomplete or insufficient in any manner before the department denies authorization.~~

(4) The department may not accept a new application sooner than six months after an applicant's denial)) submit missing materials or information.

~~((5))~~) (4) An applicant ~~((or an authorized retailer))~~ may request an exemption to the ~~((retailer))~~ vendor selection criteria in WAC 246-790-077.

(a) The request must:

(i) Be in writing, dated, and signed by the applicant;

(ii) ~~((Identify the specific retailer selection criterion or criteria for which the retailer is seeking an exemption and))~~ Explain the reasons for the request in detail; ((and))

(iii) Demonstrate how the requested exemption is consistent with the requirements, purpose and objectives of the program; and

(iv) List, in the body of the request, the physical address of the applicant.

(b) The department may grant ~~((an))~~ the request exemption ~~((from retailer selection criteria if the applicant submits a request that satisfies))~~ if the applicant's request conforms to

(a) of this subsection and the department determines that allowing the exemption is consistent with the requirements, purpose, and objectives of the program and is necessary to assure participant access.

(c) The department shall respond in writing to a request for exemption with its decision to grant or deny the request.

AMENDATORY SECTION (Amending WSR 11-23-125, filed 11/21/11, effective 12/22/11)

**WAC 246-790-077** (~~(Retailer))~~) **Vendor selection criteria.** ~~((An applicant and an authorized retailer shall meet all the following retailer selection criteria to be authorized.~~

~~((1) Business license, permit, and certification requirements.~~

~~((a) A current master business license and unified business identifier number issued by the Washington state department of revenue as required under chapter 19.02 RCW with a major operation category that includes the retail sale of foods, such as grocery store.~~

~~((b) A current reseller's permit issued by the Washington state department of revenue as required under chapter 82.32 RCW.~~

~~((c) A current food establishment permit issued by the local health jurisdiction as required by the Washington state board of health under chapter 246-215 WAC.~~

~~((d) A current weighing and measuring device registration issued by the Washington state department of agriculture as required under chapter 16-674 WAC.~~

~~((e) A current authorization as a vendor in the supplemental nutrition assistance program (SNAP).~~

~~((f) Comply with all other applicable federal, state, county, and city required licenses, permits and certifications.~~

~~((2) Business model requirements.~~

~~((a) Be primarily engaged in retail sales of a variety of food products and general merchandise as a full line grocery store. A full line grocery store stocks on a continuous basis, multiple varieties of the following product categories:~~

~~((i) Canned foods;~~

~~((ii) Frozen foods;~~

~~((iii) Dairy products;~~

~~((iv) Fresh and frozen meat, fish, and poultry;~~

~~((v) Fresh fruits;~~

~~((vi) Fresh vegetables;~~

~~((vii) Juices;~~

~~((viii) Bakery goods including, but not limited to, breads, pastries, and tortillas;~~

~~((ix) Dried grains and beans;~~

~~((x) Baby products;~~

~~((xi) Household cleaners;~~

~~((xii) Laundry products; and~~

~~((xiii) Health care products.~~

~~((b) Purchase WIC approved foods directly from a wholesale supplier or other nonretail supplier, such as a food manufacturer or a fresh produce supplier.~~

~~((c) Purchase WIC approved infant formula directly from an infant formula manufacturer or supplier named on the WIC approved infant formula supplier list.~~

~~((d) Not use the WIC program name, acronym, or logo in the store name or advertisement, advertise primarily to WIC customers, offer incentives primarily to WIC customers, or otherwise focus primarily on serving WIC customers.~~

~~((e) Not receive or expect to receive more than fifty percent of annual food sales revenue from WIC transactions.~~

~~((f) Maintain on store shelves at all times the minimum quantities and varieties of WIC approved foods, including infant formula, required by the contract. Expired foods are not counted as inventory.~~

~~((g) Maintain shelf prices for WIC approved foods that are competitive with retailers in the same WIC retailer peer group. A "peer group" means a group of retailers who share similar characteristics established by the department.~~

(h) Operate from a fixed, permanent location where all WIC transactions take place in the store.

(i) Maintain business hours of at least eight hours per day, six days per week.

(j) Accept various types of tender including cash and SNAP electronic benefit transfer (EBT).

(k) Post WIC food price on the item, on the shelf next to the item, or other means that is clearly visible to customers.

(l) Maintain sanitary conditions that meet food service rules in chapter 246-215 WAC.

(m) Keep fresh fruit and vegetable display areas free of spoiled produce.

(3) Recordkeeping.

(a) Maintain a recordkeeping system that meets the Washington state department of revenue requirements in WAC 458-20-254 including the following:

(i) The recordkeeping system must have original documents and records organized in a logical way that conforms to acceptable accounting methods and procedures.

(ii) Documents and records must be retrievable and in a readable format.

(b) The recordkeeping system must include original, dated documents and records that contain enough detail to prove the purchase, inventory, and sale of WIC approved foods, including infant formula, by brand name, container size and quantity. These documents and records must be kept for a period of six years following the date of final payment.

(c) Submit to the department upon request documents and records showing food is purchased from a wholesale supplier or other nonretail supplier, such as a food manufacturer or a fresh produce supplier.

(d) Submit to the department upon request documents and records showing infant formula is purchased from an infant formula manufacturer or supplier named on the WIC approved infant formula supplier list.

(e) Submit to the department upon request itemized sales receipts for WIC purchases using an electronic cash register or a manual system. Sales receipts must include the store name, food product name, quantity sold, price of each item, and the date of sale.

(f) Submit to the department upon request annual sales information including gross sales and tax exempt food sales by payment type including cash, SNAP EBT, WIC and credit/debit card.

(g) Submit to the department upon request shelf price and stock level information.

(4) Additional requirements.

(a) Allow access to facilities, including nonpublic storage areas, by the department during normal business hours.

(b) Maintain an active e-mail account that is capable of receiving WIC contract and program information.

(c) Comply with WIC training requirements stated in the contract.

(d) Maintain in-store records documenting employee training on WIC requirements.

(e) Demonstrate business integrity.

(f) Comply with all applicable federal and state laws.

(5) Exemptions.

(a) Oregon and Idaho retailers located on the Washington border and that serve Washington residents are exempt

from Washington state business license, permit, and certification requirements. They shall meet all applicable business license, permit and certification requirements for their respective state.

(b) A retailer authorized as an "infant formula only provider" is exempt from the full line grocery store requirement. "Infant formula only provider" means a retailer for whom WIC authorization is limited to the redemption of WIC checks issued for infant formula.) At the time of application, applicants must meet the following criteria; all authorized vendors must continue to meet the following criteria throughout the period of authorization:

(1) Purchase WIC approved infant formula directly from an infant formula manufacturer or supplier named on the "WIC approved infant formula suppliers" document.

(2) Purchase WIC approved foods directly from a wholesale supplier or other nonretail supplier, such as a food manufacturer, wholesaler, dairy, or fresh produce supplier.

(3) Maintain in store at all times the minimum quantities and varieties of WIC approved foods, including infant formula, as required by the "WIC minimum inventory requirements" document. Expired or spoiled foods do not count as inventory.

(4) Maintain an active electronic mailing address to be used for department communications.

(5) Be primarily engaged in the retail sale of food products and general merchandise as a full line grocery store. A full line grocery store carries the designated products in the following categories on a continuous basis. These requirements are separate from the "minimum inventory requirements."

(a) Canned foods: At least twenty total varieties of canned foods such as fruit, vegetables, beans, meat, poultry, chili, soup, stew, broth or sauce (excluding canned infant formula, fish, juice or other beverages).

(b) Frozen foods: At least ten total varieties of frozen foods such as dinners, pizza, fruit, or vegetables (excluding frozen juice, meat, seafood, poultry, desserts, snacks or novelties).

(c) Dairy products: At least ten total varieties of refrigerated dairy products such as butter, yogurt, cottage cheese, string cheese, cream cheese, whipped cream, sour cream or ice cream (excluding milk, WIC approved cheeses, infant formula or individual serving size packages).

(d) Frozen and unfrozen meat, seafood, and poultry: At least six total varieties (all unbreaded) of frozen meat, unfrozen meat, frozen seafood, unfrozen seafood, frozen poultry, or unfrozen poultry including at least two varieties of meat and at least two varieties of poultry (excluding precooked and deli style products).

(e) Fresh fruit and vegetables: At least twenty total varieties of fresh fruits or fresh vegetables including at least five varieties of fruits and at least five varieties of vegetables. The store must have a minimum of five linear feet of refrigerated display space for its produce.

(f) Bread and tortillas: At least ten total varieties of bread products such as bread, rolls, bagels, and tortillas. Breads and tortillas exclude muffins, pastries, cookies, cakes, crackers, or other snack foods.

(g) Grains, pasta, and dried beans: At least ten total varieties of grains, pasta, or beans such as oatmeal, rice, bulgur, pasta, beans, peas, or lentils (excluding bread, canned products or other breakfast cereals).

(h) Baby products: At least ten total varieties of baby products such as diapers, baby bottles, baby wipes, baby shampoo, baby lotion, or baby bottles (excluding infant formula).

(i) Household cleaners and laundry products: At least ten total varieties of household cleaning or laundry products used for cleaning kitchens, dishes, bathrooms, windows, floors, furniture, clothes, or fabrics.

(j) Health care products: At least twenty total varieties of health care products such as pain relievers, cold/cough/allergy products, digestive aids, dental care products, feminine hygiene products, or toilet paper.

(6) Maintain prices for WIC approved foods that are at or below the limits established by the WIC nutrition program's current price management system.

(7) Be currently authorized and participating as a vendor in the supplemental nutrition assistance program (SNAP).

(8) Receive or expect to receive less than fifty percent in annual food sales revenue from WIC transactions.

(9) Be open for business at least eight hours per day, six days per week.

(10) Submit to the department, upon request, sales information including gross sales and tax exempt food sales.

(11) Have electronic cash registers capable of producing receipts that include:

(a) The store name;

(b) Food product name and description;

(c) Quantity sold, price of each item;

(d) Total actual purchase price; and

(e) The date of sale.

(12) Post food prices for all foods, including fresh fruits and vegetables, on each item, or on the shelf next to the item.

(13) Maintain a business model that promotes business integrity. In its determination of business integrity, the department's consideration will include, but is not limited to, the following:

(a) Providing complete and truthful information in the application, correspondence, and other documents requested by the department.

(b) Ensuring all current owners, officers, managers, or representatives have had no criminal convictions or civil judgments entered against them in the last six years for fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice.

(c) Having no uncorrected violation from a previous contracting period, current disqualification, or outstanding claims owed to the department.

(d) Not being currently disqualified from the SNAP or having a civil money penalty levied instead of SNAP disqualification.

(e) Disclosure of any third party, agent or broker involved in any part of the application process.

(f) Where a store has an outstanding WIC or SNAP sanction or claim, not attempting to avoid sanction or claim by reapplying after:

(i) Conveying any legal interest in a store to a relative or other person with whom the owner or owners have a financial relationship.

(ii) Accepting any legal interest in a store from a relative by blood or marriage or other person with whom the owner or owners have a financial relationship.

(iii) Reorganizing the business to another form, such as, but not limited to, corporation, general partnership, limited partnership, sole proprietorship, and limited liability company.

(14) When evaluating business integrity, the department may take into account whether a store subject to a sanction or claim has been sold for less than fair market value.

(15) Not own, have previously owned, or have a legal interest in a business that has a WIC sanction currently in effect. This includes any business for which a vendor may be applying.

(16) Maintain a recordkeeping system that meets the Washington state department of revenue requirements and the following criteria:

(a) A vendor must retain inventory records used for federal tax reporting and other records the WIC nutrition program may require for the period of six years following the date of final payment.

(b) The recordkeeping system must include original, dated documents, invoices, and records that contain enough detail to prove the purchase, inventory, and sale of WIC approved foods, including infant formula, by brand name and description, container size, and quantity.

(c) Sales receipts must come from a wholesale supplier or other nonretail supplier, such as a food manufacturer or a fresh produce supplier. The sales receipts must include the supplier's business name and address, your business name, food product name, quantity sold, price of each item, and the date of sale.

(d) The recordkeeping system must consist of original documents and records organized in a logical, orderly, readable, and retrievable way that conforms to acceptable accounting methods and procedures.

(e) Upon request, a vendor must make available to representatives of the WIC nutrition program, USDA Food and Nutrition Services, and the Comptroller General at any reasonable time and place for inspection and audit, all food instruments and cash value vouchers in the vendor's possession.

(f) Upon request, a vendor must make available to representatives of WIC nutrition program, USDA Food and Nutrition Services, and the Comptroller General at any reasonable time and place for inspection and audit, all WIC program-related records, which may include tax identification numbers, bills of sale, lease agreements, or bank statements.

(17) Comply with all federal and state nondiscrimination laws, regulations, and policies. This includes, but is not limited to, 7 C.F.R. Parts 15, 15a, and 15b and RCW 49.60.030.

(18) Comply with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336.

(19) Comply with all other federal, state, county, and city required licenses, permits and certifications.

(20) Exemptions.

(a) Oregon and Idaho vendors located on the Washington border and that serve Washington residents are exempt from Washington state business license, permit, and certification requirements. They shall meet all applicable business license, permit and certification requirements for their respective state.

(b) An "infant formula only provider" is exempt from the full line grocery store requirement. Infant formula only provider means an authorized vendor or pharmacy for whom WIC authorization is limited to the redemption of WIC checks issued for infant formula.

AMENDATORY SECTION (Amending WSR 11-23-125, filed 11/21/11, effective 12/22/11)

**WAC 246-790-086 Requirements of an authorized ~~((retailer))~~ vendor.** (1) ~~((An))~~ Authorized ~~((retailer))~~ vendors shall:

(a) Comply with the terms and conditions of their contracts;

(b) Continue to meet the ~~((retailer))~~ vendor selection criteria in WAC 246-790-077 throughout the term of the contract;

(c) Notify the department prior to ownership changes; ~~((and))~~

(d) Notify the department prior to store closures;

(e) Notify the department prior to changing telephone numbers or electronic mailing addresses;

(f) Safeguard WIC client-related data; and

(g) Comply with corrective action requested by the department or the United States Department of Agriculture (USDA).

(2) An authorized ~~((retailer))~~ vendor may reapply at the time of contract expiration; however, neither the department nor the ~~((retailer))~~ vendor has an obligation to enter into a subsequent contract.

AMENDATORY SECTION (Amending WSR 11-23-125, filed 11/21/11, effective 12/22/11)

**WAC 246-790-105 Failure to meet WIC program requirements.** (1) When ~~((a retailer))~~ an authorized vendor is out of compliance with the requirements of 7 C.F.R. 246.12, this chapter, or the contract, the department ~~((may))~~ will initiate appropriate enforcement action which may include notices of violation, unless the department determines that

~~((notifying the retailer))~~ notification would compromise the investigation; claims for reimbursement; and disqualification.

~~((2) The department shall disqualify an authorized retailer for violations stated in 7 C.F.R. 246.12(1).~~

(3) For violations of the requirements of this chapter, not specified in 7 C.F.R. 246.12(1), the department may take enforcement action based on a pattern of violations. Department actions may include:

(a) Notice of violation and offer of technical assistance for the first incident;

(b) Notice of violation and warning of disqualification for the second incident of the same type of violation;

(c) One year disqualification for the third incident of the same type of violation.

(4) A "pattern" of violations means more than one documented incident of the same type of violation within a thirty-six month period.

(5) An authorized retailer's contract is terminated on the effective date of a disqualification.

(6) An authorized retailer who has been disqualified may reapply at the end of the disqualification period.)) (2) Where a violation requires disqualification, the department may determine to impose a civil penalty in lieu of disqualification if the department determines, in its sole discretion and in accordance with the department's participant access criteria, that the continued operation of the store is necessary to assure adequate participant access.

(3) An authorized vendor's contract is terminated on the effective date of a disqualification.

(4) A "pattern" of violations means more than one documented incident of the same type of violation within a contract period.

(5) A disqualified vendor may reapply at the end of the disqualification period.

(6) The department will document complaints against authorized vendors and any resulting corrective action.

(7) The effective date of all sanctions is twenty-eight days after authorized vendor receives notice of the department's decision to impose sanctions, unless otherwise specified in this chapter, the contract, or in the department's notice. The department, in its sole discretion, may temporarily suspend the contract in lieu of termination to resolve any uncertain matters including appeals.

(8) Federal sanctions: In compliance with 7 C.F.R. 246.12(I), the WIC program must sanction a vendor as follows:

<u>Violation</u>	<u>Mandatory Federal Sanction</u>
<u>1. Conviction for trafficking WIC food instruments or cash value vouchers or selling firearms, ammunition, explosives, or controlled substances in exchange for WIC food instruments or cash value vouchers.</u>	<u>Termination of contract, permanent disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria). Termination of the contract shall be effective upon authorized vendor's receipt of termination notice.</u>

<u>Violation</u>	<u>Mandatory Federal Sanction</u>
2. <u>One incidence of selling firearms, ammunition, explosives or controlled substances (as defined in section 21 of the Controlled Substances Act (U.S.C.) 802) in exchange for WIC food instruments or cash value vouchers.</u>	<u>Termination of contract, six-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
3. <u>One incidence of buying or selling WIC food instruments or cash value vouchers for cash (trafficking). Trafficking includes some of the violations included in the definition of redeeming WIC food instruments or cash value vouchers outside of authorized channels.</u>	<u>Termination of contract, six-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
4. <u>Failure to comply fully with the applicable provisions of 7 C.F.R. 278—SNAP. (Authorized vendor is disqualified from SNAP, or chooses not to participate in SNAP.)</u>	<u>Termination of contract and disqualification for time period corresponding to the SNAP disqualification term, or, at the discretion of the department, civil monetary penalty (based upon participant access criteria). No administrative review allowed.</u>
5. <u>One incidence of sale of alcohol or alcoholic beverages or tobacco products in exchange for WIC food instruments or cash value vouchers.</u>	<u>Termination of contract, three-year disqualification or, at the discretion of the department, civil monetary penalty.</u>
6. <u>A pattern of providing credit or nonfood items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash value vouchers.</u>	<u>Termination of contract, three-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
7. <u>A pattern charging for food not received by a participant.</u>	<u>Termination of contract, three-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
8. <u>A pattern of receiving, transacting, or redeeming a food instrument outside of authorized channels, including the use of an unauthorized store or person.</u>	<u>Termination of contract, three-year disqualification or, at the discretion of the department, civil monetary penalty.</u>
9. <u>A pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the authorized vendor's documented inventory of that supplemental food item for a specific period of time.</u>	<u>Termination of contract, three-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
10. <u>A pattern of authorized vendor overcharges.</u>	<u>Termination of contract, three-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
11. <u>A pattern of charging for supplemental foods provided in excess of those listed on the food instrument.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
12. <u>A pattern of selling unauthorized food items in exchange for food instruments or cash value vouchers.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
13. <u>A pattern of an above-fifty-percent vendor providing prohibited incentive items to customers as set forth in paragraph (g)(3)(iv) of this section, in accordance with the state agency's policies and procedures required by paragraph (h)(8) of this section.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
14. <u>Providing false information on its application for authorization.</u>	<u>Termination of contract upon minimum fifteen day notice.</u>

<u>Violation</u>	<u>Mandatory Federal Sanction</u>
<u>15. The existence of a conflict of interest between the authorized vendor and the department or local agency as defined by state law, regulations or policies.</u>	<u>Termination of contract upon minimum fifteen day notice and disqualification from the WIC program until the conflict of interest no longer exists.</u>
<u>Second Mandatory Sanction</u>	
<u>If a vendor has been assessed a sanction for any of the violations in this table, then receives another sanction for any of the same violations, the department must double the second sanction. If a civil monetary penalty is assessed in lieu of disqualification, the amount may be doubled up to the limits specified in Federal WIC Regulations at 7 C.F.R. 3.91(b)(3)(v).</u>	
<u>Third or Subsequent Mandatory Sanction</u>	
<u>If a vendor, previously assessed two or more sanctions for any of the above sanctions, then receives another sanction for any of the same violations, the department must double the third sanction and all subsequent sanctions. Civil monetary penalties may not be imposed in lieu of disqualification for third or subsequent sanctions.</u>	

(9) State sanctions: For violations of the contract, not specified in 7 C.F.R. 246.12(I), the department may take enforcement action based on a pattern of violations. At the department's discretion and for violations not involving a pattern, the department actions may include:

- (a) Notice of violation and offer of technical assistance for the first incident;
- (b) Technical assistance or notice of violation and warning of disqualification for the second incident of the same type of violation;
- (c) One year disqualification for the third incident of the same type of violation in a contract period.

<u>Violation</u>	<u>Sanction</u>
<u>16. A pattern of adding sales tax or a fee or surcharge to the purchase amount charged to the WIC program (military commissaries may levy a surcharge).</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>17. A pattern of charging a participant for WIC foods.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>18. A pattern of exceeding food instruments costs based upon the state price assessment tool.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>19. A pattern of failing to process each food instrument separately (except cash value vouchers for fruits and vegetables which can be combined).</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>20. A pattern of failing to write the total amount of the purchase amount on the food instrument or cash value voucher.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>21. A pattern of vendor having the participant sign the food instrument or cash value voucher before the purchase price is entered on the food instrument or cash value voucher.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>22. A pattern of not getting a participant's signature on a WIC food instrument or cash value voucher.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>23. A pattern of failing to show program participants, parents or caretakers or infant of child participants, and proxies the same courtesies offered to other customers.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>24. A pattern of failing to allow a participant to buy all the foods in the amounts listed on the food instruments or cash value vouchers. This violation also includes refusal to sell WIC foods to a participant. If refusal to sell WIC foods is based on discrimination, use discrimination follow-up procedures.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>

<u>Violation</u>	<u>Sanction</u>
<u>25. A pattern of giving free items or discounts to participants that are not offered to other customers.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>26. A pattern of not meeting the WIC minimum inventory requirements.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>27. A pattern of not complying with the vendor selection criteria.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>28. A pattern of using the acronym "WIC" without permission in advertising, or for foods identification.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>29. A pattern of WIC approved foods when they are defective, spoiled, or have exceeded their "sell by," "best if used by," or other date limiting the sale or use of an item.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>30. A pattern of failing to allow exchange of an identical approved food obtained with WIC food instruments or cash value vouchers when the original approved food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical approved food item means the exact brand and size as the original approved food item obtained and returned by the participant.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>31. A pattern of failing to train store staff on WIC requirements annually by participating in annual training in the prescribed manner.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>32. A pattern of failing to post prices where participants can see them.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>33. A pattern of failing to keep training records.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>34. A pattern of failing to provide training records upon request.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>35. A pattern of failing to participate in the food price survey conducted by the department twice a year.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>36. A pattern of failing to keep or submit inventory receipts upon request.</u>	<u>Termination of contract, one-year disqualification or, at the discretion of the department, civil monetary penalty (based upon participant access criteria).</u>
<u>37. Any incidence of refusal to allow the participant to use the WIC appointment and ID folder as identification.</u>	<u>Technical assistance provided.</u>
<u>38. Any incidence of requiring the participant to buy all the food on the food instrument or cash value voucher.</u>	<u>Technical assistance provided.</u>
<u>39. Any incidence of failing to print clearly and carefully on the food instrument or cash value voucher using a black or dark blue ink pen.</u>	<u>Technical assistance provided.</u>

<u>Violation</u>	<u>Sanction</u>
40. Any incidence of accepting WIC food instruments or cash value vouchers that were not signed in the presence of the checker.	Technical assistance provided.
41. Any incidence of failing to treat participants with courtesy or being rude.	Technical assistance provided.
42. Any incidence of failing to attend or assure a representative attends any training identified as mandatory by the department.	Technical assistance provided, may be subject to other penalties as prescribed by department policy.
43. Failure to have a representative from the store attend required WIC training once in a three-year contract period.	Technical assistance provided, may not be eligible for reauthorization in new contract period.
<u>Second Sanction</u>	
If an authorized vendor has been assessed a sanction for any of the violations in this table, then receives another sanction for any of the same violations all in the same contract period, the department must double the second sanction. If a civil monetary penalty is assessed in lieu of disqualification, the amount may be doubled up to the limits specified in Federal WIC Regulations at 7 C.F.R. 3.91(b)(3)(v).	
<u>Third or Subsequent Sanction</u>	
If an authorized vendor, previously assessed two or more sanctions for any of the above sanctions, then receives another sanction for any of the same violations all in the same contract period, the department must double the third sanction and all subsequent sanctions. Civil monetary penalties may not be imposed in lieu of disqualification for third or subsequent sanctions.	

AMENDATORY SECTION (Amending WSR 11-23-125, filed 11/21/11, effective 12/22/11)

**WAC 246-790-125 ((Retailer)) Vendor appeal process.** ~~((1) The retailer may request an administrative appeal of certain adverse actions as provided in 7 C.F.R. 246.18. Actions that the retailer may not appeal are described in 7 C.F.R. 246.18 (a)(1)(iii).~~

~~(2) A request for appeal must:~~

~~(a) Be in writing, state the issue, and contain a summary of the retailer's position on the issue;~~

~~(b) Be filed with the Department of Health, Adjudicative Service Unit, P.O. Box 47879, Olympia, WA 98504-7879, with a copy sent to the WIC Nutrition Program at P.O. Box 47886, Olympia, WA 98504-7886; and~~

~~(c) Be received by the department of health, adjudicative services unit within twenty-eight days of the date the retailer receives the notice unless otherwise specified in the program's notification of adverse action.~~

~~(3) The administrative hearing procedures of chapter 246-10 WAC apply to retailer administrative appeals. If a provision of chapter 246-10 WAC conflicts with a provision of 7 C.F.R. 246.18, the federal regulation shall prevail.)) (1) The following department actions may not be appealed:~~

~~(a) The validity or appropriateness of the department's limiting criteria or the vendor selection criteria for minimum variety and quantity of WIC approved foods, business integrity, and current SNAP disqualification or civil monetary penalty instead of disqualification;~~

~~(b) The validity or appropriateness of the department's selection criteria for competitive price including, but not limited to, the peer group criteria and the criteria used to identify above fifty percent vendors;~~

~~(c) The validity or appropriateness of the department's participant access criteria and the department's participant access determinations;~~

~~(d) The department's determination whether or not to include an infant formula manufacturer, wholesaler, or distributor on the approved infant formula provider list;~~

~~(e) The validity or appropriateness of the department's prohibition of incentive items;~~

~~(f) The department's determination whether to notify an authorized vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established;~~

~~(g) The department's determination whether the authorized vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the authorized vendor was not aware of, did not approve of, and was not involved in the violation;~~

~~(h) The expiration of the authorized vendor contract;~~

~~(i) Disputes regarding food instrument payments and claims (other than the opportunity to justify or correct an overcharge or other error);~~

~~(j) Disqualification as a result of a disqualification from SNAP.~~

~~(2) Except as provided in WAC 246-790-125(1), applicant or authorized vendor may file an appeal for the department's decision to decline an application, terminate a contract, impose a sanction, or other adverse action.~~

~~(3) The request for appeal must be filed in conformance with the following:~~

~~(a) A request for appeal must be filed with the Department of Health, Adjudicative Service Unit (ASU), P.O. Box 47879, Olympia, WA 98504-7879, with a copy sent to the department's WIC Nutrition Program at P.O. Box 47886, Olympia, WA 98504-7886;~~

(b) The request must be in writing, state the issue, contain a summary of the applicant or authorized vendor's position on the issue, and include a copy of the department's notice of adverse action;

(c) If applicable, a notice of appearance by the applicant or authorized vendor's attorney;

(d) The request must be filed no later than twenty-eight days from the date the applicant or authorized vendor receives the notice unless otherwise specified in the department's notification of adverse action.

(4) Proceedings under this chapter shall be in accordance with chapter 246-10 WAC as modified by the following:

(a) Within thirty days from the date ASU receives the request for appeal, the ASU or other designee of the secretary shall approve or deny the request. The notice of approval shall include a scheduling order setting forth a date, time, and place for a prehearing conference and the hearing.

(b) Without discovery request by the appellant, the program shall deliver its record of the decision to the appellant within thirty days from the issuance of the scheduling order.

(c) At the time provided in the scheduling order, the presiding officer shall conduct a telephonic prehearing conference. Following the prehearing conference, the presiding officer will issue a prehearing order defining conduct at hearing, which will establish the procedure for the hearing.

(d) At the time provided in the scheduling order, the presiding officer will conduct an in-person hearing in which the appellant and program will each have an opportunity to present its case and cross-examine adverse witnesses.

(e) The presiding officer shall decide the case based solely on whether the program has correctly applied federal and state statutes, regulations, policies, and procedures governing the WIC program, according to the evidence presented at the review.

(5) If a provision of chapter 246-10 WAC conflicts with a provision of 7 C.F.R. 246.18, the federal regulation shall prevail.

AMENDATORY SECTION (Amending WSR 11-23-125, filed 11/21/11, effective 12/22/11)

**WAC 246-790-127 ((Retailer)) Vendor advisory committee.** (1) The department shall facilitate a WIC ((retailer)) vendor advisory committee.

(2) The committee shall function in an advisory capacity.

(3) Participation is voluntary and there is no compensation.

(4) Invitations for participation may include authorized WIC ((retailers)) vendors, retail grocer associations, food manufacturers, wholesale suppliers, and retail checker labor unions.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-790-055 Adoption by reference.

### WSR 14-16-030 PROPOSED RULES BUILDING CODE COUNCIL

[Filed July 28, 2014, 4:55 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-030.

Title of Rule and Other Identifying Information: Amending chapter 51-54A WAC: Sections 202 and 903 of the 2012 International Fire Code.

Hearing Location(s): Fire Department Training Center, 1618 South Rebecca Street, Spokane, WA, on September 12, 2014, at 10 a.m.; and at DES Presentation Room, 1500 Jefferson S.E., Olympia, WA 98504, on October 10, 2014, at 10 a.m.

Date of Intended Adoption: November 14, 2014.

Submit Written Comments to: Ray Allshouse, P.O. Box 41449, Olympia, WA 98504-1449, e-mail sbcc@ga.wa.gov [sbcc@ga.wa.gov], fax (360) 586-5366, by October 24, 2014.

Assistance for Persons with Disabilities: Contact Peggy Bryden by September 2, 2014, (360) 407-9280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment to the Fire Code will redefine "portable school classrooms" and add a definition of "clusters" of such classrooms; it will modify the requirements for fire sprinklers in clusters of portable school classrooms below 6000 square feet for the purpose of improving fire safety and efficient egress for school occupants.

This matter is also the subject of an emergency rule currently in place under WSR 14-11-058 [14-15-028].

Reasons Supporting Proposal: The existing code language regarding portable classrooms was originally adopted many years ago and has become obsolete due to changes in technology and fire safety requirements for schools. It no longer reflects the needs of school districts regarding fire safety in portable school classrooms. The existing rules negatively impact building plans for school districts throughout the state. This proposed modification of the fire code will provide immediate economic relief to school districts planning to add portable classrooms to meet capacity, and will provide a safer environment for students, school staff, and other Group E building occupants and visitors.

Statutory Authority for Adoption: RCW 19.27.074, 19.27.031.

Statute Being Implemented: Chapter 19.27 RCW.

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

Name of Proponent: State building code council (SBCC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joanne McCaughan, P.O. Box 41449, Olympia, WA 98501-1449, (360) 407-9279; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules pertain to Group E portable school classrooms, and would revise the fire code. The rules are proposed for adoption due to numerous requests for interpretation for this code section. The rules

will eliminate obsolete language related to portables, and will add definitions for "portable school classrooms" and for "clusters" of such classrooms. The rule will also clarify and modify requirements for fire sprinklers in such classrooms. Existing rules have had a negative impact on school districts, and adoption of these proposed rules will eliminate that impact.

A cost-benefit analysis is not required under RCW 34.05.328. SBCC is not a listed agency under RCW 34.05.-328 (5)(a)(i).

June 13, 2014  
C. Ray Allshouse  
Council Chair

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

**WAC 51-54A-0202 General definitions.**

**SECTION 202 GENERAL DEFINITIONS**

**ADULT FAMILY HOME.** A dwelling, licensed by Washington state, 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.

**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.

**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 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 DRILL.** An exercise performed to train staff and occupants and to evaluate their efficiency and effectiveness in carrying out emergency procedures.

**EXISTING.** Buildings, facilities or conditions that are already in existence, constructed or officially authorized prior to the adoption of this code.

**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.

**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 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:

**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*.

**Licensed care facility.** A facility such as the above providing licensed care to clients in one of the categories listed in Section 310.1 of the International Building Code licensed by Washington state shall be classified as Group R-2.

**Family home child care.** Family home child care licensed by Washington state for the care of twelve 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 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 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

Assisted living facilities as licensed by Washington state under chapter 388-78A WAC

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)

Residential treatment facilities as licensed by Washington state under chapter 246-337 WAC

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, ~~((which requires a chassis to be transported))~~ and is designed to be used as an educational space with or without a permanent foundation. The structure shall be ~~((trailerable and))~~ capable of being demounted and relocated to other locations as needs arise.

**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.

**AMENDATORY SECTION** (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

#### **WAC 51-54A-0903 Automatic sprinkler systems.**

**903.2.1.6 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 Group E occupancies.

EXCEPTIONS: 1. Portable school classrooms with an occupant load of 50 or less calculated in accordance with Table 1004.1.2, provided that the aggregate area of any cluster of portable classrooms does not exceed ~~((5,000))~~ 6,000 square feet ~~((1465 m<sup>2</sup>))~~ (557 m<sup>2</sup>); 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, and provided with two means of direct independent exterior egress from each classroom in accordance with Chapter 10, and one exit from each classroom shall be accessible, provided that the aggregate area of any cluster of portable classrooms does not exceed 6,000 square feet (557 m<sup>2</sup>); and clusters of portable school classrooms shall be separated as required by the building code; or

3. Group E occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.2.

**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.
7. A hand-held (portable) fire extinguisher is in every Group R fire area.

**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.

**WSR 14-16-031**  
**PROPOSED RULES**  
**BUILDING CODE COUNCIL**  
 [Filed July 28, 2014, 5:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-029.

Title of Rule and Other Identifying Information: Amendments to chapter 51-51 WAC: Section 302 of the 2012 International Residential Code.

Hearing Location(s): Fire Department Training Center, 1618 South Rebecca Street, Spokane, WA, on September 12, 2014, at 10 a.m.; and at DES Presentation Room, 1500 Jefferson S.E., Olympia, WA 98504, on October 10, 2014, at 10 a.m.

Date of Intended Adoption: November 14, 2014.

Submit Written Comments to: Ray Allshouse, P.O. Box 41449, Olympia, WA 98504-1449, e-mail sbcc@ga.wa.gov [sbcc@ga.wa.gov], fax (360) 586-5366, by October 24, 2014.

Assistance for Persons with Disabilities: Contact Peggy Bryden by September 2, 2014, (360) 407-9280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule will

modify chapter 51-51 WAC to resolve conflicts in the Residential Code regarding fire sprinkler requirements for townhouse construction. The current language is unclear and leads to misinterpretation of the code requirements for the building industry and code officials.

This matter is also the subject of an emergency rule currently in place under WSR 14-07-080.

Reasons Supporting Proposal: This modification maintains the original intent of the code to require additional passive fire separation where no sprinkler protection is present.

Statutory Authority for Adoption: RCW 19.27.074, 19.27.031.

Statute Being Implemented: Chapter 19.27 RCW.

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

Name of Proponent: State building code council (SBCC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joanne McCaughan, P.O. Box 41449, Olympia, WA 98504-1449, (360) 407-9279; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This code modification is being made to resolve a flaw in the current code language, due to several requests for interpretation of the existing code language. It will provide clarity to builders and code officials regarding the need for a two-hour wall in townhouse construction. There is no fiscal impact incurred.

A cost-benefit analysis is not required under RCW 34.05.328. SBCC is not a listed agency under RCW 34.05-328 (5)(a)(i).

June 13, 2014  
 C. Ray Allshouse  
 Council Chair

**AMENDATORY SECTION** (Amending WSR 13-23-084, filed 11/19/13, effective 4/1/14)

**WAC 51-51-0302 Section R302—Fire-resistant construction.**

**R302.1 Exterior walls.** Construction, projections, openings and penetrations of exterior walls of dwellings and accessory buildings shall comply with Table R302.1(1); or *dwellings* equipped throughout with an *automatic sprinkler system* installed in accordance with Section P2904 shall comply with Table R302.1(2).

EXCEPTIONS:

1. Walls, projections, openings or penetrations in walls perpendicular to the line used to determine the fire separation distance.
2. Walls of dwellings and accessory structures located on the same lot.
3. Detached tool sheds and storage sheds, playhouses and similar structures exempted from permits are not required to provide protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line.
4. Detached garages accessory to a dwelling located within 2 feet (610 mm) of a lot line are permitted to have roof eave projections not exceeding 4 inches (102 mm).
5. Foundation vents installed in compliance with this code are permitted.

**TABLE R302.1(1)  
EXTERIOR WALLS**

Exterior Wall Element		Minimum Fire-Resistance Rating	Minimum Fire Separation Distance
Walls	Fire-resistance rated	1-hour tested in accordance with ASTM E 119 or UL 263 with exposure from both sides	< 5 feet
	Not fire-resistance rated	0 hours	≥ 5 feet
Projections	Fire-resistance rated	1 hour on the underside <sup>a, b</sup>	≥ 2 feet to < 5 feet
	Not fire-resistance rated	0 hours	≥ 5 feet
Openings in walls	Not allowed	N/A	< 3 feet
	25% maximum of wall area per story	0 hours	3 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section R302.4	< 5 feet
		None required	5 feet

For IS: 1 foot = 304.8 mm. N/A = Not Applicable

<sup>a</sup> Roof eave fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave if fire blocking is provided from the wall top plate to the underside of the roof sheathing.

<sup>b</sup> Roof eave fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave provided no gable vent openings are installed.

**Table R302.1(2)  
Exterior Walls—Dwellings with Fire Sprinklers**

Exterior Wall Element		Minimum Fire-Resistance Rating	Minimum Fire Separation Distance
Walls	Fire-resistance rated	1-hour tested in accordance with ASTM E 119 or UL 263 with exposure from the outside	0 feet
	Not fire-resistance rated	0 hours	3 feet <sup>a</sup>
Projections	Fire-resistance rated	1 hour on the underside <sup>b, c</sup>	2 feet <sup>a</sup>
	Not fire-resistance rated	0 hours	3 feet
Openings in walls	Not allowed	N/A	< 3 feet
	Unlimited	0 hours	3 feet <sup>a</sup>
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	3 feet <sup>a</sup>

For IS: 1 foot = 304.8 mm. N/A = Not Applicable

<sup>a</sup> For residential subdivisions where all dwellings are equipped throughout with an automatic sprinkler system installed in accordance with P2904, the fire separation distance for nonrated exterior walls and rated projections shall be permitted to be reduced to 0 feet, and unlimited unprotected openings and penetrations shall be permitted, where the adjoining lot provides an open setback yard that is 6 feet or more in width on the opposite side of the property line.

<sup>b</sup> Roof eave fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave if fire blocking is provided from the wall top plate to the underside of the roof sheathing.

<sup>c</sup> Roof eave fire-resistance rating shall be permitted to be reduced to 0 hours on the underside of the eave provided no gable vent openings are installed.

**R302.2 Townhouses.** Each *townhouse* shall be considered a separate building and shall be separated by one of the following methods:

1. A common 1-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 and a fire sprinkler system in accordance with Section P2904 in both townhouses shall be provided. The cavity of the common wall shall not contain plumbing or mechanical equipment,

ducts or vents. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4.

2. A common 2-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 shall be provided. The cavity of the common wall shall not contain

plumbing or mechanical equipment, ducts or vents. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4.

3. Two wall assemblies meeting the requirements of Section R302.1 for exterior walls shall be provided.

**R302.2.1 Continuity.** The fire-resistance-rated wall or assembly separating townhouses shall be continuous from the foundation to the underside of the roof sheathing, deck or slab. The fire-resistance rating shall extend the full length of the wall or assembly, including wall extensions through and separating attached enclosed accessory structures.

Where a story extends beyond the exterior wall of a story below:

1. The fire-resistance-rated wall or assembly shall extend to the outside edge of the upper story; or
2. The underside of the exposed floor-ceiling assembly shall be protected as required for projections in Section R302.

**R302.2.4 Structural independence.** Each individual townhouse shall be structurally independent.

- EXCEPTIONS:
1. Foundation supporting exterior walls or common walls.
  2. Structural roof and wall sheathing from each unit may be fastened to the common wall framing.
  3. Nonstructural wall and roof coverings.
  4. Flashing at termination of roof covering over common wall.
  5. Townhouses separated by a common (~~1-hour fire-resistance-rated~~) wall as provided in Section R302.2, Item 1 or 2.
  6. Floor sheathing may fasten to the floor framing of both units.

**R302.3.1 Supporting construction.** When floor assemblies are required to be fire-resistance rated by Section R302.3, the supporting construction of such assemblies shall have an equal or greater fire-resistance rating.

- EXCEPTION:
- The supporting construction is not required to be fire-resistance rated where:
1. Automatic fire sprinklers are installed in accordance with appendix R in both dwelling units;
  - or
  2. All required smoke alarms in both dwelling units are interconnected in such a manner that the actuation of one alarm will activate all alarms in both dwelling units.

## WSR 14-16-032

### PROPOSED RULES

#### BUILDING CODE COUNCIL

[Filed July 28, 2014, 5:05 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-030.

Title of Rule and Other Identifying Information: Amendments to chapter 51-54A WAC: Section 907 [of] the 2012 International Fire Code (IFC).

Hearing Location(s): Fire Department Training Center, 1618 South Rebecca Street, Spokane, WA, on September 12, 2014, at 10 a.m.; and at DES Presentation Room, 1500 Jefferson S.E., Olympia, WA 98504, on October 10, 2014, at 10 a.m.

Date of Intended Adoption: November 14, 2014.

Submit Written Comments to: Ray Allshouse, P.O. Box 41449, Olympia, WA 98504-1449, e-mail sbcc@ga.wa.gov [sbcc@ga.wa.gov], fax (360) 586-5366, by October 24, 2014.

Assistance for Persons with Disabilities: Contact Peggy Bryden by September 2, 2014, (360) 407-9280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This amendment to the Fire Code will ease a significant financial burden for small daycares and small or limited school remodel projects; the current rule exempts Group E occupancies with an occupant load of thirty or fewer from the requirements for manual fire alarm systems. This rule will raise that number to an occupant load of fifty or fewer; it will also specify that [that] an emergency voice alarm system is not required in Group E occupancies of one hundred or fewer occupants if the manual fire alarm system initiates an approved signal.

This matter is also the subject of an emergency rule currently in place under WSR 14-08-090.

Reasons Supporting Proposal: The adoption of the 2012 Fire Code placed an undue financial hardship on school districts and small Group E daycare centers due to fire alarm requirements related to occupancy. The proposed amendment provides an adequate level of safety as determined by the national standards for the 2015 code; it has been recognized that the 2012 Fire Code had the unintended consequence of an increased scope; this was not justified and is being addressed through the national code amendment process for 2015. Adoption of the current proposal in Washington state, rather than delaying action until the adoption of the 2015 Fire Code, will provide economic relief to school districts now.

Statutory Authority for Adoption: RCW 19.27.074, 19.27.031.

Statute Being Implemented: Chapter 19.27 RCW.

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

Name of Proponent: State building code council (SBCC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joanne McCaughan, P.O. Box 41449, Olympia, WA 98504-1449, (360) 407-9279; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This code modification is being made to resolve an error in the current code language that has been rectified in the 2015 edition of the IFC. It will provide relief to school districts by eliminating the requirement for voice alarm systems in some Group E occupancies. It has been determined that there is no fiscal impact incurred on Washington small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. SBCC is not a listed agency under RCW 34.05.-328 (5)(a)(i).

June 13, 2014  
C. Ray Allshouse  
Council Chair

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

**WAC 51-54A-0907 Fire alarm and detection systems.**

**907.2.3 Group E.** 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 E occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

**EXCEPTION:**

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, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.
3. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
  - 3.1 Interior corridors are protected by smoke detectors.
  - 3.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.
  - 3.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
4. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1, the emergency voice/alarm communication system will activate on sprinkler water flow and manual activation.

**907.2.9.1.1 Group R-2 boarding homes.** A manual fire alarm system shall be installed in Group R-2 occupancies where the building contains a boarding home licensed by the state of Washington.

**EXCEPTION:** In boarding homes licensed by the state of Washington, manual fire alarm boxes in resident sleeping areas shall not be required at exits if located at all constantly attended staff locations, provided such staff locations are visible, continuously accessible, located on each floor, and positioned so no portion of the story exceeds a horizontal travel distance of 200 feet to a manual fire alarm box.

**WSR 14-16-033**  
**PROPOSED RULES**  
**BUILDING CODE COUNCIL**

[Filed July 28, 2014, 5:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-028.

Title of Rule and Other Identifying Information: Amendments to chapter 51-50 WAC: Section 2900 of the 2012 International Building Code.

Hearing Location(s): Fire Department Training Center, 1618 South Rebecca Street, Spokane, WA, on September 12, 2014, at 10 a.m.; and at DES Presentation Room, 1500 Jefferson S.E., Olympia, WA 98504, on October 10, 2014, at 10 a.m.

Date of Intended Adoption: November 14, 2014.

Submit Written Comments to: Ray Allshouse, P.O. Box 41449, Olympia, WA 98504-1449, e-mail sbcc@ga.wa.gov [sbcc@ga.wa.gov], fax (360) 586-5366, by October 24, 2014.

Assistance for Persons with Disabilities: Contact Peggy Bryden by September 2, 2014, (360) 407-9280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: An earlier modification of this WAC section created an unintended financial impact on Washington school districts, and required them to install additional plumbing fixtures with no benefit to building occupants. This rule will reduce the number of fixtures needed in Group E occupancy buildings, and will thus eliminate the financial burden on school districts.

This matter is also the subject of an emergency rule currently in place under WSR 14-11-060.

Reasons Supporting Proposal: In late 2013, the building code council developed a special technical advisory group (TAG) to address building code issues related to schools. The council learned that there had been an oversight in the adoption of the 2012 codes that required additional plumbing fixtures to be installed in Group E occupancies. This issue resulted in an excessive number of fixtures being required by the local building officials, and had a negative economic impact on the districts. The TAG recommended, and the council concurred, the adoption of an emergency rule to be followed by permanent rule making on the issue, reducing the number of fixtures required in Group E occupancies.

Statutory Authority for Adoption: RCW 19.27.074, 19.27.031.

Statute Being Implemented: Chapter 19.27 RCW.

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

Name of Proponent: State building code council (SBCC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joanne McCaughan, P.O. Box 41449, Olympia, WA 98504-1449, (360) 407-9279; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This code modification is being made to resolve an error in the current code language. It will provide relief to builders and school districts by eliminating the requirement for an excessive number of plumbing fixtures in Group E occupancies. It has been determined that there is no fiscal impact incurred on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. SBCC is not a listed agency under RCW 34.05.-328 (5)(a)(i).

June 13, 2014  
C. Ray Allshouse  
Council Chair

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

**WAC 51-50-2900 Chapter 29—Plumbing systems.**

**SECTION 2901—GENERAL.**

**2901.1 Scope.** The provisions of this chapter and the state plumbing code shall govern the erection, installation, *alteration*, repairs, relocation, 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.

**SECTION 2902—MINIMUM PLUMBING FACILITIES.**

**2902.1 Minimum number of fixtures.** Plumbing fixtures shall be provided for the type of occupancy and in the minimum number shown in Table 2902.1. Types of occupancies 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. Occupancy classification shall be determined in accordance with Chapter 3. 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.** Where urinals 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.

**2902.1.2 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.

**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/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.

**2902.3 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 open or enclosed parking garages. Toilet facilities shall not be required in parking garages where there are no parking attendants.

**2902.3.1 Access.** The route to the public toilet facilities required by Section 2902.3 shall not pass through kitchens, food preparation areas, unpackaged food storage areas, storage rooms or closets. Access to the required facilities shall be from within the building or from the exterior of the building. Access to toilets serving multiple tenants shall be through a common use area and not through an area controlled by a tenant. All routes shall comply with the accessibility requirements of this code. The public shall have access to the required toilet facilities at all times that the building is occupied. For other requirements for plumbing facilities, see Chapter 11.

**2902.3.1.1 Food preparation areas.** Toilet rooms shall not open directly into a room used for the preparation of food for service to the public or residents of Group R-2 boarding homes and residential treatment facilities licensed by Washington state.

**2902.3.2 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 travel distances to required employee facilities in factory and industrial occupancies are permitted to exceed that required by this section, provided that the location and maximum travel distance are *approved*.

**2902.3.3 Location of toilet facilities in malls.** In covered and open mall buildings, the required *public* and employee toilet facilities shall be located not more than one story above or below the space required to be provided with toilet facilities, and the path of travel to such facilities shall not exceed a distance of 300 feet (91,440 mm). In mall buildings, the required facilities shall be based on total square footage (m<sup>2</sup>) within a covered mall building or within the perimeter line of an open mall building, and facilities shall be installed in each individual store or in a central toilet area located in accordance with this section. The maximum travel distance to central toilet facilities in mall buildings shall be measured from the main entrance of any store or tenant space. In mall buildings, where employees' toilet facilities are not provided in the individual store, the maximum travel distance shall be measured from the employees' work area of the store or tenant space.

**2902.3.4 Pay facilities.** Where pay facilities are installed, such facilities shall be in excess of the required minimum facilities. Required facilities shall be free of charge.

**2902.3.5 Door locking.** Where a toilet room is provided for the use of multiple occupants, the egress door for the room shall not be lockable from the inside of the room. This section does not apply to family or assisted-use toilet rooms.

**2902.4 Signage.** Required public facilities shall be designated by a legible sign for each sex. Signs shall be readily visible and located near the entrance to each toilet facility. Signs for accessible toilet facilities shall comply with Section 1110.

**2902.4.1 Directional signage.** Directional signage indicating the route to the public facilities shall be posted in accordance

with Section 3107. Such signage shall be located in a *corridor* or aisle, at the entrance to the facilities for customers and visitors.

**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 travel distance 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.

**2902.6 Dwelling units.** Dwelling units shall be provided with a kitchen sink.

**2902.7 Water closet space requirements.** The water closet stool in all occupancies shall be located in a clear space not less than 30 inches (762 mm) in width, with a clear space in front of the stool of not less than 24 inches (610 mm).

**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<sup>a</sup>**  
**(See Sections 2902.2 and 2902.3)**

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathtubs /Showers
				Male	Female	Male	Female	
1	Assembly	A-1 <sup>d</sup>	Theaters and other buildings for the performing arts and motion pictures	1 per 125	1 per 65	1 per 200		—
		A-2 <sup>d</sup>	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		—

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathtubs /Showers
				Male	Female	Male	Female	
		A-3 <sup>d</sup>	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	Educational facilities	1 per <del>((50))</del> <u>35</u>	1 per <del>((30))</del> <u>25</u>	1 per <del>((400))</del> <u>85</u>	1 per <del>((60))</del> <u>50</u>	—
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 <sup>b</sup>	1 per room <sup>c</sup>		1 per room <sup>c</sup>		1 per 15
			Employees, other than residential care <sup>b</sup>	1 per 25		1 per 35		—
			Visitors other than residential care	1 per 75		1 per 100		—
		I-3	Prisons <sup>b</sup>	1 per cell		1 per cell		1 per 15
			Reformatories, detention centers and correctional centers <sup>b</sup>	1 per 15		1 per 15		1 per 15
Employees <sup>b</sup>	1 per 25		1 per 35		—			

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathtubs /Showers
				Male	Female	Male	Female	
		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	Structures for the storage of goods, warehouses, storehouses and freight depots, low and moderate hazard	1 per 100		1 per 100		Check State (UPC)
		S-2						

- 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.

**WSR 14-16-036**  
**PROPOSED RULES**  
**DEPARTMENT OF AGRICULTURE**

[Filed July 28, 2014, 9:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-087.

Title of Rule and Other Identifying Information: Chapter 16-301 WAC, General seed regulations and chapter 16-302 WAC, General seed certification standards.

Hearing Location(s): Washington state department of agriculture (WSDA) Building, 21 North First Avenue, Room 238, Yakima, WA 98902, on September 11, 2014, at 11:00 a.m.

Date of Intended Adoption: September 25, 2014.

Submit Written Comments to: Theresa Norman, P.O. Box 42560, Olympia, WA 98504, e-mail WSDARules

Comments@agr.wa.gov, fax (360) 902-2043, by 5:00 p.m., September 11, 2014.

Assistance for Persons with Disabilities: Contact the agency receptionist by calling TTY 1-800-833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will establish certification standards for new seed crops being certified in Washington, align other standards with nationally established certification standards, bring labeling and certification standards up-to-date and take care of multiple house-keeping items.

Reasons Supporting Proposal: This proposal is supported by members of the seed industry that are growing new seed crops in Washington as it will establish standards to facilitate certification and seed sales. This proposal also addresses many suggestions from a recent audit by the Association of Official Seed Certification Agencies to better align

with national standards. Finally, this proposal addresses many outstanding housekeeping items.

Statutory Authority for Adoption: Chapters 15.49 and 34.05 RCW.

Statute Being Implemented: Chapter 15.49 RCW, Seeds.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Victor Shaul, Yakima, (509) 249-6950.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared as this proposal does not impose any new fees or impose any new regulatory compliance measures upon industry.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency in RCW 34.05.328 (5)(a)(i).

July 27, 2014  
Brad J. Avy  
Assistant Director

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

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

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

**"AOSA"** means the Association of Official Seed Analysts.

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

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

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

**"Bean"** means common beans and adzuki beans.

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

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

**"Buyer"** means a person who purchases seeds.

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

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

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

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

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

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

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

**"Common bean"** means *Phaseolus vulgaris* L.

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

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

**"Department"** as defined in RCW 15.49.011(~~(8)~~) (10) means the Washington state department of agriculture or its duly authorized representative.

**"Director"** as defined in RCW 15.49.011(~~(9)~~) (11) means the director of the department of agriculture.

**"Field standards"** means the tolerances permitted as determined by established field inspection procedures.

**"Fiscal year"** means the twelve-month period July 1 through June 30.

**"Flower seeds"** as defined in RCW 15.49.011(~~(14)~~) (13) include seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold as flower seeds in this state.

**"Germination"** as defined in RCW 15.49.011(~~(13)~~) (15) means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

**"Interagency certification"** means the participation of two or more official certifying agencies in performing the services required to certify the same lot or lots of seed.

**"Isolation standards"** means the distance in feet from any contaminating source (i.e., distance from other fields of same species).

**"Label"** as defined in RCW 15.49.011(~~(18)~~) (21) includes a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk

seeds purporting to set forth the information required on the seed label by chapter 15.49 RCW, and may include other information including the requirement for arbitration.

**"Land standards"** means the number of years that must elapse between the destruction of a stand of a kind, and establishment of a stand of a specified class of a variety of the same kind (i.e., number of years out of production of same crop kind).

**"Mixture, mixed or mix"** as defined in RCW 15.49-.011(~~((22))~~) (24) means seed consisting of more than one species, each in excess of five percent by weight of the whole.

**"Nursery"** means an area of two acres or less in which grass for seed production is seeded in rows with twenty-four inch minimum spacing to facilitate roguing.

**"O.E.C.D."** means the Organization for Economic Cooperation and Development certification scheme.

**"Off-type"** means a plant or seed which deviates in one or more characteristics from that which has been described as being usual for the strain or variety.

**"Official certificate"** means a document issued by an official testing agency including but not limited to seed certification tags, bulk seed certification certificates, phyto-sanitary certificates, laboratory sanitary certificates, and other letters, tags, stamps, or similar documents certifying seed quality or condition.

**"Official sample"** as defined in RCW 15.49.011(~~((23))~~) (25) means any sample taken and designated as official by the department.

**"Official seed laboratory"** means a seed testing laboratory approved by the director, such as, but not limited to, Washington State Seed Laboratory, 21 N 1st Avenue, Yakima, Washington; and Oregon State Seed Laboratory, Oregon State University, Corvallis, Oregon. (~~(This definition is to include any laboratory that has an accreditation process in place.)~~)

**"Origin"** means the county within the state of Washington, or the state, territory, or country where a specific seed lot was grown.

**"Person"** as defined in RCW 15.49.011(~~((26))~~) (27) means an individual, partnership, corporation, company, association, receiver, trustee or agent.

**"Proprietary variety"** means that crop variety for which a person has exclusive production and/or marketing rights.

**"Representative sample"** means a sample drawn in accordance with sampling procedures adopted in WAC 16-301-095.

**"Seeds"** as defined in RCW 15.49.011(~~((33))~~) (35) means agricultural or vegetable seeds, or other seeds as determined by rules adopted by the department.

**"Seed labeling permit"** means a permit issued by the department pursuant to RCW 15.49.400 to a person labeling seed for distribution in this state.

**"Seed program advisory committee"** means a committee of representatives from the small grains, pea, lentil, bean, vegetable, small seeded legumes, and grass seed industries selected by the program manager in consultation with the industry.

**"Seed standards"** means the tolerances permitted as determined by established seed inspection procedures.

**"Serology"** means precipitation, agglutination, immunodiffusion, or labeled antibody test methods (such as ELISA) that use the specificity of antigen-antibody reactions to detect and identify antigenic substances and the organisms such as viruses and bacteria that carry viruses.

**"Stock seed"** means breeders, prebasic, or like initial generation of seed.

**"Sudangrass"** means *Sorghum bicolor x drummondii*.

**"University"** means the Washington State University.

**"USDA"** means the United States Department of Agriculture.

**"Vegetable seeds"** as defined in RCW 15.49-.011(~~((38))~~) (40) include the seeds of all crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

**"WSCIA"** means the Washington State Crop Improvement Association.

AMENDATORY SECTION (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

**WAC 16-301-010 (~~(What)~~) Publications (~~(are)~~) adopted in chapters 16-301, 16-302, and 16-303 WAC (~~(and where can they be obtained?)~~).** (1) The department adopts the 2013 AOSCA rules and procedures for certification (adopted in the year 2003. A copy may be obtained by writing: AOSCA, 600 Watertower Lane, Suite D, Meridian, Idaho 83642-6286).

(2) The department adopts the 2013 AOSA rules for testing seed (adopted in the year 2003. A copy may be obtained by contacting the administrative office for AOSA at McBride and Associates, Inc., P.O. Box 80705, Lincoln, NB 68501-0705).

(3) The department adopts the Federal Seed Act and Code of Federal Regulations (C.F.R.) Part 201 as revised January (1, 1998. A copy may be obtained by writing to the USDA, AMS, Washington, D.C. 20250) 6, 2014.

Copies of these documents can be obtained by contacting the department's seed program by calling 509-249-6950.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-301-011 (~~(What are the)~~) Functions of the seed program advisory committee(~~(?)~~).** The seed program advisory committee shall meet at least annually and make recommendations to the department regarding the objectives of the seed program. The review should include a review of the regulatory activities and program expenditures.

AMENDATORY SECTION (Amending WSR 11-19-014, filed 9/8/11, effective 10/9/11)

**WAC 16-301-015 Seed labeling requirements for agricultural, vegetable, and flower seeds.** (1) Each container of agricultural, vegetable or flower seeds, that is sold, offered or exposed for sale, or transported within this state for sowing purposes, must bear or have attached to the container a plainly written or printed label or tag in the English language; and

(a) The label provides information required in WAC 16-301-060 through 16-301-085 on treated seeds in addition to the information required in subsection (2) of this section; and

(b) The label is placed in a conspicuous manner on the seed container; and

(c) The printed label or tag is not modified or denied in the labeling or on any label attached to the seed container.

(2) Each container of agricultural, vegetable, or flower seeds (~~(-that is)~~) sold, offered or exposed for sale, or transported within this state for sowing purposes must bear "Requirement for arbitration - The Washington State Seed Act, chapter 15.49 RCW, requires mandatory arbitration of disputes involving allegedly defective seed. See chapter 16-301 WAC or contact the Washington State Department of Agriculture, Seed Program, 509-249-6950," on:

(a) The analysis tag; or

(b) A separate tag or label attached securely to each container; or

(c) Printed in a conspicuous manner on the side of each container; or

(d) Alternate wording may be approved in writing by the department to meet the needs of the industry.

(3) Except for grass seed mixtures, and hybrids that contain less than ninety-five percent hybrid seed, the label for agricultural seeds must contain the following information:

(a) The name of the kind and variety of each agricultural seed present in excess of five percent of the whole and the percentage by weight of each or if the variety is not listed with the certifying agency, the name of the kind and the words, "variety not stated." Hybrids must be labeled as hybrids; and

(b) The lot number or other lot identification; and

(c) The origin state or foreign country, if known. If the origin is not known, that fact shall be stated on the label; and

(d) The percentage, by weight, of all weed seeds present. The maximum weed seed content may not exceed two percent by weight; and

(e) The name and rate of occurrence in seeds per pound of each kind of restricted noxious weed seed present; and

(f) The percentage by weight of agricultural seeds, which may be designated as "crop seeds," other than those required to be named on the label; and

(g) The percentage by weight of inert matter; and

(h) The percentage of seed germination, exclusive of hard seed, and the percentage of hard seed, if present, or "total germination and hard seed" as a single percentage; and

(i) The calendar month and year the seed germination test was completed to determine such percentages; and

(j) The name and address of the person who labels, sells, offers, or exposes for sale seed within this state.

(4) For seed that is coated the label must also contain the following:

(a) The percentage of pure seed with coating material removed;

(b) The percentage of coating material shown as a separate item in close association with the percentage of inert material;

(c) The percentage of germination as determined on four hundred coated seed pellets, with or without seeds.

AMENDATORY SECTION (Amending WSR 02-12-060, filed 5/30/02, effective 6/30/02)

**WAC 16-301-025 Special requirements for labeling of vegetable and flower seed as prepared for use in the home.** In addition to the information required on the label in WAC 16-301-015, the following requirements also apply to vegetable and flower seed as prepared for use in home:

(1) **Vegetable seeds in packets or preplanted devices** - Labeling for vegetable seeds in packets as prepared for use in home gardens or household plantings or vegetable seeds in preplanted containers, mats, tapes, or other planting devices must include the following information:

(a) The year in which the seed was packed for sale as "packed for planting in ..." or the percentage germination and the calendar month and the year the test was completed to determine that percentage;

(b) Label for seeds which germinate less than the standard established in WAC 16-301-090 must include the following:

(i) Percentage of germination, exclusive of hard seed;

(ii) Percentage of hard seed, if present;

(iii) The words "below standard" in not less than eight-point type;

(c) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quality of seed without removing the seed from the medium, mat, tape or device, a statement to indicate the minimum number of seeds in the container.

(2) **Vegetable seeds in containers** - The labeling requirements for vegetable seeds in containers, other than packets prepared for use in home gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices, (~~(is)~~) are considered met if the seed is weighed from a properly labeled container of more than one pound in the presence of the purchaser.

(3) **Flower seeds in packets or preplanted devices** - Labeling for flower seeds in packets prepared for use in home gardens or household plantings or flower seeds in preplanted containers, mats, tapes, or other planting devices must include the following information:

(a) For all kinds of flower seeds:

(i) The name of the kind and variety or a statement of the kind and performance characteristics as prescribed in chapter 15.49 RCW and rules adopted thereunder;

(ii) The calendar month and year the seed was tested or the year for which the seed was packaged;

(b) Labels for seeds of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard established under the provisions of chapter 15.49 RCW must include the following:

(i) The percentage of germination exclusive of hard seeds;

(ii) The words "below standard" in not less than eight-point type.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-301-030 Exemptions for small grain, chickpea, field pea, lentil and/or soybean seed.** (1) Small grain,

chickpea, field pea, lentil, and/or soybean seed distributed in packaged form to a wholesaler or a commercial grower for the grower's own use and accompanied by an invoice or other document containing the labeling information required in this chapter may attach labels containing information required in treated seed label requirements listed in WAC 16-301-060 through 16-301-085; and the net weight of the seed if the purchaser has knowledge of, and consents to, the invoice labeling. Small grain seed labels must also contain information in WAC 16-301-020 (1)(a).

(2) With the exception of PVP Title V varieties that are required to be sold as a class of certified seed, when small grain, chickpea, field pea, lentil, and/or soybean seed is needed for immediate planting, a purchaser may waive the seed analysis information requirement for the purchase by completion of the following waiver:

CUSTOMER WAIVER AFFIDAVIT

THIS WAIVER MUST NOT BE USED FOR PVP TITLE V VARIETIES

Date .....

.....  
 .....  
 .....  
 .....

(Seed Dealer's Name and Address)

I, ....., because of an emergency need for ..... seed, am waiving my rights as provided in RCW 15.49.021 to receive the germination and purity information required in chapter 16-301 WAC on lot(s) ..... purchased on .....: Provided, That within thirty days, ..... the supplier provides the above information to me in writing.

.....  
 (Customer's Signature)

AMENDATORY SECTION (Amending WSR 09-16-006, filed 7/22/09, effective 8/22/09)

**WAC 16-301-045 Prohibited noxious weed seeds.** Prohibited noxious weed seeds are the seeds of weeds which when established are highly destructive, competitive and/or difficult to control by cultural or chemical practices. Seed is deemed mislabeled if the seed consists of or contains any of the prohibited noxious weed seeds listed below. For the purpose of seed certification, see WAC 16-302-100 for the list of prohibited noxious weeds.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Austrian fieldcress	<i>Rorippa austriaca</i> <del>((Crantz) Bess.)</del>
Field bindweed	<i>Convolvulus arvensis</i> (( <del>L.</del> ))
Hedge bindweed	<del>((Convolvulus sepium L.))</del> <i>Calystegia sepium</i>
Bladder campion (only in timothy-	<i>Silene vulgaris</i>

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
<i>Phleum pratense</i> ) Camelthorn	<i>Alhagi maurorum</i>
Canada thistle	<i>Cirsium arvense</i> (( <del>L.</del> - <del>Seop.</del> ))
Hairy whitetop	<i>Lepidium appelianum</i>
Hoary cress	<i>Lepidium draba</i>
Jointed goatgrass (only in small grain)	<i>Aegilops cylindrica</i>
Knapweed complex (including bighead, Vochin, black, brown, diffuse, meadow, Russian, spotted knapweeds  Purple starthistle)	<i>Centaurea macrocephala</i> , <i>Centaurea nigrescens</i> , <i>Centaurea nigra</i> , <i>Centaurea jacea</i> , <i>Centaurea diffusa</i> , <i>Centaurea</i> (( <del>jacea x nigra</del> )) <i>x moncktonii</i> , <i>Rhaponticum repens</i> , <i>Centaurea stoebe</i> <u>subsp.</u> <u>australis</u> , <i>Centaurea calcitrapa</i>
Leafy spurge	<i>Euphorbia esula</i> (( <del>L.</del> ))
Lepyrodiolis	<i>Lepyrodiolis holosteoides</i>
Perennial pepperweed	<i>Lepidium latifolium</i> (( <del>L.</del> ))
Perennial sowthistle	<i>Sonchus arvensis</i> (( <del>L.</del> ))
Quackgrass	<i>Elymus repens</i>
Serrated tussock	<i>Nassella trichotoma</i>
Silverleaf nightshade	<i>Solanum elaeagnifolium</i>
Sorghum perennial such as, but  not limited to, johnsongrass, sorghum alnum, and perennial sweet sudangrass	<i>Sorghum</i> spp.
Tansy ragwort	<i>Jacobaea vulgaris</i>
Velvetleaf	<i>Abutilon theophrasti</i>
White cockle (only in timothy- <i>Phleum pratense</i> )	<i>Silene latifolia</i>
Yellow-flowering skeleton weed	<i>Chondrilla juncea</i> (( <del>L.</del> ))
Yellow starthistle	<i>Centaurea solstitialis</i> (( <del>L.</del> ))

AMENDATORY SECTION (Amending WSR 09-16-006, filed 7/22/09, effective 8/22/09)

**WAC 16-301-050 Restricted noxious weed seeds.** Restricted (secondary) noxious weed seeds are the seeds of weeds which are objectionable in fields, lawns, and gardens of this state, but which can be controlled by cultural or chemical practices. Seed is deemed mislabeled if it consists of or contains any of the restricted noxious weed seeds listed below in excess of the number declared on the label. For the purpose of seed certification, see WAC 16-302-105 for the list of objectionable weeds.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Blackgrass or slender foxtail	<i>Alopecurus myosuroides</i>
Black mustard	<i>Brassica nigra</i>
Blue lettuce	<i>Lactuca tatarica</i> subsp. <i>pulchella</i>
Docks and Sorrel	<i>Rumex spp.</i>
Dodder	<i>Cuscuta spp.</i>
Dyers woad	<i>Isatis tinctoria</i>
Field pennycress (fanweed)	<i>Thlaspi arvense</i>
Field sandbur	<i>Cenchrus</i> ( <del>(incertus)</del> ) <i>spifex</i>
Gromwell (only in small grain)	<i>Buglossoides arvensis</i>
Halogeton or clustered barilla salt	<i>Halogeton glomeratus</i> ( <del>(C.A. Mey.)</del> )
Medusahead	<i>Taeniatherum caput-medusae</i>
Plantains	<i>Plantago spp.</i>
Poverty weed	<i>Iva axillaris</i> ( <del>(Pursh.)</del> ) Pursh
Puncturevine	<i>Tribulus terrestris</i> ( <del>(L.)</del> )
St. Johnswort	<i>Hypericum perforatum</i> ( <del>(L.)</del> )
Dalmation toadflax	<i>Linaria dalmatica</i> ( <del>((L.) Mill.)</del> )
Yellow toadflax	<i>Linaria vulgaris</i> ( <del>(Hit.)</del> )
Western ragweed	<i>Ambrosia psilostachya</i> ( <del>(DC.)</del> )
Wild mustard	<i>Sinapis arvensis</i> subsp. <i>arvensis</i>
Wild oat	<i>Avena fatua</i> ( <del>(L.)</del> )
Wild radish	<i>Raphanus raphanistrum</i>

AMENDATORY SECTION (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

**WAC 16-301-055 Tolerances for seed law enforcement.** Tolerances for seed law enforcement shall be in accord

with the code of federal regulations, C.F.R. Title 7, Section 201 as revised (~~(January 1, 1998)~~) February 25, 2014 and/or those adopted by the Association of Official Seed Analysts, as amended on October 1, (~~(2003)~~) 2013, except for the tolerances for prohibited noxious and restricted noxious weed seed which shall be as the Washington state seed law specifies for labeling.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-301-095 Sampling—Administration of the Washington State Seed Act.** (1) The official sampling procedure for sampling all seed is as follows:

(a) In order to secure a representative sample, equal portions must be taken from evenly distributed parts of the quantity of seed to be sampled. Access must be allowed to all parts of that quantity.

(b) For free-flowing seed in bags or bulk, a probe or trier is used. For small free-flowing seed in bags, a probe or trier long enough to sample all portions of the bag or container must be used.

(c) Nonfree-flowing seed, such as certain grass seed, uncleaned seed, or screenings, difficult to sample with a probe or trier, are sampled by thrusting the hand into the bulk and withdrawing representative portions.

(d) Composite samples must be obtained to determine the quality of a lot of seed, such as the percentages of pure seed, other crop seed, weed seed, inert matter, noxious weed seed, germination, varietal purity, freedom from disease, and effectiveness of seed treatment. Individual bag samples may be obtained to determine whether the seed is of uniform quality.

(2) Sampling equipment. The trier must be designed so that it will remove an equal volume of seed from each part of the bag through which the trier travels. Unless the trier has partitions in the seed chamber, it must be inserted into the bags horizontally.

(3) Obtaining representative samples.

(a) For lots of one to six bags, sample each bag and take a total of at least five cores or handfull.

(b) For lots of more than six bags, sample five bags plus at least ten percent of the number of bags in the lot. (Round numbers with decimals to the nearest whole number.) Regardless of the lot size, it is not necessary to sample more than thirty bags.

Examples:

No. bags in lots	7	10	23	50	100	200	300	400
No. bags to sample	6	6	7	10	15	25	30	30

(c) For sampling bulk seed to obtain a composite sample, take at least as many cores or handfull as if the same quantity of seed were in bags of an ordinary size. Take the cores or handfull from well-distributed points throughout the bulk.

(d) Seed in small containers must be sampled by taking entire unopened container in sufficient numbers to supply a minimum size sample as required (~~(in subsection (4) of this section)~~) by the AOSA rules for testing seed. The contents of a single container or the combined contents of multiple con-

tainers of the same lot must be considered representative of the entire lot of seed sampled.

~~((4) Minimum weights of seed samples are defined in chapter 16-303 WAC, Schedule of testing, certification and other fees.))~~

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-301-120 Arbitration committee.** The director shall create a seed arbitration committee composed of five members, including the director, or a department of agriculture employee as his or her designee, and four members. Four alternates shall also be appointed by the director according to the requirements of RCW 15.49.111.

(1) Each alternate member shall serve only in the absence of the member for whom the person is an alternate.

(2) The arbitration committee shall elect a chairperson and a secretary from among its members.

(a) The chairperson shall conduct meetings and deliberations of the committee and direct its other activities.

(b) The secretary shall keep accurate records of all meetings and deliberations and perform other duties as assigned by the chairperson.

(3) The committee shall be called into session at the direction of the director or the chairperson.

(4) The members of the committee shall receive no compensation for their duties but shall be reimbursed for travel expenses according to established state travel and per diem rates. Expense reimbursement shall be borne equally by the parties to the arbitration.

(5) A committee member, delegated with investigative responsibilities outside of the hearing under WAC ~~((16-318-395))~~ 16-301-185, may not participate in making the final decision and award.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-301-245 Annual bluegrass quarantine—Establishing quarantine.** The seeds of the weed known as annual bluegrass, *Poa annua* and its known strains, hereinafter referred to as annual bluegrass, are objectionable in turf grass seed; therefore, an annual bluegrass quarantine is established to prevent the introduction of annual bluegrass into grass seed production areas, to control seed stocks to be planted for further seed increase, and to assure grass seed growers of a source of seed stock for planting purposes which is tested for presence of annual bluegrass.

AMENDATORY SECTION (Amending WSR 04-06-019, filed 2/23/04, effective 3/26/04)

**WAC 16-301-250 Annual bluegrass quarantine—Definitions.** Definitions for terms in this chapter may be found in chapter 15.49 RCW and WAC 16-301-005, except for the purposes of WAC 16-301-255 through 16-301-295, the following definitions shall apply:

(1) "Annual bluegrass" means *Poa annua* and all related subspecies and hybrids.

(2) "Seed stock" means those seeds of turf type grasses which are to be planted for seed increase or with intent of seed increase.

(3) "Annual bluegrass analysis certificate" means a test report from an official seed laboratory showing freedom from annual bluegrass based on a ten gram sample for bentgrass or redtop; and a twenty-five gram sample for other turf type grasses.

~~((4) "Quarantine tag" means a tag issued by Washington state department of agriculture to be sealed to each bag showing said seed has met quarantine requirements.))~~

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-301-255 Annual bluegrass quarantine—Regulated area.** Areas regulated under the annual bluegrass quarantine include all areas of the state of Washington lying east of the Cascade Crest, excluding Klickitat County and the portion of Benton County south of Interstate 82.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-301-260 Annual bluegrass quarantine—Quarantine area.** Areas quarantined under the annual bluegrass quarantine include all areas of the state of Washington lying west of the Cascade Crest, Klickitat County and the portion of Benton County south of Interstate 82 in Eastern Washington and all areas outside of the state of Washington.

AMENDATORY SECTION (Amending WSR 04-06-019, filed 2/23/04, effective 3/26/04)

**WAC 16-301-270 Annual bluegrass quarantine—Conditions governing movement of regulated articles.** (1) No seed stock may be shipped, transported, moved within, or into the annual bluegrass quarantine regulated area unless such seed stock is accompanied by a test report from an official laboratory showing said seed stock is free of annual bluegrass on the basis of a minimum ten gram analysis for bentgrass and a minimum of twenty-five gram analysis for other grasses except that seed stock found to contain annual bluegrass may be planted in the regulated area if planted in a nursery under an inspection program as established by the state department of agriculture.

(2) This quarantine shall not apply to seed sown for forage or turf. This quarantine shall not apply to range, reclamation, or forage type seed production fields.

(3) This quarantine shall not apply to:

(a) Experiments or trial grounds of the United States Department of Agriculture;

(b) Experiments or trial grounds of Washington State University experiment station; or

(c) Trial grounds of any person, firm, or corporation; provided said trial ground plantings are approved by the director and under supervision of technically trained personnel familiar with annual bluegrass control.

(4) Any person shipping, moving or transporting any seed stock for planting purposes in or into the regulated area that is not ~~((tagged with official "annual bluegrass quaran-~~

~~time tags or~~) represented by a test report showing freedom of annual bluegrass as allowed in subsection (1) of this section must:

(a) State where and when seed stock can be sampled for the required annual bluegrass test; or

(b) Attach a copy of the official laboratory analysis showing freedom from annual bluegrass; or

(c) Submit a representative sample for testing.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-301-280 Annual bluegrass quarantine— Procedure for clearing.** ~~((+))~~ Each person moving, shipping or transporting seed stock within or into the annual bluegrass quarantine regulated area must:

~~((+))~~ (1) Submit an official laboratory analysis of a representative sample showing freedom from annual bluegrass; or

~~((+))~~ (2) Submit a representative sample for testing.

~~((2))~~ Upon receipt of an official laboratory analysis showing freedom from annual bluegrass, the department of agriculture shall tag each bag of those lots found free of annual bluegrass by the required test with "annual bluegrass quarantine" tag, stating said seed is eligible for planting in Eastern Washington.)

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-490** ~~((Why is the department establishing a))~~ **Crucifer seed quarantine** ~~((?))~~. The production of crucifer vegetable seed is an important industry in Washington state. The economic well-being of that industry is threatened by the introduction of crucifer seed infected with certain bacterial and fungal pathogens. In addition, certain crucifer species produce dormant seed that, if present in a seed lot will persist into subsequent cropping years. The resulting "volunteer" plants have the potential to become established as weeds in Washington state.

The director has determined that a quarantine is needed to protect the Washington crucifer vegetable seed industry from the introduction of seed infected with certain pathogens and from the introduction of crucifer seed containing dormant seed. The quarantine will provide the seed growers in this state with sources of crucifer seed that have been tested and proven to be free from harmful pathogens and, when appropriate, dormant seed.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-495** ~~((What))~~ **Definitions** ~~((are important to understanding this chapter?))~~. Definitions for some terms in this chapter can be found in chapter 15.49 RCW and chapter 16-301 WAC. In addition, the following definitions apply to this chapter:

"**Approved treatment methods**" include hot water, hot chlorine or any other methods that can eliminate the presence of regulated pathogens.

"**Crucifer**" means all plants in the family Brassicaceae (also known as Cruciferae) and specifically includes all *Brassica* species, *Raphanus sativus* - Radish, *Sinapis alba* and other mustards.

"**Crucifer production**" means any planting of crucifer seed or seedlings for the purpose of producing seed, oil, commercial vegetables or cover crops.

"**Crucifer seed**" includes any part of a plant capable of propagation including, but not necessarily limited to, seeds, roots, and transplants.

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

"**Director**" means the director of the Washington state department of agriculture or the director's designee.

"**Dormant seed**" means viable true seed that displays a delay in or lack of germination when provided favorable germination conditions for the type of seed in question.

"**Owner**" means the person having legal ownership, possession or control over a regulated article covered by this chapter including, but not limited to, the owner, shipper, consignee, grower, seed dealer, landowner or their agent.

"**Person**" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

"**Regulated area**" means those geographic areas that are protected from the introduction of specified plant pests by the provisions of this quarantine.

"**Seed lot**" means a designated quantity of seed that is uniquely identified by a lot number.

"**Seed program**" means the Washington state department of agriculture seed program.

"**Trial ground**" means a specific parcel of land approved by the director for experimental or limited production or increase of crucifer seed and for planting seed lots whose quantity of seed is insufficient to allow for pathological testing.

"**True seed**" means a mature fertilized ovule consisting of an embryo, with or without an external food reserve enclosed by a seed coat.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-500** ~~((What))~~ **Crucifer articles** ~~((are))~~ **regulated by this chapter** ~~((?))~~. (1) With the exception of the exemptions listed in WAC 16-301-525(4), all crucifer seed, seedlings, roots, or transplants intended for seed production, oil production, commercial vegetable production or cover crop use are regulated under the provisions of this chapter.

(2) This chapter also regulates crop residue remaining from the harvest of infected crucifer plants.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-505** ~~((What diseases are))~~ **Diseases regulated by this chapter** ~~((?))~~. (1) "**Regulated diseases**" means those bacterial and fungal diseases of crucifers listed in this section and any new variations or strains of these diseases.

(2) "**Regulated pathogens**" means those bacterial and fungal organisms identified as the casual agents for the diseases listed in this section.

(3) The following bacterial and fungal diseases of crucifers, and any new strains or variations of these diseases are regulated by this chapter:

Common Name	Scientific Name
Black leg of Crucifers	<i>Phoma lingam</i>
Black rot	<i>Xanthomonas campestris pv. campestris</i>

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-510** (~~What~~) Seed (~~must undergo~~) dormancy testing(?). Any seed of a *Brassica* or *Sinapis* species whose primary uses for any nonvegetable use must be tested for the presence of dormant seed.

This testing must be done by either a single or paired germination test that demonstrates freedom of dormant seed.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-515** (~~What is the quarantined area for this~~) Crucifer seed quarantine(?) Quarantined area.

(1) The quarantine area for the crucifer seed quarantine includes all Washington state counties except Clallam, Island, Lewis, Skagit, Snohomish, and Whatcom counties.

(2) Regulated articles imported into Washington state must comply with the regulations of this chapter before transport into the regulated area. No additional requirements apply within the quarantine area but all regulated articles transported into the regulated area must comply with the regulations of this chapter.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-520** (~~What is the regulated area for this~~) Crucifer seed quarantine(?) Regulated area. The regulated area for this crucifer seed quarantine includes Clallam, Island, Lewis, Skagit, Snohomish, and Whatcom counties.

AMENDATORY SECTION (Amending WSR 07-19-122, filed 9/19/07, effective 10/20/07)

**WAC 16-301-525** (~~What are the exemptions to the~~) Crucifer seed quarantine (~~that apply~~) within the regulated area(?) Exemptions. This crucifer quarantine does not apply to:

(1) Experiments or trial grounds of the United States Department of Agriculture;

(2) Experiments or trial grounds of a university such as but not limited to the University of Idaho or Washington State University research stations; or

(3) Trial grounds of any person, firm or corporation that are approved by the director and established in accordance with WAC 16-301-550(-);

(4) Shipments, movements, or transportation of:

(a) Prepackaged crucifer seed in packages of 1/2 ounce or less if the seeds are free of regulated diseases as required in WAC 16-301-530; or

(b) Vegetable seedlings offered for sale for home garden use in the regulated area if the seedlings are free of regulated diseases as required in WAC 16-301-530.

(5) Research, variety development, variety maintenance or other crucifer production where the entire crop cycle is confined within a building or greenhouse(-);

(6) Seed lots with a maximum weight of five pounds that were in inventory prior to January 1, 2007.

AMENDATORY SECTION (Amending WSR 07-19-122, filed 9/19/07, effective 10/20/07)

**WAC 16-301-530** (~~What requirements apply to~~) Planting crucifer seed in the regulated area(?) Requirements.

(1)(a) It is a violation of this chapter to plant or establish crucifer seed that is infected with any regulated disease in the regulated area.

(b) Any seed of a *Brassica* or *Sinapis* species planted or established in the regulated area whose primary use is for any nonvegetable use must be tested for the presence of dormant seed as required by WAC 16-301-510.

(2) Any person who plans to ship, move, or transport any crucifer seed intended for planting purposes into or within the regulated area must file a Notice of Intent/Quarantine Compliance form with the seed program before planting or offering the seed for sale.

(3) The Notice of Intent/Quarantine Compliance form filed with the seed program must be accompanied by a copy of the:

(a) Laboratory analysis or some other proof (such as a phytosanitary certificate based upon laboratory testing issued from the state or country of production) demonstrating that the lot is free of regulated diseases; and

(b) Seed analysis certificate(s) showing that the lot is free from dormant seed, if required under WAC 16-301-510.

(4) It is a violation of this chapter for any crucifer seed intended for seed production, oil production, commercial vegetable production or cover crop use to be offered for sale within or into the regulated area unless accompanied by documentation verifying quarantine compliance.

(a) For small packages such as heat sealed envelopes and tins, quarantine compliance may be placed on a sales invoice or other documentation that is provided to the purchaser of seed. Language must be approved by the seed program.

(b) Larger containers must bear a label issued by the seed program indicating that the seed is in compliance with this chapter.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-535** (~~What requirements apply to~~) Boxes and racks used to ship crucifer seedlings(?) Requirements.

(1) Only boxes that have not previously contained crucifer seedlings may be used for shipping transplants into or within a regulated area.

(2) Racks used to ship transplanted crucifer seedlings must be thoroughly disinfected with an appropriate sanitizer before the seedlings are shipped.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-540 (~~What requirements apply to~~) Crucifer transplants grown in greenhouses in the regulated area(?)—Requirements.** (1) All crucifer transplants produced in greenhouses in the regulated area must be subjected to pest control procedures that reduce the presence of diseases or insects that may inhibit identifying regulated diseases.

(2) The interiors of greenhouses in the regulated area used to produce crucifer transplants must be free of crucifer weeds.

(3) One hundred meter buffers, free of crucifer weeds, must surround all greenhouses in the regulated area used to produce crucifer transplants.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-545 (~~What requirements apply to~~) Crucifer seed lots that test positive for any regulated disease(?)—Requirements.** (1) If a crucifer seed lot tests positive for any regulated disease, the infected seed lot may be treated with an approved seed treatment.

(2) After treatment, the seed lot must be tested for the presence of regulated diseases using appropriate pathological testing methods.

(3) If the pathological testing yields negative test results, the seed lot will be considered in compliance with this chapter.

(4) It is a violation of this chapter to plant seed in the regulated area that tests positive for any regulated disease subsequent to any approved treatment method.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-550 (~~If documentation verifying that crucifer seed is free from regulated diseases is not available, what protocols must be followed before the seed is planted in a regulated area?>) Planting seed in a regulated area—Protocols when certain documentation is unavailable.~~** When no documentation exists verifying that a crucifer seed lot is free from regulated diseases, the following protocols must be followed before the seed is planted in the regulated area:

(1) A crucifer seed lot will be classified as a suspect seed lot if the seed lot lacks the documentation verifying that the lot complies with the crucifer seed quarantine requirements of this chapter.

(2) Suspect seed lots must:

(a) Not be offered for sale in the regulated area.

(b) Be treated by an approved treatment method.

(c) Be sown in a greenhouse and the seedlings must pass inspection by seed program inspectors before transplanting to the field.

(3) Any greenhouse operation used to grow crucifer seedlings for transplant must:

(a) Physically separate suspect seed lots from other crucifer production within that greenhouse.

(b) Monitor and document the location and identity of each suspect seed lot during production.

(4) It is a violation of this chapter for seedlings from a suspect seed lot to be topped, clipped, chopped or undergo any other treatment to toughen them or reduce their size.

(5) All seedlings from a suspect seed lot that exhibit symptoms of regulated diseases must be physically separated from asymptomatic transplants in that lot.

(6) Before shipping seedlings from a suspect seed lot, the seedlings must be inspected by seed program inspectors for the presence of regulated diseases.

(a) If no symptoms of regulated diseases are detected during this inspection, the suspect seed lot is considered in compliance with this chapter and may be sold and planted within the regulated area.

(b) If seedlings display symptoms of regulated diseases, laboratory testing for the diseases is mandatory.

(c) If seedlings from a suspect seed lot test negative for regulated pathogens after appropriate pathological testing, the suspect seed lot is considered in compliance with this chapter and may be sold and planted within the regulated area.

(d) If the presence of a regulated disease is confirmed by laboratory testing, all seedlings from a suspect seed lot may be subject to a quarantine order or destruction order under WAC 16-301-570.

(7) Any crucifer seed production fields, plant beds, or greenhouse production that will be planted with or receives production from suspect seed lots that are determined to be free from regulated diseases under subsection (6) of this section must be entered into the Washington state phytosanitary inspection program as required under WAC 16-301-235.

(8)(a) It is a violation of this chapter to plant seedlings from a suspect seed lot that tests positive for any regulated disease in the regulated area.

(b) Any suspect seed lot testing positive for any regulated disease may be subject to a quarantine order or a destruction order under WAC 16-301-570.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-555 (~~How are~~) Approved trial grounds (established and what rules apply to them?).** (1) If a crucifer seed lot has not been tested to determine if it is disease free, and the quantity of seed in the lot is too small for testing to be practical, it must be planted in an approved trial ground that meets the requirements of the seed program.

(2) Trial grounds may be established for the purposes of, but not limited to, variety maintenance, variety development or other related research.

(3)(a) The seed program must approve a trial ground before it is established.

(b) Failure to obtain approval of a trial ground before it is established is a violation of this chapter and may subject

the trial ground to a destruction order under WAC 16-301-570.

(4)(a) Trial grounds must be isolated from crucifer production crops according to the standards set in "*Seed Field Minimum Isolation Distances*" published by the Washington State University (WSU) cooperative extension.

(b) Copies of this publication can be obtained by contacting a WSU extension office.

(5) A person may plant crucifer seed in an approved trial ground after notifying the seed program, in writing, of their intent to plant for research purposes only. The notification will include an assurance that the person planting crucifer seed in an approved trial ground will comply with the inspection procedures in WAC 16-301-560, the isolation requirements prescribed by the WSU extension publication "*Seed Field Minimum Isolation Distances*," and any other requirements established by the director.

(6) The maximum planting in a trial ground is:

- (a) One pound per variety for crucifer seed; and
- (b) One-half acre for crucifer transplants.

**AMENDATORY SECTION** (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-560 (~~What are the~~) Inspection requirements for trial grounds(?)** (1) Applications for the phytosanitary field inspection of a trial ground must be submitted to the department before September 1 of the year the trial ground is established.

(2) A minimum of two phytosanitary field inspections of a trial ground must be conducted. These inspections must take place:

- (a) During the seedling stage; and
- (b) At the bloom stage.

(3) The phytosanitary field inspection application must include:

- (a) A detailed varietal planting plan;
- (b) A description of the exact location of the trial ground;
- (c) The manner in which the trial ground will be isolated from other known crucifer production; and
- (d) The distance by which the trial ground is isolated from other known crucifer production.

(4) If the field inspections detect any regulated pathogens, the trial ground is subject to destruction upon the order of the director.

(5) A disinfectant must be applied to the:

- (a) Machinery used in the production of the crucifer crop;
- (b) Footwear of all persons entering the trial grounds; and
- (c) Footwear of all persons before traveling from a trial ground to other crucifer fields.

**AMENDATORY SECTION** (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-565 (~~What are the~~) Testing requirements for seed harvested from an approved trial ground(?)** (1) Seed harvested from an approved trial ground must be tested in an approved laboratory for the pres-

ence of regulated pathogens before it is planted in a regulated area.

(2) If the seed harvested from a trial ground tests positive for any regulated pathogens, it may not be released for general planting within a regulated area.

(3)(a) Seed harvested from a trial ground infected with a regulated pathogen must either be destroyed or shipped out of the regulated area.

(b) Written documentation of either the seed's destruction or shipment out of the regulated area must be submitted to the seed program within thirty days of the positive test for the regulated pathogen.

(c) Seed from a trial ground infected with a regulated pathogen that remains in a regulated area beyond thirty days may be subject to destruction upon the order of the director.

**AMENDATORY SECTION** (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-570 (~~What are the~~) Penalties for violating the crucifer seed quarantine(?)** (1) When the director determines that crucifer seed or production is infected with a regulated disease, the director may issue a quarantine order or notice of destruction. A violation of this chapter may also result in either a quarantine order or notice of destruction as determined by the director and the rules regulating the crucifer quarantine. Any costs associated with complying with a notice of destruction or quarantine order is the sole responsibility of the owner and not the responsibility of the department.

(2) The director may issue a notice of destruction:

(a) The notice of destruction will identify the property or seed lot affected.

(b) The notice of destruction will order the destruction of regulated articles or prescribe the terms of entry, inspection, partial destruction and/or treatment of regulated articles.

(c) The notice of destruction may prescribe control measures or other requirements needed to prevent the infection of adjacent properties with a regulated disease.

(d) To ensure that the affected parties comply with the measures required to eliminate a disease caused by regulated pathogens, the director will notify the owner and seed company representatives, if known, regarding the methods of destruction to be used, the extent of the destruction and the safeguards being implemented to prevent the spread of the disease.

(3) The director may order the quarantine of any regulated article or planting area. The director will:

- (a) Determine the quarantine conditions;
- (b) Determine if a quarantine extension is warranted; and
- (c) Prescribe sanitary precautions that will prevent the spread of the suspected regulated disease.

(4) To prevent the spread of the suspected regulated disease, persons entering the quarantined area must follow the sanitary precautions in WAC 16-301-560(5). Entry into the quarantined area is restricted to:

- (a) The owner;
- (b) Department employees;
- (c) University personnel or other plant pathology specialists; and/or

(d) Persons authorized in writing by the director.

(5) Fields placed under a quarantine order:

(a) Must enter the Washington state phytosanitary inspection program as required under WAC 16-301-235 with all inspection costs borne by the owner.

(b) May be subject to additional inspection, control, isolation, or destruction requirements if the director determines they are needed to prevent the spread of regulated pathogens.

(6) Any owner violating the requirements of this crucifer quarantine is subject to the civil and/or criminal penalties as established in chapters 15.49 and/or 17.24 RCW.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-575 ((How are)) Identification of diseased crucifer seeds and infected fields ((identified?)).** (1) So that timely investigations may be made, all interested parties, including owners, seed company representatives, and university extension personnel are encouraged to promptly report any suspected infected crucifer fields to the seed program.

(2) Any crucifer crop infected with a regulated pathogen must be reported to the seed program within seventy-two hours after the regulated pathogen is discovered.

(3)(a) The seed program may conduct inspections and tests to determine infection of any crucifer seed or production with a regulated disease.

(b) If a WSDA plant services program plant pathologist and a qualified plant pathologist representing a commercial company or owner disagree over the presence of a regulated disease, the company or owner may request a verification test for a regulated pathogen. A university plant pathologist may recommend the verification test. The verification test must use accepted scientific and professional techniques and will be at the owner's expense.

(c) The affected planting area will be placed under quarantine for at least thirty days or until verification testing is completed.

AMENDATORY SECTION (Amending WSR 06-01-111, filed 12/21/05, effective 1/21/06)

**WAC 16-301-580 ((What regulations apply to)) Diseased crucifer seeds and infected fields((?))—Regulations.** (1) When the director determines that a field is infected with a regulated pathogen and threatens to infect other fields, the director may issue a notice of destruction prescribing control measures or other requirements needed to prevent the infection of adjacent properties.

(2) Unless the crop is within two weeks of harvest, any crucifer crop within the regulated area that is infected with a regulated pathogen may be subject to immediate destruction, in part or in total. The owner is responsible for the expenses incurred to destroy a diseased crucifer crop.

(3) The following requirements apply to crops that are within two weeks of harvest:

(a) Residues must be destroyed or incorporated into the ground immediately after harvest;

(b) Harvested seed must be isolated from other seed lots until it is treated with hot water and/or chlorine seed treatments;

(c) Harvest equipment must be steam cleaned before entering any other fields; and

(d) WSDA personnel in consultation with WSU extension personnel must monitor these post-harvest activities.

AMENDATORY SECTION (Amending WSR 08-13-014, filed 6/6/08, effective 7/7/08)

**WAC 16-302-010 Agencies that certify seed in Washington state.** (1) Seed certification in Washington state is conducted under the authority of chapter 15.49 RCW. The department conducts seed certification in cooperation with the ((WSCIA)) Washington State Crop Improvement Association, Washington State University and ((AOSCA)) the Association of Official Seed Certifying Agencies.

(2) The ((WSCIA)) Washington State Crop Improvement Association is designated to assist the department in the certification of certain agricultural seeds. A memorandum of understanding between the department and the ((WSCIA)) Washington State Crop Improvement Association designates ((WSCIA)) the Washington State Crop Improvement Association to act as the director's duly authorized agent for the purpose of certifying seed of buckwheat, chickpeas, field peas, lentils, millet, soybeans, small grain, sorghum and forest trees((The address and phone number for the WSCIA office is 1610 N.E. Eastgate Blvd. Suite 610, Pullman, WA 99163, 509-335-8250)), including conditioning plant inspections for these crops.

(3) The department's seed program certifies seed other than buckwheat, chickpeas, field peas, lentils, millet, soybeans, small grain, sorghum and forest trees. ((The address and phone number for the department seed program office is 21 N. 1st Avenue, Yakima, WA 98902, 509-249-6950.))

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-015 Seed classes recognized for seed certification.** For the eligibility of varieties of seed refer to WAC 16-302-040. Four seed classes are recognized in seed certification, namely: Breeder, foundation, registered, and certified.

(1) Breeder seed is seed or vegetative propagating material directly controlled by the originating, or in certain cases the sponsoring plant breeder, institution, or firm. Breeder seed supplies the source for the initial and recurring increase of foundation seed. Breeder seed may also be used to produce subsequent generations.

(2) Foundation seed (identified by white tags) is first-generation seed increased from breeder seed or its equivalent. Production must be carefully supervised and approved by the certifying agency and/or the agricultural experiment station. Foundation seed is eligible to produce registered or certified seed.

(3) Registered seed (identified by purple tags) is the progeny of breeder or foundation seed that is handled as to maintain satisfactory genetic identity and purity and is

approved and certified by the certifying agency. Registered seed is eligible to produce certified seed.

(4) Certified seed (identified by blue tags) is the progeny of breeder, foundation, registered or certified seed which is handled as to maintain satisfactory genetic identity and purity and is approved and certified by the certifying agency. Certified seed is not eligible for recertification ~~((for the crops certified by WSCIA, listed in WAC 16-302-550)),~~ except as provided for in WAC 16-302-035.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-030 Standards for production of foundation seed.** The general seed certification standards together with specific crop standards established in this chapter constitute the basic standards for production of foundation seed as deemed necessary by the certifying agency. Seed to be eligible for foundation certification tags, or OECD basic tags, must be approved by the originating plant breeder or his designated agent, and in compliance with the following standards:

(1) Preplanting report. A preplanting inspection, an industry responsibility, must be made of fields to be planted with breeder seed. A written report of the preplant inspection, performed by either a representative of the person issuing the contract or by the grower must be maintained by the variety owner or designee for a minimum of three years. The report shall show the grower's name, number of acres, location, crop history for the past three years, crops to be planted, origin of breeder seed, isolation status, and weed and crop present.

(2) Planting requirement. To distinguish between any possible volunteer and the crop seeded, all fields must be planted in distinct rows. Plants outside defined rows may be construed as volunteers.

(3) Combine inspection. The combine used for seed harvesting must be cleaned and inspected prior to harvesting foundation or OECD basic seed. The combine must be free of all contaminating material. If an official combine inspection is requested, the certifying agency must be notified of the following: The date, time, and location where the combine inspection may be made.

(4) Processing plant inspection. The processing or conditioning plant must be inspected before processing foundation or OECD basic seed and periodic inspections will be made during processing by the processor.

(5) Recleaning, rebagging, preinoculation, treating, or other processes must be approved by the certifying agency. An original tag must be submitted with the request for recertification and the seed must be retagged and resealed on completion.

(6) For a proprietary variety the above combine inspection (subsection (3) of this section), and processing plant inspection (subsection (4) of this section), responsibility may be assigned to the proprietor or his designee upon their request. The variety owner or designee must maintain a report covering required inspections.

AMENDATORY SECTION (Amending WSR 10-02-113, filed 1/6/10, effective 2/6/10)

**WAC 16-302-040 Varieties eligible for seed certification in Washington state.** (1) Only seed varieties that are accepted as meriting seed certification by an appropriate AOSCA National Variety Review Board or a member agency of AOSCA in accordance with the criteria listed in subsection ~~((3))~~ (2) of this section may be eligible for seed certification in Washington state.

(2) ~~((A current list of varieties eligible for certification for the crops certified by the seed program may be obtained by contacting WSDA Seed Program, 21 N. 1st Avenue, Yakima, WA 98902, 509 249 6950. A current list of varieties eligible for certification for the crops certified by WSCIA may be obtained by contacting WSCIA, 1610 N.E. Eastgate Blvd. Suite 610, Pullman, WA 99163, 509 335 8250.~~

~~((3))~~ The following information is required for submission to an AOSCA National Variety Review Board or other certifying agency for acceptance of a seed variety for certification:

~~((a) A statement and supporting evidence by the originator, developer, or owner requesting certification that:~~

~~(i) The variety has been adequately tested to determine its value and probable area of adaptation, and that it merits certification; and~~

~~(ii) The variety is distinguishable from other varieties as set forth in Article 5, International Code of Nomenclature for Cultivated Plants, which reads as follows: "The term cultivar (variety) denotes an assemblage of cultivated individuals which are distinguished by any characters (morphological, physiological, cytological, chemical or others) significant for the purposes of agriculture, forestry, or horticulture, and which, when reproduced (sexually or asexually) retain their distinguishing features."~~

~~(b) A statement on origin and breeding procedure.~~

~~(c) A description of:~~

~~(i) The morphological characteristics, (such as color, height, uniformity, leaf, head or flower characteristics, etc.);~~

~~(ii) Physiological characteristics;~~

~~(iii) Disease and insect reactions; and~~

~~(iv) Any other identifying characteristics of value to field inspectors and other pertinent factors as the breeder or sponsor considers relevant.~~

~~(d) Evidence of performance, including data on yield, insect or disease resistance and other factors supporting the value of the variety. Performance tests may be conducted by private seed firms or agricultural experiment stations, and must include appropriate check varieties, which are used extensively in the area of intended usage.)~~ (a) The name of the variety.

(b) A statement concerning the variety's origin and the breeding procedure used in its development.

(c) A detailed description of the morphological, physiological, and other characteristics of the plants and seed that distinguish it from other varieties.

(d) Evidence supporting the identity of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety.

(e) A statement giving the suggested region of probable adaptation and purposes for which the variety is used. ~~((This~~

includes where the breeder of the variety has tested the variety and anticipates recommending the merchandising of it.)

(f) A description of the procedure for maintenance of stock seed classes (~~At the time a variety is accepted for certification, a sample lot of breeder seed is presented to the certifying agency. The sample is retained as a control varietal sample against which all future seed stock released for certified seed production may be tested to establish continued truthness of variety.~~), including the number of generations through which the variety can be multiplied.

(g) A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified.

(h) Any additional restrictions on the variety, specified by the breeder, with respect to geographic area of seed production, age of stand or other factors affecting genetic purity.

(i) A sample of the seed representative of the variety as marketed.

AMENDATORY SECTION (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

**WAC 16-302-045 (~~How may a person apply~~) Applying for seed certification in Washington state(?)**, (~~If a person wishes~~) To participate in the Washington state seed certification program, (you must) submit an application for seed certification to the appropriate certifying agency.

(1) An application for seed certification must be submitted for each crop, variety and field.

(2) Applications may be obtained from a certified seed processor or the certifying agency listed in WAC 16-302-010.

(3) The applicant is responsible for payment of all fees. Washington State University, its official agents and USDA Plant Material Center are exempt from paying fees on seed stock.

(4) The applicant must attach to the application for seed certification official tags/labels and/or other verification from seed stock planted. The applicant must also attach proof of quarantine compliance when required, under chapter 16-301 WAC. Refer to chapter 16-303 WAC for appropriate fees.

(5) When it is necessary for a grower to reseed due to a failure to get a stand, the grower will retain records of seed lots used and the date of reseeding. Reseeding must be done within two years of the original planting date for grasses or within one year for all other crops. If seed stock of a different lot is used for reseeding, the grower must submit proof of seed stock used on a seedling application form. An additional application fee will be charged.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-050 (~~When is~~) Submitting an application for seed certification (~~submitted~~?)**, (1) Seed certification application due dates are:

(a) For seed certified by the department: Alfalfa, clover, grasses and rapeseed (seedling applications) - Within sixty days of planting. Seedling applications will not be accepted if received more than one hundred five days after planting.

(b) Hybrid canola or hybrid rapeseed – Fall plantings February 1; Spring plantings – Twenty-one days after planting.

(c) Sunflower twenty-one days after planting.

(d) Notification of a seedling field to be harvested for certification the same year of planting is due July 31 with the required fees.

(i) Bean - July 1.

(ii) Corn - June 1.

(2) For seed certified by the WSCIA:

(a) (~~Buckwheat~~) Field pea, chickpea, lentil, millet, and small grains (both winter and spring varieties) - June 1.

(b) Buckwheat and soybean - July 1.

(c) Sorghum - July 15.

(d) Forest tree seed certification - Refer to specific crop requirements in chapter 16-319 WAC.

(3) An application for seed certification must be submitted to the certifying agency each year a grower plans to produce seed for certification of annual crops (beans, peas, grain).

(4) A renewal application for seed certification must be submitted to the certifying agency after a stand is established each year that a grower plans to produce seed for certification of perennial crops (alfalfa, clover, grass). Due dates for renewal applications are as follows:

(a) Alfalfa and clover - June 15.

(b) Grass - May 1.

(5) Applications received after the due date are assessed a late application fee.

(6) No renewal application for seed certification may be accepted after the due date if a field inspection cannot be conducted prior to harvest except at the discretion of the certifying agency.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-055 (~~What are the~~) Responsibilities (~~of a grower~~) when participating in the seed certification program(?)**, All (~~growers participating~~) participants in the seed certification program must:

(1) Maintain the genetic purity and identity (~~of seed harvested and/or farm stored~~) during seeding, growing, harvesting, and post-harvest storage, and ensure(~~s~~) reasonable precaution is taken to control contaminating crops and varieties, noxious weeds, and seed-borne diseases.

(2) (~~Exercise precaution to~~) Prevent seed crop and lot mixture when harvesting.

(3) Identify the seed crop as it is delivered to the processor with the assigned field number or numbers.

(4) Clean the seed crop at a seed conditioner approved by the department under WAC 16-302-125. A list of approved seed conditioners may be obtained from the department seed program.

(5) Comply with standards and procedures for seed certification under the authority of chapter 15.49 RCW and rules adopted thereunder.

(6) Prior to planting, comply with the quarantine provisions under chapter 16-301 WAC.

(7) Harvest of seed before a field inspection by the certifying agency causes forfeitures of both the application and field inspection fees, and completion of certification.

(8) Failure of seed growers to comply with the seed laws and rules is cause for the department to deny certification of seed under the provisions of chapter 34.05 RCW, the Administrative Procedure Act.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-060** (~~(What are the)~~) **Certification requirements for seed(?)**. (1) The general seed certification rules in addition to the rules adopted on specific seed crop standards constitute the certification requirements for the seed crops listed in this chapter.

(2) Crops approved for certification for which rules are not in effect may be certified under the minimum requirements for seed certification as shown in WAC 16-301-010. Fees for certification of seed shall be the most applicable fees established by the department in rule.

AMENDATORY SECTION (Amending WSR 10-08-029, filed 3/31/10, effective 5/1/10)

**WAC 16-302-070** (~~(When is a)~~) **Seed field ((inspected)) inspections by the certifying agency(?)**. The certifying agency conducts field inspections as follows:

(1) A seedling field is inspected at the most appropriate time after receipt of seedling application. If the field produces seed the same year of planting, a seedling producing inspection is made prior to harvest.

(2) Each year a crop of certified seed is produced, field inspections are made at a time when factors affecting certification are most evident.

(3) The unit of certification is defined as the entire field standing at the time of inspection. A portion of a field may be certified if the area to be certified is clearly defined by flagging, stakes or other visual means. The border area of the field is considered the unit of certification if it is planted to the same crop and is inclusive of the acreage applied for.

(4) The unit of inspection may include areas adjacent to a field or areas of surveillance if these areas contain factors that would impact the certification eligibility of the seed crop as defined in the specific crop standards. Such factors may be, but are not limited to, contaminating pollen sources, weeds, jointed goatgrass, jointed goatgrass hybrids or other crop.

AMENDATORY SECTION (Amending WSR 10-08-028, filed 3/31/10, effective 5/1/10)

**WAC 16-302-080** (~~(What will cause a)~~) **Seed fields ((to be)) ineligible for seed certification(?)**. (1) A seed field is not eligible for certification unless a field inspection is made prior to defoliation or harvesting.

(2) Prohibited noxious weeds must be controlled to prevent seed formation, with the exception of jointed goatgrass or jointed goatgrass hybrids, the presence of which in "small grain" fields will be cause for rejection. Follow-up inspections may be conducted to ensure weed control was suffi-

ciently carried out to prevent prohibited noxious weed seeds from being harvested with the seed crop. Excessive objectionable weeds may be cause for rejection of a seed field. Excessive weeds, poor stands, lack of vigor, or other conditions which make inspection inaccurate may be cause for rejection. A field producing foundation or registered seed that warrants a rejection because of noxious weeds may be reclassified to certified blue tag class if upon reinspection the field meets certified blue tag standards.

(3) If a seed field is rejected for certification, the grower may reapply to the certifying agency and pay a fee for reinspection after the cause for rejection is corrected, unless otherwise specified in chapter 16-302 WAC. No more than two reinspections are permitted for each field per year.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-085** (~~(When may an applicant with-~~) **draw)) Withdrawing a field from inspection for seed certification(?)**. The applicant applying for seed certification may withdraw a field from field inspection for seed certification by notifying the certifying agency before the field is inspected.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-090 Sampling—Methods used in the sampling, inspecting, testing, analyzing and examining seed for certification.** (1) The terms used in seed testing and the methods of sampling, inspecting, analyzing, testing and examining seed for certification are those adopted by the AOSA as shown in WAC 16-301-010. Other testing methodologies such as, but not limited to, genetic testing may also be used to determine certification eligibility.

(2) The entire lot of seed must be cleaned, the quantity defined, and in condition for sale at the time of sampling((-)), except for ryegrass, which may be sampled under the early sampling program as allowed in WAC 16-302-091.

(3) The department shall obtain a representative sample for laboratory analysis of each lot of seed for certification. The sample shall be taken in accordance with official sampling procedures. Official sampling procedures are as follows:

Seed in bags.

(a) When more than one core is drawn from a bag, follow different paths. When more than one handful is taken from a bag, take them from well-separated points.

(b) For lots of one to six bags, sample each bag and take a total of at least five cores or handfuls.

(c) For lots of more than six bags, sample five bags plus at least ((10%)) ten percent of the number of bags in the lot. Round numbers with decimals to the nearest whole number. Regardless of the lot size, it is not necessary to sample more than thirty bags.

Ex: No. bags in lots	7	10	23	50	100	200	300	400
No. bags to sample	6	6	7	10	15	25	30	30

(4) Bulk seed. To obtain a composite sample, take at least as many cores or handfuls as if the same quantity of seed were in bags of an ordinary size. Take the cores or handfuls from well distributed points throughout the bulk.

(5) Seed in small containers. Seed in small containers shall be sampled by taking the entire unopened container in sufficient number to supply a minimum size sample for testing. The contents of a single container or the combined contents of multiple containers of the same lot shall be considered representative of the entire lot of seed sampled.

(6) A mechanical sampling device installed in a conditioning plant approved by the department under WAC 16-302-125 may be used in lieu of the sampling procedures above. Hand samples taken during the conditioning process may also be used in lieu of the sampling procedures above.

(7) If it is necessary for a sample to be taken by the department, a sampling fee will be charged under provisions of chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 02-12-060, filed 5/30/02, effective 6/30/02)

**WAC 16-302-091 ((What is the)) Program for early sampling of ryegrass(?)**. The procedure for participating in the program for early sampling of ryegrass is as follows:

(1) Any company participating in this program must submit a report to the seed program listing the grower, acreage, variety, and field number of each field to be enrolled. This report must be filed by June 15th of each year. For fields that are in their second year of production or beyond, all lab numbers of tests from the previous year must also be provided.

(2) The seed company is responsible for having their field personnel sample each field in the windrow. The sample must be obtained from well-distributed points throughout the field. It is recommended that samples be thrashed and cleaned prior to testing. An additional fee will be charged for samples that are not cleaned. Samples must be forwarded to the seed program with the following information: The crop and variety, field number, grower, the name of the seed company, and a request for germination and fluorescence test. The sample must also indicate that it is being submitted under the early sampling program for ryegrass.

(3) At the time of conditioning the seed, a composite sample must be submitted to the seed program for purity testing. The sample information must indicate the seed is from a field under the early sampling program for ryegrass. In addition to providing complete certification information, the lab number on which the fluorescence test was conducted must also be provided. The seed program may run a fluorescence test on the composite sample to verify the results from the early sample.

(4) Certification tags will be issued upon completion of all required testing meeting the minimum certification standards for ryegrass. A tagging request must be filed with the seed program.

(5) Failure to comply with the requirements of this section will result in the disqualification of the seed company from the early sampling program for the year.

AMENDATORY SECTION (Amending WSR 09-16-006, filed 7/22/09, effective 8/22/09)

**WAC 16-302-100 Seed certification—Prohibited noxious weed seed.** The following are considered prohibited noxious weeds for the purpose of seed certification.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Austrian fieldcress	<i>Rorippa austriaca</i> (( <del>Crantz</del> ) Bess.)
Field bindweed	<i>Convolvulus arvensis</i> (( <del>L.</del> ))
Hedge bindweed	<i>Calystegia</i> spp.
Camelthorn	<i>Alhagi maurorum</i>
Canada thistle	<i>Cirsium arvense</i> (( <del>L.</del> ) Scop.)
Dodder	<i>Cuscuta</i> spp.
Hairy whitetop	<i>Lepidium appelianum</i>
Hoary cress	<i>Lepidium draba</i> (( <del>L.</del> ) Desv.)
Jointed goatgrass and jointed goatgrass hybrids	<i>Aegilops cylindrica</i>
Leafy spurge	<i>Euphorbia esula</i> (( <del>L.</del> ))
Perennial pepperweed	<i>Lepidium latifolium</i> (( <del>L.</del> ))
Perennial sowthistle	<i>Sonchus arvensis</i> (( <del>L.</del> ))
Quackgrass	<i>Elymus repens</i>
Knapweed complex	
Bighead	<i>Centaurea macrocephala</i>
Vochin	<i>Centaurea nigrescens</i>
Black	<i>Centaurea nigra</i>
Brown	<i>Centaurea jacea</i>
Diffuse	<i>Centaurea diffusa</i>
Meadow	<i>Centaurea</i> (( <i>jacea</i> x <i>nigra</i> )) x <i>moncktonii</i>
Russian	<i>Rhaponticum repens</i>
Spotted	<i>Centaurea stoebe</i> subsp. <i>australis</i>
Purple starthistle	<i>Centaurea calcitrapa</i>
Yellow starthistle	<i>Centaurea solstitialis</i> (( <del>L.</del> ))
Serrated tussock	<i>Nassella trichotoma</i>
Silverleaf nightshade	<i>Solanum elaeagnifolium</i> Cav.
Sorghum perennial such as, but not limited to, johnson-grass, sorghum almum, and perennial sweet sudangrass	<i>Sorghum</i> spp.
Tansy ragwort	<i>Jacobaea vulgaris</i>
Yellow-flowering skeleton weed	<i>Chondrilla juncea</i> (( <del>L.</del> ))

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
White cockle	<i>Silene latifolia</i> (only in timothy)
Bladder campion	<i>Silene vulgaris</i> (only in timothy)
Lepyroclis	<i>Lepyroclis holsteoides</i>
Velvetleaf	<i>Abutilon theophrasti</i>

**AMENDATORY SECTION** (Amending WSR 09-16-006, filed 7/22/09, effective 8/22/09)

**WAC 16-302-105 Seed certification—Objectionable weeds.** The following weeds are considered objectionable noxious weeds for the purpose of seed certification.

ENGLISH OR COMMON NAME	BOTANICAL OR SCIENTIFIC NAME
Blackgrass or slender foxtail	<i>Alopecurus myosuroides</i>
Blue lettuce	<i>Lactuca tatarica</i>
Docks and sorrel	<i>Rumex</i> spp.
Field pennycress (fanweed)	<i>Thlaspi arvense</i>
Field sandbur	<i>Cenchrus</i> ( <del>(incertus)</del> ) <i>spinifex</i>
Halogeton or clustered barilla salt	<i>Halogeton glomeratus</i> ((C.A. Mey.))
Medusahead	<i>Taeniatherum caput-medusae</i> subsp. <i>caputmedusae</i>
Plantains	<i>Plantago</i> spp.
Poverty weed	<i>Iva axillaris</i> ((Pursh.))
Puncturevine	<i>Tribulus terrestris</i> ((L.))
St. Johnswort	<i>Hypericum perforatum</i> ((L.))
Dalmation toadflax	<i>Linaria dalmatica</i> ((L.) Mill.)
Yellow toadflax	<i>Linaria vulgaris</i> ((Hill.))
Western ragweed	<i>Ambrosia psilostachya</i> ((DC.))
Wild mustard	<i>Sinapis arvensis</i> subsp. <i>arvensis</i>
Wild oat	<i>Avena fatua</i> ((L.))
Gromwell (in small grain)	<i>Buglossoides arvensis</i>
Bedstraw	<i>Galium</i> spp. (in alfalfa only)
Black mustard	<i>Brassica nigra</i>
Brown mustard	<i>Brassica juncea</i> (in rapeseed or canola only)
Wild radish	<i>Raphanus raphanistrum</i>
Dyers woad	<i>Isatis tinctoria</i>

**AMENDATORY SECTION** (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

**WAC 16-302-110 Completion of seed certification—**~~((When may seed be labeled with a seed certification tag, label or seal?))~~ **Tagging, labeling, or sealing.** (1) The seed certification tag, label or seal is evidence of the genetic identity and purity of the contents must be attached to a container of certified seed prior to distribution. Seed that fails to meet certification standards because of genetic purity is not eligible for labeling.

(2) Seed certification tags, labels, and seals must be obtained from the certifying agency except as allowed in WAC 16-302-390, and must be attached to seed containers in accordance with the certifying agency's rules.

(3) Certification of seed is valid only if the tag, label or seal is affixed to each container in accordance with the AOSCA procedures as shown in WAC 16-301-010.

(4) No tag, label or seal may be removed and reused without permission of the certifying agency.

(5) A certified seed sale certificate will be issued upon completion of final certification for all seed to be sold in bulk. This certificate must accompany any shipment or transfers including those to other seed plants, out-of-state shipments or with any brokered seed. The seed plants own invoice may be used in lieu of a certified seed sale certificate for retail sales to growers. The invoice must contain the certification information from the certified seed sale certificate as well as labeling information as required in WAC 16-301-015, 16-301-020, and 16-301-030.

(6) Seed that fails to meet certification requirements on factors other than genetic purity may be designated substandard at the discretion of the certifying agency. The certification tag or label attached to the seed must clearly show the reason the seed is substandard. Seed may not be tagged substandard if the seed can be remilled to meet minimum seed standards.

(7) Refer to chapter 16-301 WAC for seed labeling requirements.

**AMENDATORY SECTION** (Amending WSR 02-12-060, filed 5/30/02, effective 6/30/02)

**WAC 16-302-125 ((Who may condition)) Conditioning seed in Washington state((?)).** (1) Under the authority of RCW 15.49.350, a seed conditioning facility must be inspected and approved by the department or its authorized agent prior to conditioning seed in Washington state. Upon approval by the department, a seed conditioning permit is issued and the facility is placed on a list of approved seed conditioning plants. A copy of the list can be obtained by contacting the department seed program.

(2) A person desiring to condition seed must make application to the department for a permit on a form provided by the department.

(3) To obtain department approval for a seed-conditioning permit, the department or its authorized agent conducts an inspection. A facility must show evidence that:

(a) Seed for certification is handled in a manner which prevents mixture of lots of seed;

(b) The seed conditioning facility is maintained and cleaned. Equipment must be easily accessible for cleaning and inspection, and must be cleaned between lots;

(c) Each lot of seed is identified with a lot number;

(d) Screenings are disposed of in accordance with chapter 15.49 RCW; and

(e) Seed is sampled in accordance with WAC 16-301-095, 16-302-090 and 16-302-091.

(4) A seed conditioning facility must be approved by the department prior to handling seed for certification in bulk.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-130 ((What are the)) Responsibilities of a seed conditioner((?)).** (1) It is the responsibility of a department approved seed conditioner to operate in a manner that:

(a) Maintains the purity and identity of seed conditioned, stored, transshipped or labeled.

(b) Complies with the standards and procedures for conditioning and sampling seed in accordance with chapter 15.49 RCW and rules adopted thereunder.

(2) Prior to shipping seed out-of-state, ~~((the seed conditioner must obtain approval from the certifying agency. Refer))~~ adhere to WAC 16-302-145 through 16-302-165 for interagency seed certification requirements.

(3) Records of all operations must be complete and adequate to account for all incoming seed and final disposition of seed.

(4) The seed conditioner is responsible for seed certification fees including sampling, testing, production and final certification fees, and may request the responsibility for additional fees.

(5) Failure of a seed conditioner to comply with the seed law and rules is cause for the department to revoke a seed conditioning permit under the provisions of chapter 34.05 RCW, the Administrative Procedure Act.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-135 ((What)) Considerations ((are there)) for blending seed((?)).** (1) Size of seed blend permitted is dependent on factors such as quality of seed lots to be blended and the conditioning plant facilities.

(2) A blend data sheet is filed with the certifying agency and must be maintained by the seed conditioner. Laboratory analysis must be completed before tags are issued.

(3) Seed must be blended by a seed conditioner approved by the department under WAC 16-302-125.

(4) A representative of the certifying agency may supervise the blending operation.

(5) A tetrazolium test may be used in lieu of a germination test.

(6) ~~((Upon approval of the certifying agency,))~~ Field run lots of seed may be commingled to facilitate conditioning. The blend fee shall not apply.

(7) Remill lots of seed may be blended prior to testing to facilitate processing.

(8) Individual lots of grass seed shall not contain more than one hundred eighty per pound and alfalfa and clover shall not contain more than ninety per pound of objectionable weed seeds.

(9) Individual lots must be free of prohibited noxious weed seeds.

(10) Two or more sod quality lots may be blended and tagged as a "sod quality mixture or blend." Appropriate tags will be issued and blend fee shall be applicable.

(11) Seed lots resulting from a blend of different certified classes may only be labeled at the lower class.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-140 ((When are seed blends eligible for)) Tagging seed blends prior to analysis((?)).** Blends are eligible for tagging prior to analysis of the official sample of the blend upon meeting the following conditions:

(1) The calculated percent of impurities (weeds, crop, inert, etc.) is twenty percent less than the maximum allowed in rules for seed certification.

(2) The calculated percent of germination is not less than the minimum germination standard established in the rule for seed certification.

(3) All seed lots blended meet certification standards.

(4) All lots of seed used in a registered class blend must meet registered class purity and germination standards.

(5) Fees for blending are payable to the department by the person requesting permission for the blend after completion of lab analysis. Refer to chapter 16-303 WAC for the appropriate fee.

**AMENDATORY SECTION** (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

**WAC 16-302-150 Eligibility for interagency certification.** (1) Seed recognized for interagency certification must be received in containers carrying official certification labels ~~((or)),~~ accompanied by transfer certificates or other proper documentation showing evidence of its eligibility from another official certifying agency together with the following information:

(a) Variety and species;

(b) Quantity of seed;

(c) Class of seed; and

(d) Field or lot number traceable to the previous certifying agency's records.

(2) Seed tagged and sealed with official certification tags is eligible for interagency certification without obtaining approval from the certifying agency of the originating state.

(3) An "interagency certified seed" report form must be submitted to all certifying agencies involved. Forms can be obtained from the department seed program. Information required to complete the form includes:

#### Part A

- Name
- Address of shipper
- Destination

- Shipping weight
- Lot number and receiving weight
- Grower name
- Field number
- Date of seed shipment
- Amount of seed used
- Date shipment is received by the receiving state

### Part B

- ~~((Date shipment is received by the receiving state  
Receiving weight and lot number))~~
- Clean weight
  - Bag count
  - New lot number if different than the receiving lot number
- ~~((Screenings weight))~~

(4) Certified seed not tagged and sealed with official certification tags must follow the interagency certification procedure in WAC 16-302-155.

AMENDATORY SECTION (Amending WSR 03-18-072, filed 8/29/03, effective 9/29/03)

**WAC 16-302-155 Interagency seed certification procedure.** Certified seed that is produced in Washington state and shipped out-of-state must comply with the interagency seed certification procedure.

(1) The interagency seed certification procedure for field pea, lentil, soybean, small grain and sorghum seed is as follows:

(a) A certified seed sale certificate must be executed by the department for unprocessed seed pending final certification when moved out-of-state.

(b) Unprocessed seed pending final certification is subject to all certification fees when moved out-of-state.

(2) The interagency seed certification procedure for all other kinds of seed except field pea, lentil, soybean, small grain and sorghum seed shipped out-of-state is as follows:

(a) ~~((Obtain approval of all certifying agencies involved prior to shipment:~~

•)) Complete section (A) of "interagency certified seed" report referred to in WAC 16-302-150(3). ~~((Prior to shipment))~~ One copy of the "interagency certified seed" report must be submitted to the department seed program and one copy to the certifying agency where seed is being processed.

~~((b))~~ Clearly mark each container with the lot number and Washington field number.

~~((c))~~ If the department is to finalize certification, upon completion of seed processing, section (B) of "interagency certified seed" report referred to in WAC 16-302-150(3) must be completed and submitted to the ~~(department seed program.~~

~~If the department is to finalize certification, a representative of the certifying agency in the receiving state must draw an official sample. The))~~ appropriate certification agency. A sample must be submitted to the department seed program.

~~((d))~~ When Washington state certification tags are used, the lot must be tagged and sealed under supervision of the department. The applicant must pay a mileage fee and hourly rate for all additional mileage and travel time required.

~~((e))~~ When Washington state interagency tags are used, the tags must be mailed to the nearest representative of the certifying agency having jurisdiction for tagging.

~~((f))~~ If another state receives seed and finalizes certification, the department must advise the receiving state's certifying agency of certification eligibility. Sampling, testing, and tagging shall be in accordance with the receiving state's requirements.

~~((g))~~ The applicant for interagency seed certification is responsible for all fees authorized under Washington's certification program and any additional fees that may be assessed by both agencies involved. Fees for Washington's interagency certification program must be paid upon submission to the department of the "interagency certified seed" report, section (A).

AMENDATORY SECTION (Amending WSR 10-08-028, filed 3/31/10, effective 5/1/10)

**WAC 16-302-170 Other considerations in applying the standards for certification.** (1) Any crop certification standard, with the exception of germination that is expressed as a percent will be derived from a test based on the minimum weight for purity analysis as specified in the ~~((2000))~~ 2013 AOSA rules for that crop unless otherwise specified in rule.

(2) Any crop certification standard that is based on a number per pound will be derived from a test based on the minimum weight for noxious weed seed examination as specified in the ~~((2000))~~ 2013 AOSA rules for that crop unless otherwise specified in rule.

(3) For species that have a high rate of inherent dormancy, it will be acceptable to use the percent of total viability instead of germination percentage for certification only. State and federal seed laws require seed be labeled on a germination test.

(4) For species or varieties that contain GMO (genetically modified organism) traits, herbicide resistant traits, or other novel traits, each seed lot may be required to meet minimum trait standards as defined by the breeder or trait owner. The variety description must define the trait. To determine the level of trait present, a test such as PCR (polymerase chain reaction) or specified bioassay test may be required. If a test is not otherwise available the variety owner must provide testing protocols to the department.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-210 ~~((What is the))~~ Organization for economic cooperation and development~~((?))~~.** The Organization for Economic Cooperation and Development (OECD) certification scheme is an international organization limited to federal government membership. The agricultural research service of the United States Department of Agriculture is responsible for implementing the OECD seed certification schemes in the United States. The department, by virtue of an agreement with the agricultural research service, United States Department of Agriculture, is authorized to implement OECD certification in Washington state.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-215 Crop standards for OECD variety certification.** (1) With the exception of seed standards established in rule by the department and the OECD scheme for varietal certification, the general and specific crop certification standards ((as established in rule by the department)) are basic and, together with the following specific standards, constitute the rules for OECD varietal seed certification.

(2) Varieties eligible for OECD certification((-);

(a) Crop varieties of Unites States origin shall be eligible for OECD certification only if accepted into Washington state's certification program.

(b) Crop varieties, of origin other than United States, are eligible for OECD certification only if listed in OECD publication, *List of Cultivars Eligible for Certification*.

(3) Classes of seed eligible for OECD certification((-);

Washington and U.S. Seed Classes	Label Color	Equivalent OECD Seed Classes	OECD Label Color
Breeder	----	Prebasic	(()) <u>White with diagonal violet stripe</u>
Foundation	White	Basic	White
Registered	Purple	Basic	White
Certified	Blue	1st Generation Certified Seed	Blue
Certified produced from Certified	Blue	2nd Generation Certified Seed	Red

(a) Breeder or prebasic shall be planted to be eligible to produce basic white label.

(b) Foundation white label, registered purple label, or basic white label shall be planted to be eligible to produce 1st generation blue label.

(c) Certified or 1st generation blue label shall be planted to be eligible to produce 2nd generation red label.

(4) OECD seed stock sample. Each lot of OECD seed stock shall be sampled under supervision of the certifying agency before seals are broken. Samples are used as control for grow out test and a portion may be submitted to seed laboratory for analysis if deemed necessary. Seed stock lots without official tags will not be granted OECD approval.

(5) The department must obtain approval from the originating country for each OECD seed stock lot to be planted in the state of Washington for OECD production. Request for OECD approval is submitted by the seed program to ARS-~~(Beltsville, Maryland)~~ Gastonia, North Carolina, which then contacts the originating country.

(6) Application for OECD certification and fees.

(a) Applicant desiring plantings to be eligible for OECD certification must submit applications and fees as required for certification of that crop under Washington state's certification standards. Certification requirements and procedures for each species shall be the genetic standards in Washington state's certification program supplemented by OECD standards and by the limitations specified by originating country; such as, length of stand and number of seed crops eligible.

All OECD seed shall be (~~officially~~) sampled according to WAC 16-302-090 and tested prior to tagging. Seed lots may not be required to meet Washington's minimum purity or germination certified seed standards.

(b) Washington OECD eligible lots may, with approval of both agencies involved, be blended with OECD eligible seed of other state agencies. The applicant is responsible for all fees of both agencies involved.

(c) Seed produced out-of-state and processed in Washington must be OECD tagged by the state of origin.

(7) OECD tagging and sealing. OECD tags shall be printed and issued according to OECD rules. The department seed program shall issue an OECD reference number, e.g., (USA-W-78-000), which is printed on each tag. The department recommends that OECD reference numbers be stenciled on each bag. Additional statements on the OECD tag such as, "date of sealing," etc., must be kept to a minimum.

(8) Bagging sample of OECD lot. A bagging sample of each lot of OECD seed tagged is drawn under supervision of the certifying agency. One hundred to two hundred fifty grams of the sample must be held for the originating country, and the balance of the sample is used for required post control grow-out tests.

(9) OECD certificate. The seed program shall issue an OECD certificate showing:

- (a) Species((-);
- (b) Variety((-);
- (c) Reference number((-);
- (d) Date of sealing((-);
- (e) Number of containers((-);
- (f) Weight of lot, class of seed((-); and
- (g) OECD reference number of seed stock used for each lot tagged and sealed upon receipt of tagging report and bagging sample.

One copy of the OECD certificate is to be mailed to the shipper, one copy is mailed to ARS-USDA, (~~one copy is attached to bagging sample~~) and one copy is for department seed program files.

(10) OECD grow-out tests. As prescribed by OECD rules, at least one of four domestic (~~lots~~) first generation lots and every basic lot tagged and all lots of foreign varieties OECD tagged must be planted in grow-out tests.

(11) Special OECD fees. In addition to fees required by applicable Washington certification rules, an additional fee shall apply to all seed tagged OECD. Refer to chapter 16-303 WAC for the appropriate fee.

All fees are payable by the person requesting OECD certificate.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-220 (~~What are the~~) Standards for alfalfa seed certification.** (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-225 through 16-302-240 constitute the standards for alfalfa seed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-245** ~~((What are the))~~ **Standards for bean seed certification.** (1) The general seed certification standards and definitions in this chapter are basic and together with WAC 16-302-250 through 16-302-270 constitute the standards for bean seed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

(3) Prior to the planting of bean seed stock, the seed must be in compliance with the quarantine requirements found in chapter 16-301 WAC in order to be eligible for certification. Any seedling application submitted without proof of quarantine compliance will not be accepted into the certification program. Any seed field planted in violation of chapter 16-301 WAC will be subject to the procedures in WAC 16-301-435, 16-301-440, and 16-301-485.

AMENDATORY SECTION (Amending WSR 02-12-060, filed 5/30/02, effective 6/30/02)

**WAC 16-302-260 Field tolerances and requirements for bean seed certification.** (1) Field tolerances and requirements for the production of a bean seed crop are as follows:

	Field Producing		
	Foundation	Registered	Certified
Percent of other varieties or off-type plants	none found	<del>((0.1%))</del> <u>0.10</u>	<del>((0.2%))</del> <u>0.20</u>
Percent of other crops <del>((*)</del> ) (a)	none found	<del>((0.1%))</del> <u>0.10</u>	<del>((0.1%))</del> <u>0.10</u>
Percent of total seed-borne diseases <del>((**))</del> (b)	none found	none found	none found

~~((\*)~~) (a) Except as noted in subsection (6) of this section.  
~~((\*\*))~~ (b) ~~((Except as noted in))~~ See subsection (7) of this section.

(2) Snap and kidney beans must be isolated by 1320 feet from known bacterial blight.

(3) The following requirements apply to bean seed certification:

(a) Pintos, red mexicans, pinks, great northern, small whites, navy beans, and black turtle beans may be grown for an unlimited number of generations under rill or sprinkler irrigation.

(b) Kidney beans, cranberry types, Taylor horticultural types, and Borlotto types may be grown for an unlimited number of generations under rill irrigation or for one generation under rill irrigation and, subsequently, for two generations under sprinkler irrigation. The fourth and unlimited subsequent generations may be grown and inspected with the same alternation of irrigation types.

(4) Bean fields must be rogued of weeds, off-type plants, volunteer plants, and plants showing symptoms of seed-borne diseases. Excessive nightshade shall be a cause for rejection.

(5) For a bean field to be eligible for certification it must be clean and have boundaries that are clearly defined and a minimum of 36" which is adequate to prevent mechanical contamination.

(6) Excessive weeds, poor stands, lack of vigor, or any other condition which is apt to make inspection inaccurate may be cause for rejection of a bean field.

(7) Bean fields, including those planted with a dominant I-gene cultivar, ~~((are allowed the following levels of bean seed-borne virus diseases in the field: For foundation class, none found; for registered class 0.5%, and for certified class 1-0%))~~ must be in compliance with WAC 16-301-365 through 16-301-440.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-275** ~~((What are the))~~ **Standards for corn seed certification.** (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-280 through 16-302-315 constitute the standards for corn seed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-320** ~~((What are the))~~ **Standards for grass seed certification**~~((?))~~. (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-325 through 16-302-360 constitute the standards for grass seed certification.

(2) Each lot of seed stock subject to the annual bluegrass and rough bluegrass quarantine as established in chapter 16-301 WAC must be in compliance with the quarantine requirements prior to planting in order to be eligible for certification. Any seedling application submitted without proof of quarantine compliance will not be accepted into the certification program. Any seed field planted in violation of chapter 16-301 WAC will be subject to the violation procedures under WAC 16-301-295 and 16-301-355.

(3) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 11-06-023, filed 2/24/11, effective 3/27/11)

WAC 16-302-385 Grass seed standards for certification. The seed standards for grass shall be as follows:

SEED STANDARDS

CROP AND TYPE OF REPRODUCTION AS PER WAC 16-302-330	MINIMUM % GERM (d)(n)		MINIMUM % PURE		MAXIMUM % INERT		MAXIMUM % WEEDS (b)		MAXIMUM % OTHER CROPS		MAXIMUM SEEDS OF OTHER CROP GRASS SPECIES			
	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. (i) REG. (i)	CERT. (a)	FNDT. SEEDS/lb.	REG. SEEDS/lb.	CERT. %	
<u>A Apomictic</u> <u>C Cross Pollinated</u> <u>S Highly Self Fertile</u>														
BLUEGRASS														
Big														
Canby														
Kentucky														
Canada((-)) & Upland	(A)	70	70	90	90	10	10	((-05))	((-3))	((+1))	((-5))	45 /lb.	454 /lb.	((-25))
<u>Rough</u>	(A)	70	70	90	90	10	10	<u>0.05</u>	<u>0.30</u>	<u>0.10</u>	<u>0.50</u>	45 /lb.	454 /lb.	<u>0.25</u>
	(A)	80	80	97	97	3	3	((-05))	((-3))	((+1))	((-5))	45 /lb.	454 /lb.	((-25))
	(A)	80	80	96	92	4	8	<u>0.05</u>	<u>0.30</u>	<u>0.10</u>	<u>0.50</u>	45 /lb.	907 /lb.	<u>0.25</u>
	(A)	<u>75</u>	<u>75</u>	<u>95</u>	<u>95</u>	<u>5</u>	<u>5</u>	<u>0.30</u>	<u>0.30</u>	<u>0.10</u>	<u>0.50</u>	45 /lb.	454 /lb.	<u>0.25</u>
BROMEGRASS														
Smooth & Meadow	(C)	80	85	95	95	5	5	((-05))	((-3))	((+1))	((-5))	9 /lb.	91 /lb.	((-25))
<u>California, Mountain &amp; Sweet</u>	(C)	85	85	95	95	5	5	<u>0.05</u>	<u>0.30 (c)</u>	<u>0.10</u>	<u>0.50</u>	9 /lb.	91 /lb.	<u>0.25</u>
								((-3))	((-3))	((+1))	1.0			((-25))
								<u>0.30</u>	<u>0.30 (c)</u>	<u>0.10</u>				<u>0.25</u>
DEERTONGUE	(C)	50	50	97	95	3	5	((-50))	((-5))	1.0	1.0	1%	-	-
								<u>0.50</u>	<u>0.50 (c)</u>					
FESCUE														
Tall & Meadow	(C)	80	85	95	97	5	3	((-03))	((-3))	((+1))	((-5))	18 /lb.	91 /lb.	((-25))
								<u>0.03</u>	<u>0.30 (c)</u>	<u>0.10</u>	<u>0.50</u>			<u>0.25</u>
Blue, Hard & Sheep (m)														
Turf Type (o)	(C)	80	85	95	97	5	3	((-03))	((-3))	((+1))	((-5))	9 /lb.	45 /lb.	((-25))
Reclamation/Range								<u>0.03</u>	<u>0.30 (c)</u>	<u>0.10</u>	<u>0.50</u>			<u>0.25</u>
Type (o)		80	85	95	92	5	8	((-03))	((-3))	((+1))	((-5))	9 /lb.	45 /lb.	((-25))
								<u>0.03</u>	<u>0.30 (c)</u>	<u>0.10</u>	<u>0.50</u>			<u>0.25</u>
Chewings Red, Idaho and other Fescue	(C)	80	90	95	97	5	3	((-03))	((-3))	((+1))	((-5))	9 /lb.	45 /lb.	((-25))
								<u>0.03</u>	<u>0.30 (c)</u>	<u>0.10</u>	<u>0.50</u>			<u>0.25</u>
ORCHARDGRASS	(C)	80	85	((85)) <u>92</u>	((90)) <u>92</u>	((15)) <u>8</u>	((10)) <u>8</u>	((-03)) <u>0.03</u>	((-3)) <u>0.30 (c)</u>	((+1)) <u>0.10</u>	((-5)) <u>0.50</u>	27 /lb.	91/lb.	((-25)) <u>0.25</u>
			80 for penlate & latar											
RYEGRASS	(C)	85	90 (l)	96 (k)	97 (k)	4	3	((+))	((-3))	((+1))	((-5))	9 /lb.	45 /lb.	((-25))
Pennfine		80	85	96 (k)	97 (k)	4	3	<u>0.10</u>	<u>0.30 (c)</u>	<u>0.10</u>	<u>0.50</u>	9 /lb.	45 /lb.	<u>0.25</u>
								((+))	((-3))	((+1))	((-5))			((-25))
								<u>0.10</u>	<u>0.30 (c)</u>	<u>0.10</u>	<u>0.50</u>			<u>0.25</u>
TIMOTHY		80	85	97	97	3	3	((+))	((-3))	((+1))	((-5))	9 /lb.	45 /lb.	((-25))
								<u>0.10</u>	<u>0.30</u>	<u>0.10</u>	<u>0.50</u>			<u>0.25</u>
WHEATGRASS ((+))														
Beardless	(C)	80	85	90	90	10	10	((+))	((-3))	((+1))	((-5))	9 /lb.	45 /lb.	25
<u>Bluebunch &amp; Snake River</u>	(C)	80	85	90	90	10	10	<u>0.10</u>	<u>0.30 (c)</u>	<u>0.10 (e)</u>	<u>0.50 (e)</u>	9 /lb.	45 /lb.	25
								((+))	((-3))	((+1))	((-5))			
								<u>0.10</u>	<u>0.30 (c)</u>	<u>0.10 (e)</u>	<u>0.50 (e)</u>			
Intermediate, Tall Pubescent	(C)	80	85	95	95	5	5	((+))	((-3))	((+1))	((-5))	9 /lb.	45 /lb.	((-25))
								<u>0.10</u>	<u>0.30 (c)</u>	<u>0.10 (e)</u>	<u>0.50 (e)</u>			<u>0.25</u>
Western, R/S, Streambank, Thickspike (p)	(C)	80	85	90	90	10	10	((+))	((-3))	((+1))	((-5))	9 /lb.	45 /lb.	((-25))
								<u>0.10</u>	<u>0.30 (c)</u>	<u>0.10 (e)</u>	<u>0.50</u>			<u>0.25</u>
								((+))	((-3))	((+1))	((-5))			
								<u>0.10</u>	<u>0.30 (c)</u>	<u>0.10 (e)</u>	<u>0.50</u>			
Slender Crested & Siberian	(S)	80	85	90	((90)) <u>95</u>	10	((+0)) <u>5</u>	((+))	((-3))	((+1))	((-5))	9 /lb.	45 /lb.	((-25- (+)))
	(C)	80	85	90	95	10	5	<u>0.10</u>	<u>0.30 (c)</u>	<u>0.10 (e)</u>	<u>0.50</u>	9 /lb.	45 /lb.	<u>0.25</u>
								((+))	((-3))	((+1))	((-5))			((-25))
								<u>0.10</u>	<u>0.30 (c)</u>	<u>0.10 (e)</u>	<u>0.50</u>			<u>0.25</u>
								((+))	((-3))	((+1))	((-5))			((-25))
								<u>0.10</u>	<u>0.30 (c)</u>	<u>0.10 (e)</u>	<u>0.50</u>			<u>0.25</u>

CROP AND TYPE OF REPRODUCTION AS PER WAC 16-302-330	MINIMUM % GERM (d)(n)		MINIMUM % PURE		MAXIMUM % INERT		MAXIMUM % WEEDS (b)		MAXIMUM % OTHER CROPS		MAXIMUM SEEDS OF OTHER CROP GRASS SPECIES			
	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. REG.	CERT.	FNDT. (i) REG. (i)	CERT. (a)	FNDT. SEEDS/lb.	REG. SEEDS/lb.	CERT. %	
<u>A Apomictic</u> <u>C Cross Pollinated</u> <u>S Highly Self Fertile</u>														
INDIAN RICEGRASS	(S)	80 (j)	80 (j)	95	90	5	10	<del>((3))</del> 0.30	<del>((5))</del> 0.50	<del>((5))</del> 0.50	1.0	9 /lb.	45 /lb.	<del>((25))</del> 0.25
PUCCINELLIA <del>((n))</del> distans <u>Alkaligrass</u>	(C)	80	80	90	95	5	5	<del>((3))</del> 0.30	<del>((5))</del> 0.50	<del>((5))</del> 0.50	1.0	45 /lb.	454 /lb.	<del>((25))</del> 0.25
WILD RYE <del>((n))</del>	(C)	80	80	90	90	10	10	<del>((+))</del> 0.10	<del>((3))</del> 0.30 (c)	<del>((+))</del> 0.10	<del>((5))</del> 0.50	9 /lb.	45 /lb.	<del>((25))</del> 0.25
BENTGRASS	(C)	85	85	98	98	2	2	<del>((3))</del> 0.30	<del>((4))</del> 0.40 (f)(g)	<del>((2))</del> 0.20	<del>((6))</del> 0.60 (h)	=	=	=
REDTOP	(C)	80	80	92	92	8	8	<del>((3))</del> 0.30	<del>((5))</del> 0.50 (f)	<del>((5))</del> 0.50	<del>((2))</del> 0.20	=	=	=
Ann. CANARYGRASS <del>((GREEN (n)))</del> NEEDLEGRASS SWITCHGRASS	(C) (€)	85 80	85 80	99 80	99 80	1 20	1 20	<del>((+))</del> 0.10 + 5	<del>((3))</del> 0.30 3 (e) 1.5	1 /lb. + + 25))	3 /lb. 5 25))	-	-	-
<u>HAIRGRASS</u> Slender Tufted	(C)	75	70	92	90	8	10	0.30	0.60	0.10	0.50	=	=	=
<u>BERMUDAGRASS</u>	(C)	=	80	=	97	=	3	=	0.20	=	0.25	=	=	=
<u>GREEN NEEDLEGRASS</u>	(C)	80	80	80	80	20	20	0.10	0.30	0.10	0.50	=	=	=
<u>SWITCHGRASS</u>	(C)	60	60	90	90	10	10	0.50	1.50	0.10	0.25	=	=	=

The following (a) - (p) are notes to the above table.

- (a) Not to exceed ~~((25))~~ 0.25% other grass species for blue tag seed.
- (b) Grass seed must not contain more than 45/lb. for registered seed 91/lb. for certified seed, singly or collectively, of objectionable weed seeds. (See (f) of this subsection for certified bentgrass and redtop exemption.) Grass seed shall be free of the seed of prohibited noxious weeds.
- (c) A tolerance of ~~((5))~~ 0.50% may be allowed for samples containing weedy ~~((bromus))~~ *Bromus* spp., provided the total of all other weed seeds does not exceed ~~((3))~~ 0.30%.
- (d) A standard tetrazolium (two hundred seed) test may be used in lieu of germination test. NOTE: State and federal seed laws require seed be labeled on a germination test.
- (e) A tolerance of ~~((8))~~ 0.80% may be allowed in registered and certified wheatgrass containing small grain seed provided the total of all other crop seed does not exceed ~~((+))~~ 0.10% for registered class and ~~((5))~~ 0.50% for certified class.
- (f) Certified seed must not contain over 907 seeds per pound, singly or collectively, of the following weeds: *Plantago* spp., big mouse-ear chickweed, yellow, spotted cat's ear, and dandelion.
- (g) A maximum of ~~((50))~~ 0.50% weed seed may be allowed in certified bentgrass containing silver hairgrass provided the total of all other weed seed does not exceed ~~((40))~~ 0.40%.
- (h) 1.50% other fine bentgrasses and ~~((50))~~ 0.50% redtop may be allowed in certified bentgrass containing a minimum of ~~((98-00))~~ 98% total bentgrass.
- (i) A crop exam is required for all registered and foundation class grass seeds.
- (j) Or 70% by Tz test.

- (k) Maximum other ryegrass allowed as determined by fluorescence test: Foundation ~~((0+))~~ 0.10%, registered 1%, certified 2% for annual and 3% for perennial containing a minimum of 97% total ryegrass. Acceptable fluorescence levels for specific varieties available upon request.
- (l) 85% minimum germination allowed on ryegrass varieties as designated by the breeder or variety owner. See list maintained by the seed program.
- (m) An ammonia test is required on hard, Idaho, blue and sheep fescue to determine presence of other ~~((Fescue))~~ *Festuca* sp. Other fine-leaved fescue found in the ammonia test will be included with other crop not other grass species.
- (n) Total viability as allowed in WAC 16-302-170 can be substituted for germination percentage.
- (o) Turf type fescues 97% pure seed. Range/reclamation types 92% pure seed. Varietal designation of turf or range/reclamation types ~~((are))~~ is to be made by the breeder or variety owner. If no designation is made, the variety will be considered a turf type.
- (p) 10% slender wheatgrass is allowed in the certified class of Critana and 5% *Elymus* species allowed in the certified class of Schwendimar, provided that the total of all other grass ~~((spp-))~~ species does not exceed ~~((25))~~ 0.25% and total other crop, including all other grass ~~((spp-))~~ species does not exceed ~~((50))~~ 0.50%.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-395 ((What are the)) Standards for sod quality seed certification((?)).** (1) The general seed certification definitions and standards in this chapter and the grass seed certification standards are basic and together with WAC 16-302-400 through 16-302-410 constitute the standards for sod quality seed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 06-15-137, filed 7/19/06, effective 8/19/06)

**WAC 16-302-410 Standards for sod quality seed.** (1) Except for ryegrass sod quality seed, seed standards for sod quality grass seed are as follows:

Variety	Minimum <del>((Purity))</del> % Pure	Minimum % Germination	Maximum <del>((%)(a)</del>	Maximum <del>((**))</del> % Weeds <del>(b)</del>
Kentucky Bluegrass	97((%))	80((%))	<del>((0-1%))</del> 0.10	<del>((-02%))</del> 0.02
Red Fescue	98((%))	90((%))	<del>((0-1%))</del> 0.10	<del>((-02%))</del> 0.02
Chewings Fescue	98((%))	90((%))	<del>((0-1%))</del> 0.10	<del>((-02%))</del> 0.02
Tall Fescue	98((%))	85((%))	<del>((0-1%))</del> 0.10	<del>((-02%))</del> 0.02

- ~~((\*)~~) (a) Must be free of ryegrass, orchardgrass, timothy, *Agrostis* sp., black medic, *Poa trivialis*, brome, reed canarygrass, tall fescue, clover, and meadow foxtail. Maximum allowable Canada bluegrass ~~((-02))~~ 0.02%. When the base sample is one of these kinds, the species will not be considered a contaminant (i.e., tall fescue in tall fescue).
- ~~((\*\*))~~ (b) Must be free of Big, Canby and Sandberg bluegrass, dock, chickweed, crabgrass, plantain, short-awn foxtail, annual bluegrass, velvetgrass, *Vulpia* sp., and noxious weed seeds as listed under WAC 16-302-100 and 16-302-105.

(2) Seed standards for sod quality ryegrass seed are as follows:

Variety	Minimum <del>((Purity))</del> % Pure	Germination <del>((***))</del> % <del>(d)</del>	Other Crops <del>((*)(a)</del>	Maximum % Weeds <del>((**))</del> <del>(c)</del>
Ryegrass <del>((**))</del> (b)	98((%))	90((%))	0.10((%))	<del>((-02%))</del> 0.02

- ~~((\*)~~) (a) Must be free of black medic, orchardgrass, timothy, *Agrostis* sp., *Poa trivialis*, brome, reed canarygrass, tall fescue, clover and meadow foxtail. Maximum allowable Canada bluegrass 0.02%.
- ~~((\*\*))~~ (b) Maximum fluorescence levels as determined by breeder or variety owner.
- ~~((\*\*\*))~~ (c) Must be free of Big, Canby and Sandberg bluegrass, dock, chickweed, crabgrass, plantain, annual bluegrass, velvetgrass, *Vulpia* sp., short-awn foxtail, and noxious weed seeds as listed under WAC 16-302-100 and 16-302-105. An additional 0.07% of weedy *Bromus* spp. will be allowed.
- ~~((\*\*\*\*))~~ (d) 85% minimum germination allowed on ryegrass varieties as designated by the breeder or variety owner. See list maintained by the seed program.

(3) A sod seed analysis certificate is the basis of determining if a lot meets sod quality standards. This certificate is issued by the certifying agency and represents a purity analysis, a twenty-five gram noxious all weed all crop exam and a germination test, except a 50-gram noxious all weed all crop exam is required for fescues and ryegrass.

(4) In addition to a seed certification tag, seed meeting sod quality certified seed standards will be tagged with a special "sod quality seed" tag.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-415 ~~((What are the)) Standards for sudangrass certification((?))~~** (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-420 through 16-302-435 constitute the standards for sudangrass seed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-445 ~~((What are the)) Standards for flax certification((?))~~** (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-450 through 16-302-455 constitute the standards for flax certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-460 ~~((What are the)) Standards for woody plants ~~((and)), Forbes, and other reclamation species certification((?))~~~~** (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-465 through 16-302-470 constitute the standards for woody plants and Forbes certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-465 Land requirements and field standards for woody plants ~~((and)), Forbes, and other reclamation species.~~** (1) The life of a stand shall be unlimited as long as seventy-five percent of the plants present in the stand are those that were planted originally.

(2) To be eligible for the production of certified class of seed, a field must not have grown or been seeded to the same species during the previous four years for foundation, three years for registered, and two years for certified.

(3) A seed field inspection must be made the year of establishment and at least once each year that seed is to be harvested. This inspection will be made at a time when plant development allows for the detection of factors such as off-type varieties and weed contamination.

(4) Isolation for seed production the minimum distance from a different variety or wild hybridizing populations are as follows:

	Minimum of isolation-feet:	
	Fields of 2 acres or less	Fields of more than 2 acres
Foundation & registered	400	200
Certified	200	100

Volunteer plants may be cause for rejection or reclassification of a seed field.

(5) Specific field tolerances:

Factor	Maximum <del>(ratio)</del> <u>ration</u> of heads or plants		
	Foundation	Registered	Certified
Other varieties & off type	1/1000	1/500	1/250

Factor	Maximum <del>(ratio)</del> <u>ration</u> of heads or plants		
	Foundation	Registered	Certified
Other kinds	1/2000	1/1000	1/500
(Inseparable other species)			
Prohibited noxious weeds	None found	None found	None found

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-470 Seed standards for woody plants ~~(and)~~, Forbes, and other reclamation species.**

SEED STANDARDS

Crop	Minimum % Germination <del>((min-))</del>		Minimum % Pure seed <del>((min-))</del>		Maximum % Inert <del>((max-))</del>		Maximum % Weeds <del>((max-))</del> (a)		Maximum % Other crops <del>((max-))</del>	
	F/R	C	F/R	C	F/R	C	F/R	C	F/R	C
Small burnet	80	80	95	95	5	5	<del>((+))</del> <u>0.10</u>	.2	.1	.25
Purple prairie clover	60 <del>((**))</del> (b)	60 <del>((**))</del> (b)	95	95	5	5	<del>((20))</del> <u>0.20</u>	.5	.1	.25
Bitterbrush, antelope	<u>75</u>	<u>75</u>	<u>95</u>	<u>95</u>	<u>5</u>	<u>5</u>	<u>0.10(a)</u>	<u>0.20</u>	<u>0.40</u> <u>0.15(g)</u>	<u>1.25</u> <u>0.50(g)</u>
Balsamroot, arrowleaf sclerotinia	<u>85</u>	<u>85</u>	<u>99</u>	<u>98</u>	<u>1.00</u> <u>0</u>	<u>2.00</u> <u>1/lb</u>	<u>0.02</u>	<u>0.04</u>	<u>0.10</u>	<u>0.20</u>
Saltbush, four-wing	<u>30</u>	<u>30</u>	<u>85</u>	<u>85</u>	<u>15</u>	<u>15</u>	<u>0.25(a)</u>	<u>.5(a)</u>	<u>.40</u> <u>.15(g)</u>	<u>1.25</u> <u>.50(g)</u>
Gallardia(d)	<u>60</u>	<u>60</u>	<u>90</u>	<u>90</u>	<u>10</u>	<u>10</u>	<u>0.20(a)</u>	<u>1.00(a)</u>	<u>.20</u> <u>.10(g)</u>	<u>2.00</u> <u>.25(g)</u>
Prairie blazingstar or Gayfeather, thickspike ( <i>Liatris pycnostachya</i> )(d)	<u>60</u>	<u>60</u>	<u>85</u>	<u>80</u>	<u>15</u>	<u>20</u>	<u>0.30(a)</u>	<u>0.30(a)</u>	<u>0.20</u> <u>0.10(g)</u>	<u>2.00</u> <u>0.25(g)</u>
Kochia, prostrate, forage Restricted noxious weeds	<u>35</u>	<u>35</u>	<u>65</u>	<u>65</u>	<u>35</u>	<u>35</u>	<u>0.10</u> <u>45/lb</u>	<u>0.20</u> <u>91/lb</u>	<u>9/lb</u>	<u>25/lb</u>
Artemesia sage, Louisiana sagebrush, big mountain	<u>30</u> <u>50</u>	<u>30</u> <u>50</u>	<u>80</u> <u>10</u>	<u>80</u> <u>10</u>	<u>20</u> <u>90</u>	<u>20</u> <u>90</u>	<u>0.25</u> <u>0.25(a)</u>	<u>0.50(a)</u> <u>0.50(a)</u>	<u>0.40</u> <u>0.40</u> <u>0.25(g)</u>	<u>1.25</u> <u>1.25</u> <u>0.75(g)</u>
sage, pitcher's (Salvia)	<u>25</u>	<u>25</u>	<u>90</u>	<u>90</u>	<u>10</u>	<u>10</u>	<u>0.30(a)</u>	<u>0.30(a)</u>	<u>0.20(c)</u> <u>0.10(g)</u>	<u>2.00(c)</u> <u>25(g)</u>
Milkvetch, cicer Alfalfa & sweet clover Restricted noxious Sclerotia	<u>75</u>	<u>70</u>	<u>99</u>	<u>98</u>	<u>1</u> <u>0.10</u>	<u>2</u> <u>0.10</u>	<u>0.01(a)</u>  None	<u>0.20(a)</u>  <u>9/lb</u>	<u>0.01</u> <u>9/lb</u> <u>0.10(g)</u>	<u>0.20</u> <u>45/lb</u> <u>0.50(g)</u>
Lupine Restricted noxious	<u>80</u>	<u>80</u>	<u>98</u>	<u>98</u>	<u>2</u>	<u>2</u>	<u>0.25</u> <u>0</u>	<u>0.50</u> <u>9/lb</u>	<u>0.10</u>	<u>0.40</u>
Mountain mahogany	<u>60</u>	<u>60</u>	<u>85</u>	<u>85</u>	<u>15</u>	<u>15</u>	<u>0.25(a)</u>	<u>0.50(a)</u>	<u>0.40</u> <u>0.15(g)</u>	<u>1.25</u> <u>0.75(g)</u>
<i>Penstemon</i> spp.	<u>80(d)</u>	<u>80(d)</u>	<u>90</u>	<u>90</u>	<u>10</u>	<u>10</u>	<u>0.20</u>	<u>1.00</u>	<u>0.20(c)</u> <u>90/lb(e)</u>	<u>2.00(c)</u> <u>180/lb(e)</u>

Crop	Minimum % Germination ((min-))		Minimum % Pure seed ((min-))		Maximum % Inert ((max-))		Maximum % Weeds((*(max-)) (a)		Maximum % Other crops ((max-))	
	F/R	C	F/R	C	F/R	C	F/R	C	F/R	C
<u>Prairie-coneflower</u>	<u>60</u>	<u>60</u>	<u>90</u>	<u>90</u>	<u>10</u>	<u>10</u>	<u>0.20(a)</u>	<u>1.00(a)</u>	<u>0.20(c)</u> <u>0.10(g)</u>	<u>2(c)</u> <u>2.00(g)</u>
<u>Safflower</u>	-	<u>85</u>	-	<u>99</u>	-	<u>1</u>	- <u>(a)</u>	<u>10(a)</u>	- <u>1 in</u> <u>2lbs(f)</u>	<u>0.10</u> <u>1 in 1</u> <u>lb(f)</u>
<u>Sainfoin</u> <u>Restricted noxious weeds</u>	-	<u>80</u>	<u>99</u>	<u>99</u>	<u>1</u>	<u>2</u>	<u>0.10(a)</u>	<u>0.20</u> <u>9/lb</u>	<u>0</u>	<u>0.10</u>
<u>Sand-reed, prairie</u>	<u>70</u>	<u>70</u>	<u>90</u>	<u>90</u>	<u>0.10</u>	<u>0.10</u>	<u>0.10</u>	<u>0.25</u>	<u>0.10</u>	<u>0.50</u>
<u>Winterfat</u>	<u>40</u>	<u>40</u>	<u>60</u>	<u>60</u>	<u>40</u>	<u>40</u>	<u>0.25</u>	<u>0.50</u>	<u>40</u> <u>0.15(g)</u>	<u>1.25</u> <u>0.75(g)</u>

- (\*) (a) Must be free prohibited and restricted noxious weed seed.
- (\*\*) (b) Includes total germination and hard seed.
- (c) Never to exceed 0.25% other Forbes.
- (d) Total viability by TZ.
- (e) Sweet clover.
- (f) Barley, oats, rye, triticale, or wheat.
- (g) Other varieties or kinds.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-475 ((What are the)) Standards for rapeseed, mustard (*Brassica spp. and Sinapis alba*), and radish certification((?)).** (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-480 through 16-302-490 constitute the standards for rapeseed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

**AMENDATORY SECTION** (Amending WSR 06-15-136, filed 7/19/06, effective 8/19/06)

**WAC 16-302-480 Field standards for rapeseed, mustard (*Brassica spp. and Sinapis alba*), and radish certification.** Field standards for the production of rapeseed are as follows:

(1) A portion of a rapeseed field may be certified if the area to be certified is clearly defined.

(2) A field producing foundation, registered or certified rapeseed, also known as canola (*Brassica napus*), must be the minimum specified isolation distance from fields of any other variety of *Brassica napus*, from fields of the same variety that do not meet the varietal purity requirements for certification, as well as from fields of *Brassica rapa*, *Brassica oleracea*, and *Brassica juncea* as indicated in the following table:

Class	Fields of Cross Pollinated Varieties Including Hybrids	Fields of Self Pollinated Varieties
Foundation	1 mile	660 feet
Registered	1 mile	660 feet
Certified	1 mile	330 feet

Class	Fields of Cross Pollinated Varieties Including Hybrids	Fields of Self Pollinated Varieties
Different class of same variety	165 feet	165 feet

These isolation distances are minimum and must be met in all cases.

(3) Volunteer plants may be cause for rejection or reclassification of a rapeseed field.

(4) Specific standards for rapeseed are:

Factor	Maximum % permitted in each class		
	Foundation	Registered	Certified
Other varieties((*) (a)	None found((†) (b)	None found((†) (b)	1.00((%)

((\*) (a) Other varieties are considered to include *Brassica rapa*, *Brassica oleracea*, *Brassica juncea*, off-type plants of *Brassica napus* and plants that can be differentiated from the variety being inspected.

((†) (b) None found means none found during the normal inspection procedures. None found is not a guarantee to mean the field inspected is free of the factor.

(5) Field standards for mustard and radish are as follows:

Class of Seed Produced	Maximum Other Varieties Permitted	Isolation Requirements
Foundation or registered	None	1320 feet
Certified	1:500	660 feet

(6) Inspection will be made by the certifying agency when the crop is in the early flowering stage.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-485 Land requirements for rapeseed, mustard (*Brassica spp. and Sinapis alba*), and radish certification.** (1) Land requirements prior to planting for the production of rapeseed are as follows:

Class Planted	Class Produced	Years Field Shall be Free of Rape-seed
Breeder	Foundation	5
Foundation	Registered	4
Breeder, Foundation, Registered	Certified	3

(2) Land requirements prior to planting of mustard or radish are as follows:

Class produced	Years free from any cruciferous crop
<u>Foundation, registered or certified</u>	<u>5 years</u>
<u>May be reduced to three years if following the same variety of the same or higher class.</u>	

(3) For all classes no manure or other contaminating materials shall be applied during the establishment and production period of the rapeseed stand.

~~((3))~~ (4) Reseeding of a rapeseed, mustard, or radish field due to failure or partial failure of the first seeding may be done by referring to the guidelines in WAC 16-302-045(5).

~~((4))~~ (5) Ditchbanks, roadways, etc., adjacent to a certified rapeseed field must be free of volunteer rapeseed and prohibited noxious weeds.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 02-12-060, filed 5/30/02, effective 6/30/02)

**WAC 16-302-490 Seed standards for rapeseed, mustard (*Brassica spp.* and *Sinapis alba*), and radish certification.** Seed standards for the production of rapeseed, mustard, and radish are as follows:

Purity		Foundation	Registered	Certified
Pure seed	<del>((Min--))</del> (minimum) %	<del>((99.00%))</del> 99	<del>((99.00%))</del> 99	<del>((99.00%))</del> 99
Other crop and/or varieties	<del>((Max--))</del> (maximum)	9/lb	9/lb	18/lb
Inert matter	<del>((Max--))</del> (maximum) %	<del>((+00%))</del> 1	<del>((+00%))</del> 1	<del>((+00%))</del> 1
Weed seed	<del>((Max--))</del> (maximum) %	91/lb and not to exceed 0.01%	91/lb and not to exceed 0.01%	181/lb and not to exceed 0.25%
Prohibited noxious weeds <del>((+))</del> (a)		None found	None found	None found
Objectionable weeds <del>((2))</del> (b)	<del>((Max--))</del> (maximum)	5/lb	9/lb	18/lb
Chemical analysis <del>((3))</del> (c), (d), (e)				
Germination	<del>((Min--))</del> (minimum) %	<del>((85.00%))</del> 85	<del>((85.00%))</del> 85	<del>((85.00%))</del> 85

Note:

- ~~((+))~~ (a) None found means none found during normal inspection procedures. None found is not a guarantee that the lot is free of noxious weed seeds.
- ~~((2))~~ (b) Objectionable weed seeds are defined as restricted noxious listed in WAC 16-301-050 plus: *Brassica nigra*, *Sinapis arvensis*, *Brassica juncea*, and *Raphanus raphanistrum*.
- ~~((3))~~ (c) Erucic acid content shall be less than 2% and glucosinolate content shall not be greater than thirty micromoles unless other tolerances are described by the plant breeder for each variety.
- ~~((4))~~ (d) Erucic acid and glucosinolate analysis must be conducted on clean seed.
- ~~((5))~~ (e) Erucic acid and glucosinolate analysis must be conducted at a WSDA approved laboratory.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-495 (~~What are the~~) Standards for red clover seed certification(~~2~~).** (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-500 through 16-302-520 constitute the standards for red clover seed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-525 (~~What are the~~) Standards for white clover and trefoil seed certification(~~2~~).** (1) The general seed certification definitions and standards in this chapter are basic and together with WAC 16-302-530 through 16-302-545 constitute the standards for white clover and trefoil seed certification.

(2) Fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

**SEED CROPS CERTIFIED BY (~~WSCIA~~) THE WASHINGTON STATE CROP IMPROVEMENT ASSOCIATION**

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-555 Labeling and sealing of certified seed of small grains by a grower.** The certifying agency may authorize a grower who has his own equipment and conditions his own seed to label and seal certified seed of small grains. The grower's cleaning equipment must be approved

by the department or its authorized agent according to WAC 16-302-125.

**AMENDATORY SECTION** (Amending WSR 10-08-028, filed 3/31/10, effective 5/1/10)

**WAC 16-302-560 Miscellaneous field and seed inspection standards for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed certification.** (1) Field inspection ((standards)) timing for buckwheat, chickpea, field pea, lentil, millet, soybean, sorghum, small grain seed entered in the certification program are:

- (a) For field pea and ((chickpea (garbanzo bean))) lentil - When seed crop is in full bloom ((and at maturity));
- (b) For ((lentil)) chickpea (garbanzo bean) - When seed crop is mature enough to differentiate leaf type (compound or simple leaf type) and in full bloom ((and at maturity));
- (c) For soybean - When seed crop is in full bloom and/or of mature color;
- (d) For open pollinated sorghum - When seed crop is in full bloom, and optionally again when seed crop begins to show mature color;
- (e) For hybrid sorghum - Two inspections during bloom and one inspection after seed begins to show mature color;
- (f) For small grains - When seed crop is fully headed and of mature color;
- (g) For millet - One inspection during bloom and one inspection after seed begins to show mature color; and
- (h) For buckwheat - One inspection when seed crop is in full bloom.

(2) Any condition or practice which permits or causes contamination of the seed crop, such as failure to prevent seed formation of prohibited noxious weeds, or excess weeds including excessive objectionable or restricted noxious weeds, or mechanical field mixing, is cause for rejection upon inspection. Fields rejected for jointed goatgrass ((at first inspection)) or jointed goatgrass hybrids are not eligible for reinspection and must remain ineligible for any production of certified classes of small grain seed until a reclamation procedure, as specified in subsection (3) of this section has been completed. Fields rejected for other causes will remain eligible for reinspection.

(3) The jointed goatgrass reclamation procedure includes the following:

(a) Each grower must develop a reclamation plan for his/her affected fields. The plan must be based on the most current recommendations of Pacific Northwest scientists and Washington State University cooperative extension as well as good management practices. The plan may include use of certified seed, spring cropping practices, and late tilling and planting. No particular program is specified or endorsed and compliance with a program does not assure eligibility for the production of certified classes of small grain seed. Eligibility is based solely upon results of field inspections as provided in (b) through (e) of this subsection.

(b) The rehabilitation and inspection program duration is three years for irrigated land and five years for dryland without production of certified small grain seed and the first year of certified seed production thereafter.

(c) Annual inspections of the affected fields are conducted by the certifying agency during the prescribed rehabilitation period at such time that the jointed goatgrass or jointed goatgrass hybrids would be most visible.

(d) Following the prescribed period of rehabilitation and during the first certified seed production year, a minimum of three field inspections are conducted by the certifying agency.

(e) If jointed goatgrass ((is)) or jointed goatgrass hybrids are found during any inspection as provided in (c) and (d) of this subsection, the rehabilitation program is determined unsuccessful or the field is declared ineligible and the rehabilitation and inspection program for that field must begin again at year one of the procedure.

(4) Field run lots of seed of the same variety may be commingled to facilitate storage and conditioning.

(5) No prohibited noxious weed seeds are permitted upon inspection for seed standards.

(6) Germination minimum refers to germination when sampled.

(7) If chemically controllable seed-borne diseases are noted upon inspection for field standards and seed standards for small grains, treatment of seed is required.

(8) Wild oat, isolated patches and borders must be removed or clearly marked so as to avoid harvesting with the rest of the field. If rejected, a reinspection is necessary to assure clean-up efforts are satisfactory. Spot checks are conducted on fields where heavy patches or contaminated borders were noted. Harvesting these areas with the rest of the field is cause for rejection of the entire field.

(9) The official laboratory providing seed analysis for the purpose of certification is the department.

(10) For all fields planted with varieties that contain the CLEARFIELD trait as defined in the variety description, documentation will be required to be submitted with the certification application verifying that the production field meets all production guidelines and was sprayed with the appropriate herbicide. CLEARFIELD is a trait that makes a plant resistant to the Imazamox herbicide.

**AMENDATORY SECTION** (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-660 Field pea standards for seed certification.** (1) The land, isolation, and field standards for field pea seed certification are:

CLASS	LAND MINIMUM YEARS	ISOLATION MINIMUM FEET	OFF-TYPE MAXIMUM PLANTS/ACRE	FIELD OTHER CROP MAXIMUM PLANTS/ACRE
Foundation	5((*)) (a)	((400**)) 50 (b)	None found	None found((***)) (c)
Registered	3((*)) (a)	((400**)) 50 (b)	10	None found((***)) (c)
Certified	2((*)) (a)	25((**)) (b)	20	None found((***)) (c)

((\*) (a) Spring peas also require 10 years land history with no production of Austrian pea for all classes.

((\*\*\*) (c) For spring peas, no Austrian pea or rye is permitted. For Austrian peas, no rye is permitted.

((\*\*) (b) Reduce to three feet from fields producing a certified class of the same variety. In addition, each field pea field for certification must be isolated by three feet from small grain fields. To prevent mechanical field mixing of swathed field pea seed crop, the planting of small grain between field pea fields, except for the three feet of isolation, is recommended.

(2) Seed certification standards for field pea are:

CLASS	OFF-TYPE MAXIMUM %	PURE SEED MINIMUM %	INERT MAXIMUM %	OTHER CROP MAXIMUM %	WEED MAXIMUM %	GERMINATION MINIMUM %
Foundation	None found	99.00	1.00	None found	None found	85
Registered	None found	99.00	1.00	None found	0.25((***) (b)	85
Certified	0.03	99.00	1.00	0.10((*) (a)	0.25((***) (b)	85

((\*) (a) For spring peas, no Austrian pea or rye is permitted. For Austrian peas, no rye is permitted.

((\*\*\*) (b) Other tolerance for weed seed:

	OBJECTIONABLE WEED SEED MAXIMUM
Registered	1/lb
Certified	2/lb

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-665 Lentil standards for seed certification.** (1) Land, isolation, and field standards for lentil seed certification are:

CLASS	LAND MINIMUM YEARS	ISOLATION MINIMUM FEET	OFF-TYPE MAXIMUM PLANTS/ACRE	FIELD OTHER CROP MAXIMUM PLANTS/ACRE
Foundation	5	((+100*)) 50 (a)	None found	None found
Registered	4	((+100*)) 50 (a)	10	10((***) (b)
Certified	3	25((*) (a)	20	20((***) (b)

((\*) (a) Reduce to three feet from fields producing a certified class of the same variety. In addition, each lentil field for certification must be isolated by three feet from small grain fields. To prevent mechanical field mixing of swathed lentil seed crop, the planting of small grain between lentil fields, except for three feet of isolation, is recommended.

((\*\*\*) (b) Refers to barley and vetch, each.

(2) Seed certification standards for lentil are:

((OFF-TYPE)) CLASS	((PURE SEED)) OFF-TYPE MAXIMUM SEEDS/LB	((INERT)) PURE SEED MINIMUM %	((OTHER CROP)) INERT MAXIMUM %	((WEED)) OTHER CROP MAXIMUM %	((GERMINATION))	
					WEED MAXIMUM %	GERMINATION MINIMUM %
Foundation	None found	99.00((*) (a)	1.00((*) (a)	None found	None found	85.00
Registered	1	99.00((*) (a)	1.00((*) (a)	0.05((***) (b)	0.05((***) (b), (c)	85.00
Certified	4	99.00((*) (a)	1.00((*) (a)	0.10((***) (b)	0.05((***) (c)	85.00

((\*) (a) A total of three percent inert matter is allowed in samples containing decorticated seed provided total of all other inert matter does not exceed one percent.

((\*\*\*) (b) No vetch is permitted.

((\*\*\*) (c) Other tolerance for weed seed:

(c)

	OBJECTIONABLE WEED SEED MAXIMUM
Registered	1/lb
Certified	2/lb

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-680 Open pollinated sorghum standards for seed certification.** (1) Land, isolation and field standards for open pollinated sorghum seed certification are:

CLASS	LAND STANDARDS MINIMUM YEARS	ISOLATION STANDARDS MINIMUM FEET	FIELD STANDARDS((**)) (c)	
			OFF-TYPE MAXIMUM RATIO	OTHER CROP MAXIMUM NO STANDARD
Foundation	1((*) (a))	1,000((**) (b))	None found	—
Registered	1((*) (a))	1,000((**) (b))	1 head/50,000	—
Certified	1((*) (a))	1,000((**) (b))	1 head/20,000	—

- ((\*) (a)) Waived if the previous crop was grown from an equal or higher certified class of seed of the same variety.
- ((\*\*) (b)) Refers to fields of other varieties or same variety which does not meet tolerance of off-types.
- ((\*\*\*) (c)) Other tolerances for field standards:

	JOHNSONGRASS MAXIMUM	HEAD SMUT MAXIMUM	KERNEL SMUT MAXIMUM
Foundation	None found	None found	None found
Registered	None found	None found	None found
Certified	None found	1 head/10,000	1 head/2,500

(2) Seed standards for open pollinated sorghum seed certification are:

CLASS	OFF-TYPE MAXIMUM %	PURE SEED MINIMUM %	INERT MAXIMUM %	OTHER CROP MAXIMUM %	WEED MAXIMUM %	GERMINATION MINIMUM %
Foundation	None found	((97.00)) 97	((3.00(**)) 3 (b))	None found	0.10	((80.00)) 80
Registered	None found	((97.00)) 97	((3.00(**)) 3 (b))	0.03	0.10	((80.00)) 80
Certified	0.01((*) (a))	((97.00)) 97	((3.00(**)) 3 (b))	0.07((***) (c))	0.10	((80.00)) 80

- ((\*) (a)) Or two seeds per pound.
- ((\*\*) (b)) Where two percent or more is cracked.
- ((\*\*\*) (c)) Or ten seeds per pound.

AMENDATORY SECTION (Amending WSR 10-24-102, filed 12/1/10, effective 1/1/11)

**WAC 16-302-685 Small grains standards for seed certification.** (1) Land, isolation, and field standards for small grains (barley, oat, rye, triticale, and wheat) seed certification are:

**LAND, ISOLATION, AND FIELD STANDARDS**

CLASS	LAND STANDARDS MINIMUM YEARS	ISOLATION STANDARDS MINIMUM FEET	OFF-TYPE MAXIMUM HEAD RATIO	OTHER CROP MAXIMUM HEAD RATIO	TRITICALE PLANTS PER ACRE IN BARLEY, WHEAT, AND OAT	WILD OAT MAXIMUM PLANTS/ACRE
Foundation	2((*) (a))	((90)) 50 same genus((*) (b)) 3 different genus	None found	None found((*) (c))	None found((*) (d))	None found
Registered	1((*) (a))	10 same genus 3 different genus((*) (b))	1/148,000	1/148,000((*) (c))	None found((*) (d))	5

CLASS	LAND STANDARDS MINIMUM YEARS	ISOLATION STANDARDS MINIMUM FEET	OFF-TYPE MAXIMUM HEAD RATIO	OTHER CROP MAXIMUM HEAD RATIO	TRITICALE PLANTS PER ACRE IN BARLEY, WHEAT, AND OAT	WILD OAT MAXIMUM PLANTS/ACRE
Certified	1 <sup>(a)</sup> (a)	10 same genus 3 different genus <sup>(b)</sup> (b)	1/49,000	1/49,000 <sup>(c)</sup> (c)	None found <sup>(d)</sup> (d)	5

<sup>(a)</sup> (a) Waived if the previous crop is grown from an equal or higher certified class of seed of the same variety.

<sup>(b)</sup> (b) Each rye field for certification must be isolated by three feet from fields producing a certified class of the same variety, and by six hundred sixty feet from other rye fields. Each triticale field for certification must be isolated by three feet from fields producing a certified class of the same variety, and by three hundred feet from other triticale, rye and wheat fields for foundation and registered class, and ten feet for certified class, unless otherwise stated by the plant breeder.

<sup>(c)</sup> (c) Refers to other small grains, except that no rye or triticale is permitted in barley, oat, or wheat; and no vetch is permitted in barley, oat, rye, triticale, or wheat.

<sup>(d)</sup> (d) Only one reinspection is allowed for foundation fields when triticale is found in the first inspection. Additional inspections are allowed if the field is downgraded to the registered or certified class.

(2) Small grains - Seed standards:

For CLEARFIELD varieties: For all classes - Each lot must pass the CLEARFIELD Confirm test by bioassay or PCR as defined by the trait owner. The CLEARFIELD Confirm test verifies that the seed is resistant to the Imazamox herbicide.

Class	Foundation	Registered	Certified
Pure seed ( <del>((min-))</del> ) % (minimum)	98((%))	98((%))	98((%))
Inert ( <del>((max-))</del> ) % (maximum)	2((%))	2((%))	2((%))
Off-type( <del>(<sup>(a)</sup>(max-))</del> ) (a) % (maximum)	None found	2/lb	4/lb
Other small grain excluding triticale( <del>(<sup>(a)</sup>(max-))</del> ) (a) (maximum)	None found	1/lb	2/lb
Triticale allowed in wheat <sup>(f)</sup> (f)	None found	None found	1/1000 grams
Triticale allowed in oats and barley	None found	None found	1/lb
Other crop( <del>(<sup>(b)</sup>(max-))</del> ) (b) % (maximum)	None found	0.03((%))	0.05((%))
Weed seed ( <del>((max-))</del> ) % (maximum)	0.01((%))	0.01((%))	0.03((%))
Objectionable weed seed( <del>(<sup>(c)</sup>(max-))</del> ) (c) (maximum)	None found	None found	<del>((1/lb))</del> None found
Wild oat ( <del>((max-))</del> ) (maximum)	None found	None found	None found <sup>(d)</sup> (d)
Viability( <del>(<sup>(e)</sup>(min-))</del> ) (e) % (minimum)	85((%))	85((%))	85((%))

<sup>(a)</sup> (a) The combination of other small grain and off-type must not exceed 2/lb for registered class, and 4/lb for certified class. The tolerance for rye is none found in barley, oat, or wheat. The tolerance for rye is none found in triticale. The tolerance for triticale is none found in rye.

<sup>(b)</sup> (b) Excluding off-type and other small grain. No vetch is allowed in small grain seed.

<sup>(c)</sup> (c) Excluding wild oat.

<sup>(d)</sup> (d) 1/lb for certified class oat.

<sup>(e)</sup> (e) A certification certificate is issued upon receipt of either an official AOSA tetrazolium or germination test which meets minimum Washington viability standards. NOTE: State and federal seed laws require seed be labeled based on a germination test.

<sup>(f)</sup> (f) In wheat, the foundation standard is based on a 1000 gram crop exam. The registered standard is based on a 500 gram crop exam. The certified standard is based on a 500 gram crop exam. If one triticale seed is found in 500 grams, a second 500 gram crop exam is required for a total 1000 gram crop exam. No triticale is allowed in the second 500 grams with the total standard of 1 triticale seed per 1000 grams allowed.

Note: For all classes the purity analysis is based on 100 grams examined. For registered and certified classes, noxious weed, vetch, off-type, and other small grain determinations are based on 500 grams examined except as allowed in footnote ((~~f~~)) (~~f~~) of this subsection. For foundation class, noxious weed, vetch, off-type, and other small grain determinations are based on 1000 grams examined.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-302-690 Chickpea standards for seed certification.** Land, isolation, and field standards for chickpea seed certification are:

**FIELD STANDARDS**

Land Requirements (( <del>4</del> )) ( <del>a</del> ) (minimum years)	Isolation (( <del>min</del> )) <u>mini-</u> <u>mum</u> feet ( <del>e</del> )	Off-type (plants/acre)	Other Crop (( <del>2</del> )) ( <del>b</del> ) (plants/ acre)	Noxious (( <del>3</del> )) ( <del>c</del> ) Weeds (plants/acre)	Ascochyta Blight (( <del>4</del> )) ( <del>d</del> )
Class					
Foundation	3	(( <del>100</del> )) <u>50</u>	none found	none found	none found
Registered	2	50	5	none found	none found
Certified	2	25	10	none found	10 <u>plants/</u> <u>acre</u>

- ((~~4~~)) (~~a~~) Shall not have been planted to chickpeas for three years for foundation class, and two years for registered and certified class, unless the previous crop is of the same variety and passes certification field standards of the same or higher generation.
- ((~~2~~)) (~~b~~) Inseparable other crops.
- ((~~3~~)) (~~c~~) Prohibited, restricted, and other weeds difficult to separate must be controlled.
- ((~~4~~)) (~~d~~) None found in all classes of nontolerant varieties. Planting seedstock must be treated with Thiabendazole ((~~2-(4-triazolyl)~~)) (2-(4-thiazolyl)) benzimidazole.
- (~~e~~) Reduce to three feet from fields producing a certified class of the same variety. In addition, each chickpea field for certification must be isolated by three feet from small grain fields. To prevent mechanical field mixing of swathed chickpea seed crop, the planting of small grain between fields, except for three feet of isolation, is recommended.

**FIELD INSPECTION**

Foundation and registered class fields must have two field inspections: One at bloom stage and one at late pod stage. Certified class fields must be inspected at bloom stage plus another at pod stage if ascochyta blight is observed during the bloom stage inspection.

**SEED STANDARDS**

	Pure seed <u>%</u>	Inert <u>%</u>	Other crop	Weed seed	Germination <u>%</u>
Class (( <del>7</del> )) ( <del>c</del> )					
Foundation	(( <del>99.00%</del> )) <u>99</u>	(( <del>1.0%</del> )) <u>1</u>	none found	none found	85(( <del>%</del> ))
Registered	(( <del>99.00%</del> )) <u>99</u>	(( <del>1.0%</del> )) <u>1</u>	none found	none found	85(( <del>%</del> ))
Certified	(( <del>99.00%</del> )) <u>99</u>	(( <del>1.0%</del> )) <u>1</u>	2 seeds/lb(( <del>5</del> )) ( <del>a</del> )	2 seeds/lb(( <del>6</del> )) ( <del>b</del> )	85(( <del>%</del> ))

- ((~~5~~)) (~~a~~) None found for Austrian pea, rye, or vetch.
- ((~~6~~)) (~~b~~) None found for nightshade berries or prohibited noxious weed seeds.
- ((~~7~~)) (~~c~~) All classes must be treated with Thiabendazole ((~~2-(4-triazolyl)~~)) (2-(4-thiazolyl)) benzimidazole at the labeled rate).

AMENDATORY SECTION (Amending WSR 08-23-055, filed 11/14/08, effective 12/15/08)

**WAC 16-302-740 ((~~What are the~~)) Standards for quality timothy seed certification((~~2~~)).** (1) The general seed certification definitions and standards found in WAC 16-302-005 through 16-302-130, the grass seed certification standards found in WAC 16-302-320 through 16-302-390, and the requirements found in WAC 16-302-745 through 16-302-755 constitute the standards for quality timothy seed certification.

(2) Fees for quality timothy seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

AMENDATORY SECTION (Amending WSR 10-20-149, filed 10/6/10, effective 11/6/10)

**WAC 16-302-755 Standards for quality timothy seed.** (1) Seed standards for quality timothy grass seed are as follows:

	Minimum % Purity	Minimum Viability by Germination or TZ Test	Maximum % Other Crop((*) (a))	Maximum % Weed((**)) (b)
Timothy seed	97((%))	85((%))	((0.2%)) 0.20	((0.02%)) 0.02
Purity component percentages are based on 1 gram sample size as prescribed by the AOSA rules.				

((\*) (a) Must be free of ryegrass, orchardgrass, *Agrostis* sp., *Poa* sp., brome, reed canarygrass, tall fescue, and meadow foxtail.

Must be free of the above listed contaminants based upon a 50 gram examination.

((\*\*) (b) Must be free of alfilaria (redstem filaree), ((bromus)) *Bromus* sp., chickweed including all other species in the Caryophyllaceae family, henbit, *Poa* sp., wild carrot, and prohibited noxious weeds listed in WAC 16-301-045 and restricted noxious weeds listed in WAC 16-301-050.

Must be free of the above listed contaminants based upon a 50 gram examination.

(2) A quality timothy seed analysis certificate is the basis of determining if a lot meets the quality timothy seed standards. This certificate is issued by the certifying agency and represents a purity test, a 50 gram noxious, all weed, all crop exam, and a viability test.

(3) Seed meeting quality timothy seed standards will be tagged with a "quality timothy seed" tag.

NEW SECTION

**WAC 16-302-760 Standards for hybrid canola and hybrid rapeseed.** (1) The general seed certification definitions and standards in this chapter are basic and together with this section through WAC 16-302-785 constitute the standards for hybrid canola and hybrid rapeseed.

(2) The fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

NEW SECTION

**WAC 16-302-765 Definitions specific to hybrid canola or hybrid rapeseed.** "A line" means the line or population that is male sterile.

"B line" means the male fertile line or population capable of maintaining male sterility.

"Canola and rapeseed" means the spring and winter varieties of *Brassica napus*, *Brassica rapa* and canola quality *Brassica juncea*.

"Commercial hybrid" means a hybrid that is one that is planted for any use except seed production.

NEW SECTION

**WAC 16-302-770 Seed requirements and designation of classes of seed for hybrid canola or hybrid rapeseed.** (1) Breeder or foundation seed must be used to establish all fields of hybrid canola or hybrid rapeseed for certification. The direction of the cross must remain unchanged throughout the certification program unless adequate data is provided to show that no change in variety performance results from the reversal of parentage.

(2) Only the certified class is recognized in the production of commercial hybrid seed.

NEW SECTION

**WAC 16-302-775 Land requirements for the production of hybrid canola or hybrid rapeseed.** (1) Fields pro-

ducing foundation class must not be planted on land that had produced any cruciferous crops in the preceding five years.

(2) Fields producing certified class must not be planted on land that had produced any cruciferous crops in the preceding three years.

NEW SECTION

**WAC 16-302-780 Field standards for the production of hybrid canola or hybrid rapeseed.** (1) All hybrid fields must be inspected at the time of stem elongation and a second inspection must occur at the early flowering stage. The certifying agency may require additional inspections to address conditions including, but not limited to, pollen shedding plants in the A line, bloom timing of the A and B lines, and removal of B lines.

(2) All hybrid canola or hybrid rapeseed fields must be isolated from other canola or rapeseed crops by a minimum of one-half mile except for fields located within the Columbia Basin irrigation project must be isolated from other canola or rapeseed crops by two miles. Isolation is not required for fields that are the same hybrid utilizing the B lines.

(3) Fields must be planted in distinct rows with the A line and B line clearly delineated.

(4) Fields must be free from prohibited noxious weeds as listed in WAC 16-302-100 and free from *Galium* sp.

(5) Maximum plants of other varieties or crop kinds per ten thousand plants. This factor is based on a sixty thousand plant count (six replicates of ten thousand plants).

Maximum plants of other varieties including off types and A-line pollen shedders.	Maximum plants of other <i>Brassica</i> crop or weed species.
1.5:10,000	1:10,000

(6) Percent hybrid shall not be less than eighty percent.

(7) Fields cut or swathed prior to inspection are not eligible for certification.

NEW SECTION

**WAC 16-302-785 Seed standards for hybrid canola or hybrid rapeseed.** Seed standards are as follows:

Factor	Foundation	Certified
Pure seed, minimum (a)	99	99

Factor	Foundation	Certified
Other crops, maximum	0.01	0.25
Inert matter, maximum	1	1
Weed seed, maximum	0.01	0.25
Objectionable noxious weed (b)	None found	18/lb
Prohibited noxious weeds	None found	None found
Germination	85	85

- (a) Percent hybrid seed shall be determined by a method approved by the department.
- (b) Objectionable noxious weeds are as defined in WAC 16-302-105 plus: *Brassica nigra*, *Sinapis arvensis*, *Brassica juncea*, and *Raphanus raphanistrum*.

NEW SECTION

**WAC 16-302-790 Standards for sunflower seed production.** (1) The general seed certification definitions and standards in this chapter are basic and together with this section through WAC 16-302-815 constitute the standards for sunflower seed.

(2) The fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

NEW SECTION

**WAC 16-302-795 Definition of terms specific to sunflower seed production. "Breeder seed"** means seed for hybrid production that is seed of male sterile, maintainer, and restorer lines maintained by the breeder.

**"Commercial hybrid"** means seed that is planted for any use except seed production utilizing hybrid seed.

**"Foundation seed"** means seed for hybrid production that is seed of male sterile, maintainer, and restorer lines produced from breeder or foundation seed.

**"Hybrid seed"** means seed that is the first generation of seed of a cross produced by controlling the pollination and by combining two or more lines, varieties, or species.

NEW SECTION

**WAC 16-302-800 Land requirements for sunflower seed production.** Land to produce any class of sunflower seed must not have grown sunflowers the previous three years or the land must have grown two intervening irrigated crops.

NEW SECTION

**WAC 16-302-805 Isolation requirements for sunflower seed production.** Fields of all classes of hybrid or open pollinated sunflowers must be isolated from all other sunflower fields, noncertified sunflower production including home garden plantings, and all wild-type sunflowers by a distance of one and one-fourth miles except for fields within the Columbia Basin irrigation project which must be isolated from the above by two miles. Isolation is not required for fields utilizing the same restorer line.

NEW SECTION

**WAC 16-302-810 Field tolerances and requirements for sunflower seed production.** (1) Only breeder or foundation seed may be used to establish a hybrid field to produce certified seed.

(2) For hybrid varieties the certified generation produced from breeder or foundation seed produces a commercial hybrid and is not eligible for further certification.

(3) For open pollinated sunflower varieties, one field inspection must be made after fifty percent of the plants are in bloom but before the plants are fully mature.

(4) For hybrid sunflower varieties at least two inspections must be made. The first inspection is during the very early bloom stage and the second inspection is during the full bloom stage.

(5) For hybrid sunflower varieties, at least fifty percent of the male parent plants must be flowering and producing pollen when the female parent is in full bloom.

(6) Fields must be free of prohibited noxious weeds listed in WAC 16-302-100. Objectionable weeds listed in WAC 16-302-105 and common weeds difficult to separate must be controlled.

(7) Different sunflower varieties cannot always be differentiated at field inspection. When differences can be distinguished, the maximum of other varieties of off-types allowed is:

Off-types	Open pollinated varieties	Female seed parent		Pollinating parent
		Foundation	Certified	
Other than pollen shedding female plants		1:2,000	1:2,000	1:2,000
Pollen shedding female plant		1:1,000	4:1,000	
Total (including above)	5:1,000	1:1,000	4:1,000	1:2,000

(8)(a) Percent hybridity shall not be less than seventy-five percent. If the field inspection shows one or more of the following, the applicant may request that seed certification be based on the results of a precertification grow-out test approved by the department:

- (i) Inadequate isolation;
- (ii) Too few male parent plants shedding pollen when female parent plants are receptive; or
- (iii) Excess off-types not to include wild-types.

(b) At least two thousand plants must be observed and meet the standards in the table below before hybrid and inbred seed can be certified from fields with problems listed in (a) of this subsection.

Factor	Maximum % Permitted	
	Hybrid	Inbred
Sterile plant	5	-----
Sterile or fertile plants	-----	5
Morphological off-types	0.50	0.50
Wild types	0.20	0.20
Total (including above types)	5	5

**NEW SECTION**

**WAC 16-302-815 Seed standards for sunflower seed production.** (1) Samples submitted for certification must be a minimum of one thousand grams.

(2) Seed standards for sunflowers are as follows:

Factor	Foundation	Registered	Certified
Pure seed - Minimum %	98	98	98
Inter matter - Maximum %	2	2	2
Other varieties* - Maximum	1 seed/lb.	1 seed/lb.	6 seeds/lb. of which may not consist of more than 1 purple or white seed
Other crop seed - Maximum	1 seed/lb.	1 seed/lb.	6 seeds/lb.
Corn or castor bean seed	None found	None found	None found
Weed seed - Maximum %	None found	None found	0.10
Germination - Minimum %	85	85	85

\* Varietal differentiation cannot always be distinguished in a seed sample. When varietal differences are evident this standard applies.

**NEW SECTION**

**WAC 16-302-820 Standards for camelina seed production.** (1) The general seed certification definitions and standards in this chapter are basic and together with this section through WAC 16-302-835 constitute the standards for camelina seed.

(2) The fees for seed certification are assessed by the certifying agency as established in chapter 16-303 WAC.

**NEW SECTION**

**WAC 16-302-825 Land requirements for camelina seed production.** Camelina shall be planted on land on which the previous crop was another kind, or was planted with a foundation or registered class of seed of the same variety.

**NEW SECTION**

**WAC 16-302-830 Field requirements for camelina seed production.** (1) Isolation - A field producing any class of certified seed must be at least fifty feet from any other variety or fields of the same variety that do not meet the varietal purity requirement for certification.

(2) Poor stands, poor vigor, lack of uniformity, excess weeds, or conditions which are apt to make inspection inaccurate or bring certified seed into disfavor shall be cause for rejection.

(3) Field standards are as follows:

Factor	Maximum permitted in each class		
	Foundation	Registered	Certified
Other varieties*	1:5000	1:2000	1:1000
Other inseparable crops	None	0.05%	0.10%

\* Other varieties shall be considered to include plants that can be differentiated from the variety being inspected. However, other varieties shall not include variations which are characteristic of the variety being tested. Fields must be free of prickly lettuce, fanweed, and shepherds purse. Fields will be inspected at full bloom. Fields swathed prior to inspection are not eligible for certification. Conditions such as poor stand, excessive weeds or insect damage that prevent varietal determination may be cause for rejection.

**NEW SECTION**

**WAC 16-302-835 Seed standards for camelina seed production.** The following are the seed standards for camelina seed production:

Factor	Standards permitted in each class		
	Foundation	Registered	Certified
Pure seed (minimum)%	98	98	97

Factor	Standards permitted in each class		
	Foundation	Registered	Certified
Other crop (maximum)%	0.10	0.20	0.30
Inert matter (maximum)%	1	1	1
Weed seed (maximum)%	0.05	0.05	0.05
Objectionable weeds	None	None	None
Germination (minimum)%*	85	85	85

\* A tetrazolium test may be used in lieu of a germination test for certification.

**WSR 14-16-042**  
**PROPOSED RULES**  
**BUILDING CODE COUNCIL**  
 [Filed July 28, 2014, 4:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-029.

Title of Rule and Other Identifying Information: Amendments to chapter 51-51 WAC: Section 2302 of the 2012 International Residential Code (IRC).

Hearing Location(s): Fire Department Training Center, 1618 South Rebecca Street, Spokane, WA, on September 12, 2014, at 10 a.m.; and at DES Presentation Room, 1500 Jefferson S.E., Olympia, WA 98504, on October 10, 2014, at 10 a.m.

Date of Intended Adoption: November 14, 2014.

Submit Written Comments to: Ray Allshouse, P.O. Box 41449, Olympia, WA 98504-1449, e-mail sbcc@ga.wa.gov [sbcc@ga.wa.gov], fax (360) 586-5366, by October 24, 2014.

Assistance for Persons with Disabilities: Contact Peggy Bryden by September 2, 2014, (360) 407-9280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule will modify chapter 51-51 WAC to allow installation of photovoltaic panels and modules on residential rooftops without the need for an engineering report, and will relax local permitting requirements. Under the current rules, some local jurisdictions require the added cost of engineering reports in order to issue a permit for installation of these systems. This rule would provide more efficient and cost-effective installation of PV systems on residential rooftops. This is also the subject of an emergency rule currently in place under WSR 14-14-003.

Reasons Supporting Proposal: The rule is intended to streamline the regulatory process for installation of solar photovoltaic systems in accordance with state policy.

Statutory Authority for Adoption: RCW 19.27.074, 19.27.031.

Statute Being Implemented: Chapter 19.27 RCW.

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

Name of Proponent: State building code council (SBCC), governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joanne McCaughan, P.O. Box 41449, Olympia, WA 98504-1449, (360) 407-9279; Enforcement: Local jurisdictions.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

**Small Business Economic Impact Statement**

Executive Summary: Impact on small business – the proposed rule does not have a negative impact on small businesses.

During the 2014 SBCC cycle of code amendment proposal review, the council received two proposals for consideration re: Changing the requirements for installation of solar power modules on residential rooftops under the IRC. These proposals were reviewed by the IRC technical advisory group (TAG) for review and recommendation. After deliberation and subsequent proposal revision, TAG recommended that the council adopt the changes as amended on an emergency rule basis. The emergency rule went into effect July 1, 2014.

The proponent asserted that the existing 2012 IRC base code language had severely limited the potential for efficient and effective residential PV system installation. It was reported by the proponents that in many jurisdictions around the state, installers were required to provide detailed engineering reports, resulting in higher costs and significant project delays. As a result, some installation companies refused to do any marketing or installations in those communities where the local officials required these extensive, expensive reports. This rule would clarify that when designed and installed according to certain requirements and the manufacturers' specifications, the roof structure would be deemed adequate to support the installation of the equipment, thus permit requirements would be relaxed.

**Section I: Introduction/Compliance with the Proposed Rules - Who is required to comply with the rules?**

Local building departments will be able to use the rules to process requests for project permits without requirements for an engineering report. This will speed up the administrative review process for residential rooftop solar installation projects. These jobs will no longer require an engineer's stamp for approval of the project, thus the building official will be able to process the paperwork more quickly.

**Section II: Compliance Costs for Washington Businesses - Impact on sales or revenue.**

These rules will reduce the cost of compliance for Washington solar installation businesses, because they will no longer be required to submit engineering reports for most rooftop solar installations. This will speed the administrative permitting requirements so that less time will be needed for review and processing of permits. This will result in additional time available for taking on additional contracts, and will save the costs related to engineering reports under current requirements.

**Section III: Analysis of Proportionate Impact on Small Businesses:**

TABLE ONE: Small Businesses Impacted by Solar PV Rules

Type of business	NAICS CODE #	# IN STATE (UP TO 49 Employ-ees)	# IN STATE (50 OR MORE Employees)	ANTICI-PATED IMPACTS (positive/negative/neutral)
Solar PV Manu-facturers	N/A*	8	4	Positive
Residential PV Installers	N/A*	25	N/A	Positive

\* The census does not specify/classify this industry type, i.e., solar installation/manufacturing, at this time. These estimates are based on data from the WSU extension energy program.

The impact on small businesses compared to the largest businesses in the state would not be disproportionate.

**Section IV: Small Business Involvement and Impact Reduction Efforts:**

Actions Taken to Reduce the Impact of the Rule on Small Businesses:

Solar installation companies worked with the Washington state energy office to collaboratively bring forward proposals for modification of the 2012 residential code through the residential code TAG. Consideration was given to the original proposals, and TAG provided a forum for the affected parties to bring forward a modified proposal for which consensus was reached. The issue was deemed appropriate to be filed as an emergency rule<sup>1</sup>, based on information provided by the small business groups, the energy office staff, and other interested parties. There is no anticipated negative impact on small business as a result of these proposed rules as modified and adopted by the council. There will be cost savings associated with relaxing the building permit requirements; those savings will be passed on to customers. Ninety-seven percent of the solar PV market in Washington is in the residential sector; this rule will allow that market to continue to grow.

Involvement of small business in the development of the proposed rules.

**Section V: Number of Affected Businesses In Wash-ington:**

Installers = 25 (50 ees or less)

Manufacturers = 8 (50 ees or less)

**Section VI: Jobs Created or Lost as a Result of These**

**Rules:** These rules will be neutral in terms of job creation and/or loss. To the degree that additional projects are taken on, there would be an increase in the number of systems sold, and an increase in the number of jobs for which an installation company would be contracted.

<sup>1</sup> Emergency rule filed on June 19, 2014, as WSR 14-14-003.

A copy of the statement may be obtained by contacting Joanne McCaughan, SBCC, P.O. Box 41449, Olympia, WA 98504-1449, phone (360) 480-2596, fax (360) 586-9088, e-mail joanne.mccaughan@des.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. SBCC is not a listed agency under RCW 34.05.-328 (5)(a)(i).

June 13, 2014  
C. Ray Allshouse  
Council Chair

NEW SECTION

**WAC 51-51-2300 Section M2302—Photovoltaic solar energy systems.**

**M2302.2 Requirements.** The installation, inspection, main-tenance, repair and replacement of photovoltaic systems and all system components shall comply with the manufacturer's instructions, sections M2302.2.1 through M2302.2.3, NFPA 70, and the IFC as amended by Washington state.

**M2302.2.1 Roof-mounted panels and modules.** Where photovoltaic panels and modules are installed on roofs, the roof shall be constructed to support the loads imposed by such modules.

- EXCEPTION: The roof structure shall be deemed adequate to support the load of the rooftop solar photovoltaic system if all of the following requirements are met:
1. The solar photovoltaic panel system shall be designed for the wind speed of the local area, and shall be installed per the manufacturer's specifications.
  2. The ground snow load does not exceed 70 pounds per square foot.
  3. The total dead load of modules, supports, mountings, raceways, and all other appurtenances weigh no more than four pounds per square foot.
  4. Photovoltaic modules are not mounted higher than 18 inches above the surface of the roofing to which they are affixed.
  5. Supports for solar modules are to be installed to spread the dead load across as many roof-framing members as needed, so that no point load exceeds 50 pounds.

Roof-mounted photovoltaic panels and modules that serve as roof covering shall conform to the requirements for roof coverings in Chapter 9. Where mounted on or above the roof coverings, the photovoltaic panels and modules and sup-ported structure shall be constructed of noncombustible materials or fire-retardant treated wood equivalent to that required for the roof construction.

**WSR 14-16-045**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**  
[Filed July 29, 2014, 11:14 a.m.]

Original Notice.  
Preproposal statement of inquiry was filed as WSR 14-10-030.

Title of Rule and Other Identifying Information:  
Amends WAC 181-78A-255 to remove requirements for continuing improvements for programs. Rule addresses pro-

fessional educator standards board (PESB) Standard II, data collection.

Hearing Location(s): Spokane City Center, 322 North Spokane Falls Court, Spokane, WA 99201, on September 18, 2014, at 8:30.

Date of Intended Adoption: September 18, 2014.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by September 11, 2014.

Assistance for Persons with Disabilities: Contact David Brenna by September 11, 2014, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The PESB Standard II contains requirements to preparation programs regarding the collection and holding of data. The section on continuing improvement is removed and will be incorporated in future changes to PESB standards.

Reasons Supporting Proposal: Improves clarity of the purpose of Standard II.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

July 29, 2014  
David Brenna  
Senior Policy Analyst

**AMENDATORY SECTION** (Amending WSR 14-07-064, filed 3/17/14, effective 4/17/14)

**WAC 181-78A-255 Approval standard—Accountability.** Building on the mission to prepare educators who demonstrate a positive impact on student learning, the following evidence shall be evaluated to determine whether each preparation program is in compliance with the program approval standards of WAC 181-78A-220(2).

(1) ~~(Each approved educator preparation program shall maintain an assessment system that:~~

~~(a) Assesses outcomes in alignment with the conceptual framework and state standards;~~

~~(b) Systematically and comprehensively gathers evidence on:~~

~~(i) Candidate learning;~~

~~(ii) Program operations, including placement rates, clinical experiences, and candidate characteristics.~~

~~(c) Collects candidate work samples that document positive impact on student learning;~~

~~(d) Aggregates key data over time;~~

~~(e) Incorporates perspectives of faculty, candidates, and P-12 partners;~~

~~(f) Includes processes and safeguards that ensure fair and unbiased assessment of candidates;~~

~~(g) Provides for regular analysis of assessment results;~~

~~(h) Is systematically linked to program decision-making processes;~~

~~(2))~~ Each approved program shall maintain a data system that exhibits:

(a) Data structure, including a table structure, the ability to utilize university data systems, data entry protocols and codes, unique record identifiers, the ability to provide repeatable reports with efficiency, and strategies to ensure data quality.

(b) Standards for security and access, including guidelines for data access by users and system back-up protocols.

(c) Guidelines for data governance, system documentation, and the processing of assessment scores from external sources.

~~((3))~~ (2) Each approved education preparation program shall collect and report data in accordance with the data manuals adopted by the professional educator standards board.

**WSR 14-16-058**  
**PROPOSED RULES**  
**YAKIMA VALLEY**  
**COMMUNITY COLLEGE**  
[Filed July 30, 2014, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-044.

Title of Rule and Other Identifying Information: Yakima Valley Community College (YVCC), chapter 132P-33 WAC, Student rights and responsibilities.

Hearing Location(s): Hopf Union Building, Yakima Campus, South 16th Avenue and Nob Hill Boulevard, M. L. King, Jr. Room, Yakima, Washington, on September 10, 2014, at 8:30 a.m.

Date of Intended Adoption: October 9, 2014.

Submit Written Comments to: Leslie Blackaby, Dean for Student Services, YVCC, P.O. Box 22520, Yakima, WA 98907, e-mail lblackaby@yvcc.edu, fax (509) 574-6879, by September 9, 2014.

Assistance for Persons with Disabilities: Contact YVCC's disability support services by September 5, 2014, TTY (509) 574-4677 or (509) 574-4961.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The last full review of the student rights and responsibilities at YVCC was in 1998. The rule is outdated and needs to be reviewed/revised to accommodate changes in local, state and federal guidelines. Changes in the college's organizational structure, technical capability, staffing and student discipline responsibilities necessitate updating the policy.

Reasons Supporting Proposal: 2013 reauthorization of the federal Violence Against Women Act (VAWA) found at 20 U.S.C. Sec. 1092f.

Statutory Authority for Adoption: RCW 28B.50.140, chapter 34.05 RCW, Administrative Procedure Act.

Statute Being Implemented: RCW 28B.50.140.

Rule is necessary because of federal law, 20 U.S.C. Sec. 1092f.

Name of Proponent: YVCC, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Leslie Blackaby, YVCC, Yakima Campus, Deccio Center, 1001 South 12th Avenue, (509) 574-6867.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impact. Revision impacts college-specific, internal policies.

A cost-benefit analysis is not required under RCW 34.05.328. No impact.

July 29, 2014  
Leslie Blackaby  
Dean of Student Services

AMENDATORY SECTION (Amending WSR 99-13-140, filed 6/18/99, effective 7/19/99)

**WAC 132P-33-010 Preamble.** Yakima Valley Community College (YVCC) is dedicated not only to learning and the advancement of knowledge but also to the development of ~~((ethically sensitive and responsible persons. It))~~ civic minded citizens. YVCC seeks to achieve these goals through a sound educational program and policies concerning conduct that encourage independence and maturity while strengthening the spirit of mutual cooperation and responsibility shared by all members of the college community. Sharing goals held in common, the students, faculty, and staff of ~~((Yakima Valley Community College))~~ (YVCC) are joined in voluntary association in an educational community.

~~((The student is, first of all, a member of the community at large, and as such, is entitled to the rights and responsibilities of any citizen of comparable age and maturity. In addition, students, as members of the college are in the unique position of being citizens of two communities, subject to the regulations imposed by both and accountable to both.~~

~~Yakima Valley Community College expects that students will respect the laws of the greater society. As an agency of the state of Washington, the college must respect and adhere to the regulations established by local, state, and federal authorities. As an educational institution, it has the added responsibility for assisting students in gaining an understanding of the law and its function, and the responsibilities imposed upon each individual in a democratic society to respect and support the legal structure which protects the individual and the society. As a functioning organization, the college also has the responsibility to develop a set of regulations to assure the orderly conduct of the affairs of the college.))~~

Admission to the college carries with it the expectation that students will conduct themselves as responsible members of the college community, that they will comply with the rules and regulations of the college, maintain high standards

of integrity and honesty, respect the rights, privileges and property of other members of the college community and will not interfere with legitimate college affairs.

~~((An atmosphere of learning and self-development is created by appropriate conditions in the college community. The rights and responsibilities in this document are critical ingredients in the free, creative, and spirited educational environment to which the students, faculty and staff on Yakima Valley Community College are committed.))~~

AMENDATORY SECTION (Amending WSR 99-13-140, filed 6/18/99, effective 7/19/99)

**WAC 132P-33-020 Definitions.** As used in this code of student rights and responsibilities the following words and phrases shall mean:

~~(1) ("YVCC senate" means the representative governing body for students at Yakima Valley Community College recognized by the board of trustees.~~

~~(2))~~ "Assembly" means any overt activity engaged in by two or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons or group of persons.

~~((3))~~ (2) "ASYVCC" means the associated students of Yakima Valley Community College.

(3) "ASYVCC senate" means the representative governing body for students at Yakima Valley Community College recognized by the board of trustees.

(4) "Board" means the board of trustees of Community College District 16, state of Washington.

~~((4))~~ (5) "Business day" means a weekday, excluding weekends and college holidays.

(6) "College" means Yakima Valley Community College located within Community College District 16, state of Washington.

~~((5))~~ "College facilities" means and includes any or all real and personal property owned or operated by the college and shall include all buildings and appurtenances affixed thereon or attached thereto.

~~(6))~~ (7) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(8) "College personnel" refers to any person employed by Community College District 16 on a full-time or part-time basis, except those who are faculty members.

~~((7))~~ (9) "Disciplinary action" ((means and includes suspension or any lesser sanction of any student by the dean of students, the student hearing committee, college president, or the board of trustees for the violation of any of the provisions of the code of student rights and responsibilities for which such sanctions may be imposed.

The college president or designee shall have the authority to take any disciplinary action including the authority to suspend any student of the college.

~~(8))~~ is the process by which the dean of student services or designee imposes discipline against a student for a violation of the student code.

(10) "Dean of student services or designee" is a college administrator designated by the president or vice-president

for instruction and student services to be responsible for implementing and enforcing the student conduct code. The president or vice-president for instruction and student services is authorized to reassign any and all of the dean of student services' duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(11) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the dean of student services or designee. Disciplinary appeals from a suspension in the excess of ten instructional days or an expulsion are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(12) "District" means Community College District 16, state of Washington.

((9)) (13) "Faculty member(s)" means any employee of Yakima Valley Community College who is employed on a full-time or part-time basis as a teacher, counselor, librarian or other position for which the training, experience and responsibilities are comparable as determined by the appointing authority, except administrative appointments.

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

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

(b) By sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

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

(15) "The president" ((means the duly appointed chief executive officer of Yakima Valley Community)) is the president of the college(, District 16, state of Washington, or in his/her absence, the acting chief executive officer). The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

((11)) (16) "Recognized student organization" means and includes any group or organization composed of students which is recognized formally by the ((student government of the college)) ASYVCC senate.

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

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

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

(b) By sending the document by e-mail and by certified mail or first class mail to the party's last known address. Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

((12)) (19) A "sponsored event or activity" means any activity that is scheduled by the college and is supervised and controlled by the college's faculty members or college personnel. Such sponsorship shall continue only as long as the event is supervised and controlled by the college faculty

member or college personnel. When the sponsored event or activity is of a prolonged nature, and free time periods are permitted to the students participating in the event, any activity taking place during such a free time period outside of the supervision and control of the college's faculty member or college personnel responsible for the event or activity shall be deemed to be a nonsponsored activity.

((13)) (20) "Student((;))" ((unless otherwise qualified, means and includes any person who is enrolled for classes or formally in the process of applying for admission to the college)) includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, 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."

(21) "Student conduct code" means Yakima Valley Community College's student rights and responsibilities found in the Washington Administrative Code.

(22) "YVCC" means Yakima Valley Community College.

(23) "Vice-president for instruction and student services or designee" is the vice-president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the vice-president for student services or designee's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

AMENDATORY SECTION (Amending WSR 82-01-079, filed 12/21/81)

**WAC 132P-33-030 Jurisdiction.** (1) All rules herein adopted shall apply to every student whenever said student is present upon or in any college facility and whenever said student is present at or engaged in any college-sponsored activity or function which is held on or in noncollege facilities ((not open to attendance by the general public)) or provided through web-based or interactive television (ITV) modes of delivery. In the event that a student's conduct, regardless of the location, shall be deemed to contribute to an unsafe college environment or create a disruptive atmosphere at the college, the college may also consider that conduct as basis for student discipline.

(2) Persons aiding or abetting a student's breach of this code shall be subject to having their privilege removed as to remaining on college property or engaging in college-sponsored activities((, and/or)). Appropriate disciplinary action may be taken pursuant to ((HEPB rules or)) faculty and administrative rules and regulations of conduct. If the privilege to remain on campus is revoked, trespassers shall be subject to possible arrest and prosecution under the state criminal trespass law.

AMENDATORY SECTION (Amending WSR 82-01-079, filed 12/21/81)

**WAC 132P-33-040 Authority to prohibit trespass.** (1) ~~((The college president is authorized in the instance of any event that the college president deems impedes))~~ In the instance of any event that the president or designee deems violates WAC 132P-24-050 by impeding the movement of persons or vehicles or which the ((college)) president deems to disrupt or threatens to disrupt ((the ingress and/or egress of persons from college facilities, and the college president acting through the dean of students, or such other designated person)) access to and from or in and out of college property or at a college-sponsored event or activity, the president or designee shall have authority and power to:

(a) Prohibit the entry of, or withdraw the ~~((license or))~~ privilege of a person or persons or any group of persons to enter onto or remain upon any portion of a college facility; or

(b) Give notice against trespass to any person, persons, or group of persons ~~((against))~~ for whom the ~~((license or))~~ privilege has been withdrawn or who have been prohibited from entering onto or remaining upon all or any portion of a college facility; or

(c) Order any person, persons or group of persons to leave or vacate all or any portion of a college facility.

(2) Any student who ~~((shall))~~ disobeys a lawful order given by the ~~((campus))~~ president or designee pursuant to the requirements of subsection (1) of this section shall be subject to disciplinary action.

AMENDATORY SECTION (Amending WSR 82-01-079, filed 12/21/81)

**WAC 132P-33-050 Right to demand identification.**

(1) For the purpose of determining identity of a person as a student, any faculty member, administrator, or other college personnel authorized by the ~~((campus))~~ president or designee may demand that any person on college ~~((facilities))~~ property or at a college-sponsored event or activity produce evidence of student enrollment at the college. ~~((Fender of the))~~ a valid student identification card will satisfy this requirement.

(2) Refusal by a student to produce identification as required shall subject the student to disciplinary action.

NEW SECTION

**WAC 132P-33-065 Statement of student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

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

(1) Academic freedom.

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

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

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

(2) Due process.

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

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

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

AMENDATORY SECTION (Amending WSR 99-13-140, filed 6/18/99, effective 7/19/99)

**WAC 132P-33-080 Freedom of association and organization.** Students bring to the campus a variety of interests previously acquired and develop many new interests as members of the college community. They are free to organize and join associations to promote any legal purpose, whether it be religious, political, educational, recreational, or social.

Student organizations must be granted a charter by the ~~((college student government))~~ ASYVCC senate before they may be officially recognized. Prior to becoming chartered, a student organization must submit to the ~~((student government))~~ ASYVCC senate a statement of purpose, criteria for membership, a statement of operating rules or procedures, and the name of a college employee who has agreed to serve as advisor. All student organizations must also submit to the student government a list of officers and keep that list updated when changes occur. In order to qualify for issuance of a charter, a student organization must be open to all students ~~((without respect to race, sex, creed, or national origin, except for religious qualifications which may be required by organizations whose aims are primarily sectarian, or for other reasonable justifications which are directly related to the purposes of the organization))~~. YVCC policy prohibits conduct that discriminates against individuals based on their race, color, creed, religion, national origin, sex, sexual orientation and/or gender identity, age, marital status, disability (including the use of a specially trained guide dog or other service animal), genetic information, honorably discharged veteran or military status, status as a disabled veteran, Vietnam era veteran, or the right of a mother to breastfeed her child. Affiliation with a ~~((noncampus))~~ noncollege organization shall not

be grounds for denial of a charter provided that other conditions ~~((for))~~ of the charter issuance have been met.

AMENDATORY SECTION (Amending WSR 82-01-079, filed 12/21/81)

**WAC 132P-33-090 Student participation in college governance.** As members of the college community, students will be free, individually and collectively, to express their views on college policy~~((;))~~ and on matters of general interest to the student body. The ASYVCC constitution and the college's administrative procedures provide clear channels for student participation in the formulation and application of institutional policies regarding academic and student affairs. Individuals affected by a policy shall have a representative voice in the formulation of that policy.

AMENDATORY SECTION (Amending WSR 05-16-005, filed 7/21/05, effective 9/1/05)

**WAC 132P-33-100 Disclosure of student records.** The Family Educational Rights and Privacy Act (FERPA) permits a student's education records to be disclosed without consent to persons who meet the strict definition of an "education official" who has a "legitimate educational interest" in their records.

(1) **Education official.** Education official is defined as a person employed by the college in either an administrative, supervisory, academic, research, law enforcement or support staff position; persons serving on official committees such as disciplinary or grievance; an outside contractor (e.g., health or medical professional, attorney, auditor) acting as an agent for the college or the Washington state college and university systems.

The college may designate a student employee of the college as an education official, with the approval of the vice-president for instruction and student services or designee, according to the following procedure:

(a) Supervisor establishes job description identifying specific tasks to be performed by the student employee that require access to personally identifiable confidential information about students, including enrollment records, grades, or other education records;

(b) Supervisor submits job description to dean for approval;

(c) Dean submits job description to the vice-president for instruction and student services approval;

(d) Vice-president for instruction and student services forwards approved job description to supervisor.

(2) **Legitimate educational interest.** Educational interest is a need for an education official to review education records in order to fulfill his or her professional responsibilities. These responsibilities may or may not be limited to the following areas:

(a) Performing a task that is specified in his/her position;

(b) Researching a matter related to student ~~((discipline))~~ conduct;

(c) Providing a service or benefit related to a currently enrolled student or a past student for which the college is still maintaining an educational record;

(d) Maintaining safety and security on campus.

(3) **Education records.** Education records are records, files, and documents containing information directly related to a student or maintained by an educational institution; such as:

(a) Records pertaining to admission, advising, registration, grades and degree information that are maintained by the college;

(b) Testing information used for advising and counseling purposes maintained by the college;

(c) Information maintained by the college concerning payment of fees;

(d) Financial aid information as maintained by the college;

(e) Information regarding students participating in student government or athletics maintained by the college.

The following student records are not considered education records and are not subject to FERPA protection against unauthorized disclosure:

(i) Employment records when the employment is not connected to student status;

(ii) Sole possession records or private notes held by education officials that are not accessible or released to other personnel; other than a temporary substitute;

(iii) Alumni records, which do not relate to the person as a student;

(iv) Application records of students not admitted to the college;

(v) Law enforcement or campus security records that are solely for law enforcement purposes and maintained solely by ~~((the law enforcement unit))~~ campus security;

(vi) Records relating to treatment provided by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional and disclosed only to individuals providing treatment.

(4) **Directory information.** An educational institution is allowed to designate certain types of information that may be released without seeking written permission from the student. Directory information may be provided to the person requesting it either in person, by mail, or by telephone.

All requests for directory information from persons not employed by YVCC shall be referred to enrollment services. Only designated registration personnel are authorized to comply with requests for directory information.

~~((Yakima Valley Community College))~~ YVCC has designated the following items as directory information:

(a) Student's name;

(b) ~~((Address;~~

~~((Telephone number;~~

~~((Date and place of birth;~~

~~((Photographs;~~

~~((E-mail address;~~

~~((Major field of study;~~

~~((Eligibility for and participation in officially recognized activities, organizations, and sports;~~

~~((Weight and height statistics for members of athletic teams;~~

~~((Dates of attendance (quarters in attendance);~~

~~((Enrollment status (number of credits enrolled);~~

~~((Honor roll;~~

~~((m))~~ (i) Degrees and awards received;

~~((n))~~ (j) Most recent previous educational agency or institution attended by the student.

**(5) Protecting directory information from disclosure.**

Students have the right to prohibit the release of directory information. A student may prevent the release of directory information by ~~((personally))~~ submitting in person a request in writing to the enrollment services office. This request to prevent the release of information becomes a part of the student's record and remains in effect (even after ~~((graduation))~~ degree and certificate completion) until the student instructs the college, in writing, to remove the hold status on the record.

**(6) Disclosure exceptions.** In addition to directory information the college will, at its discretion, make disclosures from education records without the student's prior written consent ~~((or))~~ to the following listed parties:

(a) Education officials with a legitimate educational interest;

(b) To officials of another school in which the student seeks or intends to enroll;

(c) To authorized federal, state, or local officials as required by law;

(d) To persons specified in a lawfully served judicial order or subpoena, provided the college makes a reasonable effort to notify the student in advance of compliance (unless in the case of grand jury or other subpoenas which prohibit notification);

(e) In connection with financial aid for which the student has applied or received;

(f) To accrediting organizations, or organizations conducting studies for or on behalf of the institution;

(g) To appropriate parties in a health or safety emergency (campus security will personally relay message of an emergent nature to students);

(h) To parents of a dependent student, upon receipt of their most recently filed tax return, that shows the student as a dependent or upon receipt of a written statement from the student approving the release of nondirectory information ~~((from the student))~~. The following information can be released to the parents of dependent college students:

(i) Tuition account balances;

(ii) Financial aid eligibility;

(iii) Reason for an account hold (not to include titles of library materials);

(iv) Explanation of the satisfactory academic progress policy;

(v) Violation of student conduct policies concerning alcohol and controlled substances.

Faculty and staff of the college may provide job references for students, and may respond to inquiries from employers regarding students. Statements made by college personnel regarding students that are based on that person's personal observations do not require a written release from the student. However, if college personnel provide in either verbal or written form personally identifiable information about a student that is obtained from education records (grades, GPA, etc.) the person is required to obtain prior written permission from the student. In cases where consent of the student is required for release of education records, the

student shall submit a written, signed and dated statement specifying the records to be disclosed, the purpose of the disclosure, and the name of the party to whom the disclosure can be made.

When personally identifiable information is released without prior consent of the student, other than directory information and information released to education officials or the student, the education official in charge of these records will record the names of the parties who have requested information from education records and the nature of the interest in that information.

**(7) Student's rights and responsibilities regarding student records.**

(a) The student~~((s-have))~~ has the right to inspect and review their records by submitting a written, signed request to the enrollment services office stating the record ~~((they wish))~~ he or she wishes to review. Charges may be assessed for reproduced copies of education records.

(b) Students have the right to seek to amend their education records. Students who believe that information contained in their education record is inaccurate, misleading, or in violation of privacy rights, may submit a written request to amend their records to the appropriate education official. The education official(s) will make every effort to settle disputes through informal meetings and discussion with the student. In instances where disputes regarding contents of education records cannot be resolved by the parties concerned, the education official(s) involved shall advise the student of the right to a hearing by the student submitting a written request, appealing the decision of the education official(s), to the registrar or dean of student(s) services or designee. Should the registrar or dean of student(s) services or designee deem that the education records in question are inaccurate or misleading, he or she can ask that the records be amended by the appropriate education official(s). If the education records are held to be accurate, the student shall be granted the opportunity to place within those records a personal statement commenting upon the information contained within.

(c) The student~~((s-have))~~ has the right to consent to disclosures of personally identifiable information contained in their education records, except to the extent that FERPA authorizes disclosure without consent.

(d) Each eligible student is afforded the right to file a complaint concerning alleged failures by the college to comply with the requirements of the act. The ~~((address))~~ web site of the office designated to investigate, process, and review violations and complaints is:

~~((The Family Educational Rights and Privacy Act Office (FERPA))~~

~~Department of Health, Education, and Welfare~~

~~330 Independence Avenue, S.W.~~

~~Washington, DC 20204~~)

Web site: <http://www.ed.gov/offices/om/fpco/>

~~((Students have the right to obtain a copy of the college's student records policy.))~~ Copies of this policy are available through the associated student body and the enrollment services office.

AMENDATORY SECTION (Amending WSR 82-01-079, filed 12/21/81)

**WAC 132P-33-110 Student publications.** The college recognizes the fact that student publications are a valuable aid in establishing and maintaining an atmosphere of free and responsible discussion and of intellectual exploration on the campus. They are a means of bringing student concerns to the attention of the faculty and institutional authorities and of formulating opinion on various issues on the campus and in the college community at large. They may also serve as a means of journalistic and/or creative expression.

~~((The college, as the publisher of student publications, must bear the legal responsibility for the contents of the publications.~~

~~Students shall have freedom to deal with any ideas and to express any opinions in the student publications without fear of their censorship.)~~ Student editors and managers of approved student publications are protected from arbitrary suspension and removal. Only for proper and stated causes, as outlined in the statement of purpose or philosophy adopted for each student publication, should editors and managers be subject to removal and then by orderly and prescribed procedures.

At the same time, student editors and managers are charged with corollary responsibilities to be governed by the canons of responsible journalism, including the avoidance of libel, indecency, harassment, innuendo, undocumented allegations, and attacks on personal integrity~~(, and the techniques of harassment and innuendo)~~.

AMENDATORY SECTION (Amending WSR 82-01-079, filed 12/21/81)

**WAC 132P-33-140 Commercial and promotional activities.** ~~((College facilities may not be used for commercial solicitations, advertising, or promotional activities except when such activities clearly serve educational objectives (as in display of books or technical books or technical equipment of interest to the academic community), and when they are conducted under the sponsorship or at the request of a college department or the associated students, and so long as such use does not interfere with or operate to the detriment of the conduct of college affairs.)~~ College facilities shall not be used for commercial solicitations, advertising, or promotional activities except when such activities clearly serve the district's educational objectives including, but not limited to, display of books of interest to the academic community or the display or demonstration of technical or research equipment, and when such commercial activities relate to educational objectives and are conducted under the sponsorship or the request of a college department or the office of student life, provided that such solicitation does not interfere with or operate to the detriment of the conduct of college affairs or the free flow of pedestrian or vehicular traffic. For the purposes of regulation, the term "commercial activities" does not include handbills, leaflets, newspapers, and similarly related materials as regulated in chapters 132P-136 and 132P-142 WAC.

AMENDATORY SECTION (Amending WSR 99-13-140, filed 6/18/99, effective 7/19/99)

**WAC 132P-33-150 Use of college facilities.** ~~((Any recognized ASYVCC organization may request approval from the student life coordinator to utilize available college facilities for authorized activities as provided for in official ASYVCC documents. Facilities will be provided free of charge to the organization except when such use necessitates staffing and services beyond regular college requirements. Standard college fees will be charged in these cases.~~

~~Use of facilities for purposes other than those approved or in an irresponsible manner may result in withdrawal of this privilege for an organization.~~

~~Student organizations should schedule facility use requests with the director of student programs as far in advance as possible.)~~ Please refer to chapters 132P-136 and 132P-142 WAC.

AMENDATORY SECTION (Amending WSR 99-13-140, filed 6/18/99, effective 7/19/99)

**WAC 132P-33-155 Electronic communication policy.** The following is a general policy:

(1) Computer and network use at ~~((Yakima Valley Community College))~~ YVCC must be consistent with the mission, policies, and procedures of the college and applicable federal, state, and local laws and regulations. ~~((Yakima Valley Community College))~~ YVCC computers and networking facilities are primarily designated for educational and research purposes.

(2) Users must respect the rights and property of others. Users must not improperly access, misuse, send, or misappropriate information or files. Unauthorized access to systems, software, or data is prohibited.

(3) ~~((Yakima Valley Community College))~~ YVCC computers and network facilities must not be used for commercial purposes or private gain.

(4) ~~((Yakima Valley Community College))~~ YVCC computers and network facilities must not be used to transmit or solicit the transmission of any communication in any form where the content and/or meaning of the message transmitted or distributed would violate any applicable law or regulation.

(5) Users of ~~((Yakima Valley Community College))~~ YVCC computers and network facilities must promote efficient use of the networks. Users must minimize and avoid unnecessary network traffic which might interfere or negatively impact the work of other users of the YVCC network or connected networks. Uses that significantly interfere with the ability of others to make effective use of the network or which disrupt the YVCC network or any connected networks, systems, services, or equipment are prohibited.

(6) Interpretation, application, and modification of this policy will be at the sole discretion of ~~((Yakima Valley Community College))~~ YVCC. Violations may result in loss of computer and network privileges and other penalties as applicable under YVCC policies and federal, state, and local laws and regulations.

(7) ~~((Yakima Valley Community College))~~ YVCC makes no warranty of any kind, expressed or implied, regarding computer resources or services, or the contents of

resources or electronic messages over the YVCC campus network or connected networks. (~~(Yakima Valley Community College)~~) YVCC will not be liable in any event for incidental or consequential damages, direct or indirect, resulting from the use of the YVCC campus network or network services.

AMENDATORY SECTION (Amending WSR 99-13-140, filed 6/18/99, effective 7/19/99)

**WAC 132P-33-160 Noncollege speaker policy.** (~~The trustees, the administration, and the faculty of the college subscribe to the proposition that an important aspect of the education of college students is the opportunity to listen to speakers representing a wide variety of opinions and beliefs on important public issues. In conformity with the American tradition of free speech and free inquiry, the following policies are established governing the appearance on campus of speakers not themselves members of the college community:~~

(1) ~~Any recognized ASYVCC student organization with the written sanction of its advisor, may ask individuals to speak on the campus subject to normal restraints imposed by considerations of common decency and the state law.)~~ (1) Student organizations officially recognized by the college shall have the right to invite outside speakers to speak on campus. This right is subject to the availability of campus facilities, funding, and in compliance with college procedures available in the respective office of student life. Speakers are subject to the legal restraints imposed by the laws of the United States and the state of Washington.

(2) ~~The appearance of ((a)) an invited speaker on ((the campus)) college facilities or at sponsored events or activities does not ((involve an)) represent an implicit or explicit endorsement((, either implicit or explicit,)) of the speaker's views or opinions by the college, its students, its faculty, its college personnel, its administration, or its board ((of trustees)).~~

(3) ~~The scheduling of facilities for ((hearing invited speakers)) events shall be made through the ((office of the student life coordinator.~~

(4) ~~The student life coordinator or designee will be notified at least three academic calendar days prior to the appearance of an invited speaker, at which time a form (available in the student programs office) must be completed with such particulars as name of speaker, speech or discussion topic, time of appearance(s) and sponsoring organization. The form must bear the signature of the sponsoring organization's advisor. Exceptions to the three day ruling may be made by the student life coordinator with the approval of the dean of students)) designated reservation clerk. Use of facilities generally requires ten calendar days notice, excluding Saturday, Sunday and holidays.~~

~~((5))~~ (4) The dean of students or designee may require views other than those of the invited speaker to be presented at the meeting, or at a subsequent meeting. The ((campus)) president may assign a ((faculty member)) college employee to preside over any meeting where a speaker has been invited.

#### NEW SECTION

**WAC 132P-33-165 Distribution and posting of materials.** Students may distribute or post printed or published

material subject to procedures available in the office of student life. All free publications not in violation of local, state and/or federal laws, such as books, magazines, newspapers, leaflets or similar materials may be distributed on campus. The college may restrict the distribution of any publications where such distribution unreasonably interferes with college operations. Such materials may be distributed from authorized public areas consistent with the maintenance of college property, with the free flow of traffic and persons, and not in the manner that, in itself, limits the orderly operation of college affairs. Any student desiring to distribute such publications shall first register with the office of student life so that reasonable areas and times can be assured and prevent undue interference with the activities of the institution. All publications shall bear identification as to the publishing agency and distributing organization or individual.

#### **DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT**

#### NEW SECTION

**WAC 132P-33-400 Supplemental sexual misconduct procedures.** Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student conduct matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132P-33-200 through 132P-33-310. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

#### NEW SECTION

**WAC 132P-33-410 Supplemental definitions.** The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

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

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

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

(c) Sexual harassment;

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

(e) Nonphysical conduct such as sexual- or gender-based digital media stalking, sexual- or gender-based online harass-

ment, sexual- or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

#### NEW SECTION

##### **WAC 132P-33-420 Supplemental complaint process.**

The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

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

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

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

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

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

#### NEW SECTION

##### **WAC 132P-33-430 Supplemental appeal rights.** (1)

The following actions by the dean of student services or designee may be appealed by the complainant:

(a) The dismissal of a sexual misconduct complaint; or  
 (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the vice-president of instruction

and student services or designee within twenty-one days of service of the notice of the discipline decision provided for in WAC 132P-33-230. The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

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

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

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

- (a) Exoneration and dismissal of the proceedings;
- (b) A disciplinary warning;
- (c) A written reprimand;
- (d) Disciplinary probation;
- (e) Suspensions of ten instructional days or less; and/or
- (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

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

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

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

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

(10) The vice-president for instruction and student services and designee, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protec-

tion, including suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights.

(11) Complainant may appeal the vice-president for instruction and student services' decision to the president subject to the same procedures and deadlines applicable to other parties.

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

## STUDENT CONDUCT CODE PROCEDURES

### NEW SECTION

**WAC 132P-33-440 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) Academic dishonesty. Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes, but is not limited to, any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes, but is not limited to, taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) Other dishonesty. Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) Obstruction or disruption. Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) Assault. Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(5) Cyber misconduct. Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sensing threatening e-mail communications directly or through communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) Property violation. Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) Failure to comply with directive. Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) Weapons. Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, 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.

(9) Hazing. Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) Alcohol and drug violations.

(a) Alcohol. The use, possession, delivery, or sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, or sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) Drugs. The use, possession, delivery, sale, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(11) Lewd conduct. Conduct which is lewd or obscene.

(12) Discriminatory conduct. Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) Sexual misconduct. The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual harassment. The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) Sexual intimidation. The term "sexual intimidation" incorporates the definition of sexual harassment and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) Sexual violence. The term "sexual violence" incorporates the definition of sexual harassment and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(14) Harassment. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates

an intimidating, hostile or offensive environment for other campus community members. Protected status includes a person's race, color, national origin, sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of sexual harassment. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(15) Retaliation. Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies, including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(16) Misuse of electronic resources. Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) Unauthorized access. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) Safety violations. Safety violation includes any non-accidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) Ethical violation. The breach of any generally recognized and published code of ethics or standards of profession practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

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

#### NEW SECTION

**WAC 132P-33-445 Disciplinary sanctions and terms and conditions.** The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(1) Disciplinary warning. A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) Written reprimand. Notice in writing that the student has violated one or more terms of this student conduct code and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) Disciplinary probation. Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) Disciplinary suspension. Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(5) Dismissal. The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(6) Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) Restitution. Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) Professional evaluation. Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with the recommendations set forth in such a professional evaluation. If the

evaluation indicates that the student is not capable of functioning within college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(7) Not in good standing. A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) Ineligible to represent college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

#### NEW SECTION

##### **WAC 132P-33-450 Purpose of disciplinary actions.**

The college may apply sanctions or take other appropriate action when student conduct interferes with the college's education process:

(1) Nothing herein shall prevent faculty members from taking reasonable summary action as maybe reasonably necessary to maintain order when they have reason to believe that such action is necessary for the physical safety and well-being of the student, the safety and protection of other students, of college property or where the student's conduct disrupts the educational process.

(2) Such summary action in the form of removal from the classroom shall be effective for a period not to exceed two scheduled classroom days.

(3) Faculty shall maintain a written record of any summary action and a copy shall be filed with the dean of student services or designee within two scheduled classroom days (excludes Saturday, Sunday, and holidays).

(4) Any summary action may be appealed to the dean of student services or designee for an informal hearing.

#### NEW SECTION

##### **WAC 132P-33-460 Initiation of disciplinary action.**

(1) All disciplinary actions will be initiated by the dean of student services or designee. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The dean of student services or designee shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the dean of student services or designee will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting the dean of student services or designee may take disciplinary action based upon the available information.

(3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the dean of student services or designee shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) The dean of student services or designee may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132P-33-200.

(c) Refer the matter directly to the student conduct committee.

(i) Initiating the process. Student behavior that is suspected to be in violation of the student conduct code may be reported by students or employees of the college. In the event of an urgent safety concern, the person reporting the behavior is advised to first contact campus security or 911 local emergency services. If the conduct may be criminal, the student or employee reporting the incident may also report the conduct to law enforcement.

(ii) Notice requirements. The dean of students or designee shall initiate timely notification of the student accused of a violation of the student conduct code. The human resources director or designee shall initiate timely notification of allegations of sexual misconduct (WAC 132P-33-150). The notice shall not be ineffective if presented later due to the student's absence. Such notice shall:

(A) Inform the student that a report has been filed alleging that the student violated specific provisions of the code and the date of the violation;

(B) Inform the student that failure to appear at either of the appointed times at the office of the dean of student services or designee by the appointed deadline may subject the student to suspension from the institution for a stated time and a loss of access to college services for an indefinite period of time.

(5) Meeting with the dean of student services or designee.

(a) At the meeting with the dean of student services or designee the student shall be informed:

(i) Of provisions of the student conduct code that prompted that notice;

(ii) That the dean of student services or designee will make a decision as to any disciplinary sanction;

(iii) That the student may appeal any disciplinary sanction by requesting a formal hearing;

(iv) That the decision of the dean of student services or designee stands until such hearing is completed; and

(v) That if a hearing is requested the student may have that hearing open to the public.

(b) After the investigation is completed, the dean of student services or designee may take any of the following actions:

(i) Terminate the proceedings, exonerating the student or students;

(ii) Dismiss the case after whatever counseling and advice may be appropriate;

(iii) Provide a warning, verbally cautioning the student that the reported behavior constitutes violation of college rules or regulations or has otherwise failed to meet the college's standards of conduct and that further conduct of the type reported may lead to more serious disciplinary actions in the future;

(iv) In the case of a sexual misconduct allegation, that the complainant may also appeal any disciplinary sanction by requesting a formal hearing;

(v) Impose disciplinary sanctions as listed in WAC 132P-33-200 subject to the student's right of appeal described below; or

(vi) Refer the matter to the student conduct committee for a recommendation to the vice-president for instruction and student services or designee as to appropriate action.

(c) Disciplinary action taken by or at the recommendation of the dean of student services or designee is final twenty-one days after notice is sent unless the student exercises the right of appeal as provided for in these rules.

(d) This process does not preclude and may occur concurrently with a Title IX sexual harassment investigation (WAC 132P-33-150). In cases of sexual misconduct, both the complainant and the accused may appeal disciplinary sanctions.

#### NEW SECTION

##### **WAC 132P-33-470 Appeal from disciplinary action.**

The respondent may appeal a disciplinary action by filing a written notice of appeal with the vice-president of instruction and student services within twenty-one days of service of the dean of student services or designee decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the dean of student services or designee's decision shall be deemed final.

(1) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(2) The parties to an appeal shall be the respondent and the dean of student services or designee.

(3) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(4) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(5) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(6) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the vice-president for instruction and student services, the dean of student services, or the president.

(7) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

- (a) Suspensions of ten instructional days or less;
- (b) Disciplinary probation;
- (c) Written reprimands; and

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

(8) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

#### NEW SECTION

##### **WAC 132P-33-480 Student conduct committee.** (1)

The student conduct committee shall consist of six members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president; and
- (c) Two administrative staff members (excluding the individual who imposed the sanction) appointed by the president at the beginning of the academic year.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings shall be heard by a quorum of three members of the committee so long as one faculty member, one administrator and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

#### NEW SECTION

**WAC 132P-33-490 Appeal student conduct committee.** (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The dean of student services or designee shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The dean of student services or designee may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown. If the dean of student services or designee imposed the appealed sanction the

vice-president of instruction and student services will designate another administrator to facilitate the process.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair or dean of student services or designee, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair or dean of student services or designee should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The dean of student services or designee, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student dean of student services or designee. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the dean of student services or designee may also be represented by a second, appropriately screened assistant attorney general.

#### NEW SECTION

**WAC 132P-33-500 Student conduct committee hearings—Presentations of evidence.** (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision;  
or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair or dean of student services or designee shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair or dean of student services or designee shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The dean of student services or designee (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

#### NEW SECTION

**WAC 132P-33-510 Student conduct committee—Initial recommendation.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial recommendation to the vice-president for instruction and student services or designee in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be identified.

(3) The vice-president for instruction and student services or designee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the dean of student services or designee, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student conduct code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the dean of

student services or designee and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The vice-president for instruction and student services or designee shall cause copies of the initial decision to be served on the parties and their legal counsel or record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

#### NEW SECTION

**WAC 132P-33-520 Appeal from vice-president for instruction and student services initial decision.** (1) A respondent who is aggrieved by the findings or conclusions issued by the vice-president for instruction and student services or designee may appeal the initial decision to the president based solely upon procedural concerns by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific procedural concerns that are challenged and must contain argument why the appeal should be granted.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) The president may at his or her discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

#### NEW SECTION

**WAC 132P-33-530 Readmission after suspension.** Any student suspended from the college for disciplinary reasons may be readmitted upon expiration of the time period for which the suspension was issued. If the student has been suspended for an indefinite period, or feels that circumstances warrant reconsideration of the temporary suspension prior to its expiration, the student may appeal in writing no more than once per quarter to the dean of student services or designee. Such petitions shall state reasons which support a reconsideration of the matter.

### SUMMARY SUSPENSION RULES

#### NEW SECTION

**WAC 132P-33-540 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The vice-president for instruction and student services or designee may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the dean of student services or designee for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the vice-president for instruction and student services or the dean of student services, or to attend a disciplinary hearing.

(5)(a) The dean of student services or designee shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the dean of student services or designee is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceeding and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the student fails to appear at the designated hearing time, the dean of student services or designee may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the dean of student services or designee shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the dean of student services or designee shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132P-33-060	Freedom of access to higher education.
WAC 132P-33-070	Freedom of expression.
WAC 132P-33-120	Student complaints.
WAC 132P-33-123	Sexual harassment policy.
WAC 132P-33-125	Complaints against academic employees in accordance with the negotiated agreement.
WAC 132P-33-170	Violations.
WAC 132P-33-180	Emergency procedures.
WAC 132P-33-190	Purpose of disciplinary actions.
WAC 132P-33-200	Initial proceedings.
WAC 132P-33-210	Appeals.
WAC 132P-33-220	Student hearing committee.
WAC 132P-33-230	Final decision regarding disciplinary sanction.
WAC 132P-33-240	Disciplinary sanctions.
WAC 132P-33-250	Readmission after suspension.
WAC 132P-33-260	Reestablishment of academic standings.
WAC 132P-33-270	Initiation of summary suspension proceedings.
WAC 132P-33-280	Permission to enter or remain on campus.
WAC 132P-33-290	Notice of summary suspension proceedings.
WAC 132P-33-300	Procedures of summary suspension hearing.
WAC 132P-33-310	Decision by the dean of students.
WAC 132P-33-320	Notice of summary suspension.
WAC 132P-33-330	Suspension for failure to appear.
WAC 132P-33-340	Appeal.
WAC 132P-33-350	Summary suspension proceedings not duplicious.

### **WSR 14-16-064**

#### **PROPOSED RULES**

#### **SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed July 30, 2014, 3:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-009.

Title of Rule and Other Identifying Information: Chapter dropout reengagement, WAC 392-700-015 Definitions, 392-700-035 Student eligibility, 392-700-042 Program operating agreements and OSPI approval, 392-700-137 Award of credit, 392-700-155 Annual reporting calendar, 392-700-160 Reporting of student enrollment, 392-700-165 Funding and reimbursement, and 392-700-175 Required documentation and reporting.

Hearing Location(s): Office of the Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 South Washington, Olympia, WA, on September 9, 2014, at 1:00 p.m.

Date of Intended Adoption: September 10, 2014.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by September 9, 2014.

Assistance for Persons with Disabilities: Contact Wanda Griffin by September 5, 2014, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Several sections of chapter 392-700 WAC require updating to address the weekly minimum contact time requirement and to provide further clarification for dropout reengagement programs.

Reasons Supporting Proposal: After the passage of the 2014 supplemental budget (ESSB 6002), the 2014 legislature added a weekly minimum contact time requirement for dropout reengagement programs. This WAC revision provides rules for this new requirement.

Further clarification is needed to address student eligibility, program requirements, and reporting processes for dropout reengagement programs.

Statutory Authority for Adoption: RCW 28A.175.100.

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

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact; no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

July 30, 2014  
Randy Dorn  
State Superintendent

**AMENDATORY SECTION** (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

**WAC 392-700-015 Definitions.** The following definitions in this section apply throughout this chapter:

(1) **"Agency"** means an educational service district, nonprofit community-based organization, or public entity other than a college.

(2) **"Annual average full-time equivalent (AAFTE)"** means the total student monthly full-time equivalent (FTE) reported for each enrolled student in a school year divided by ten (~~((with the maximum being 1.0 per year))~~).

(3) **"Attendance period requirement"** is defined as, at minimum, two hours of face-to-face interaction with a designated program staff for the purpose of instruction, academic counseling, career counseling, or case management contact aggregated over the prior month.

(4) **"CEDARS"** refers to comprehensive educational data and research system, the statewide longitudinal data system of educational data for K-12 student information.

~~((4))~~ (5) **"College"** means ~~((community))~~ college or technical college pursuant to chapters 28B-20 through 28B-50 RCW.

~~((5))~~ (6) **"Consortium"** means a regional group of organizations that will consist of districts, and agencies and/or colleges who agree to work together to create and operate a program that will serve students from multiple districts and reduce the administrative burden on districts.

~~((6))~~ (7) **"Consortium agreement"** means ~~((~~ the agreement that is signed by the authorized consortium lead and all district ~~((s))~~ superintendents or their authorized officials which are part of the consortium and agree to refer eligible students to the consortium's program. This agreement will clearly outline the responsibilities of the consortium lead and those of the referring districts ~~((or~~

~~((b))~~ ~~The agreement that is signed by a district or college that is directly operating a program and all districts which agree to refer eligible students to the program. This agreement will clearly outline the responsibilities of the college or district directly operating the program and those of the referring districts))~~.

~~((7))~~ (8) **"Consortium lead"** means the lead organization in a consortium that will assume the responsibilities outlined in WAC 392-700-042(3).

~~((8))~~ ~~"Contract"~~ means ~~the document signed by the administrator of a district and the administrator of an agency when the program is operated by an agency on behalf of the district and will receive compensation in accordance with WAC 392-700-165. The contract will specifically outline all the required elements of a program that the agency and the district agree to implement.)~~

(9) **"Count day"** is the instructional day that is used to claim a program's enrollment for state funding pursuant to WAC 392-121-033. For September, the count day is the fourth instructional day. For the remaining months, the count day is the first instructional day.

(10) **"Credential"** is identified as one of the following:  
(a) High school equivalency certificate;  
(b) High school diploma;  
(c) College certificate received after completion of a college program requiring at least forty hours of instruction;  
(d) College degree; or  
(e) Industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction.

~~((10))~~ (11) **"Enrolled student"** is an eligible student whose enrollment and attendance meets the criteria adopted by the office of superintendent of public instruction (OSPI) specifically for the program and outlined in WAC 392-700-035 and 392-700-160, and is reported as an FTE for state funding.

~~((11))~~ (12) **"ERDC"** refers to education research and data center, which conducts analyses of early learning, K-12, and higher education programs and education issues across the P-20 system that collaborates with legislative evaluation and accountability program and other statutory partner agencies.

~~((12))~~ (13) **"Full-time equivalent (FTE)"** is the measurement of enrollment that an enrolled student can be claimed on a monthly basis with the maximum being 1.0 FTE per month for each student enrolled in a program.

~~((13))~~ (14) **"Indicator of academic progress"** means standard academic benchmarks that are measures of academic performance which are attained by reengagement students. These indicators will be tracked and reported by the program and district for each student and for programs as a whole using definitions and procedures outlined by OSPI. Indicators of academic progress will be reported when a student does one of the following:

(a) Passes one or more high school equivalency certificate measures (each measure may only be claimed once), or other state assessment;

(b) Earns high school credit or college credit.

(c) Makes a significant gain in math and/or reading skills level based on the assessment tool's determination of significant gain (may be claimed multiple times in a year);

(d) Completes approved college readiness course work with documentation of competency attainment;

(e) Completes job search and job retention course work with documentation of competency attainment;

(f) Successfully completes a paid or unpaid work based learning experience of at least forty-five hours. This experience must meet the requirements of WAC 392-410-315(2);

(g) Enrolls in a below one hundred level class other than adult basic education (ABE), high school equivalency certificate, or English as a second language (ESL) class; or

(h) Transitions from an ESL class to ABE or high school equivalency certificate class;

(i) Transitions from ABE or high school equivalency certificate class to a below one hundred level math or English class;

(j) Transitions from a below one hundred level math or English class to the next below one hundred level math or English class or from a below one hundred level math or English class to college level math or English class; and

(k) Transitions from ABE or high school equivalency certificate class to a college level class (other than English or math).

(15) **"Instructional staff"** means the following:

(a) For programs operated by ~~((or in partnership with))~~ a district, the instructional staff is a certificated instructional staff pursuant to WAC 392-121-205;

(b) For programs operated by ~~((or in partnership with))~~ a college, the instructional staff is one who is employed or

appointed by the college whose required credentials are established by the college; and

(c) For programs operated by ~~((or in partnership with))~~ an agency, the instructional staff is one who is employed or appointed by the agency whose required credentials are established by the agency.

~~((14) "Interlocal agreement" means the document signed by the administrator of a district and the administrator of a college when the program is operated by a college on behalf of the district and will receive compensation in accordance with WAC 392-700-165. The interlocal agreement will specifically outline all the required elements of a program that the college and the district agree to implement.~~

~~(15))~~ (16) **"Letter of intent"** means the document signed by the ~~((administrator of a district or college))~~ district, college or lead agency authorized official that specifically outlines to OSPI the required elements of a program that the district ~~((or))~~, college, or agency agree to implement.

~~((16) "Measure of academic progress" means standard academic benchmarks that are measures of academic performance which are attained by reengagement students in addition to a credential. These measures will be tracked and reported by the program and district for each student and for programs as a whole using definitions and procedures outlined by OSPI. Measures of academic progress will be reported when a student does one of the following:~~

~~(a) Passes one or more high school equivalency certificate measures (each measure may only be claimed once);~~

~~(b) Makes a significant gain in math and/or reading skills level as measured by a post-test using a commonly accepted standardized assessment (may be claimed multiple times in a year);~~

~~(c) Completes approved college readiness course work with documentation of competency attainment;~~

~~(d) Completes job search and job retention course work with documentation of competency attainment;~~

~~(e) Successfully completes a paid or unpaid work based learning experience of at least forty five hours. This experience must meet the requirements of WAC 392-410-315(2);~~

~~(f) Enrolls in postsecondary classes other than adult basic education (ABE), high school equivalency certificate, or English as a second language (ESL); or~~

~~(g) Transitions from ESL to ABE high school equivalency certificate classes;~~

~~(h) Transitions from ABE high school equivalency certificate classes to postsecondary developmental math and English classes (math or English classes below the 101 level);~~

~~(i) Transitions from postsecondary developmental math or English classes to the next level of postsecondary developmental math or English or from postsecondary developmental math or English classes to college level math and English classes (classes at 101 or above); and~~

~~(j) Transitions from ABE high school equivalency certificate classes to college level classes at 101 or above (other than English or math).~~

~~(17) "Minimum attendance standard" means the minimum attendance that must be made by a student enrolled in a program in order to be eligible to be claimed on any monthly count day.~~

~~(18))~~ (17) **"Noninstructional staff"** is any person employed in a position that is not an instructional staff as defined under subsection (13) of this section.

~~((19))~~ (18) **"OSPI"** means the office of superintendent of public instruction.

~~((20))~~ (19) **"Program"** means a statewide dropout reengagement program approved by OSPI, ~~((established through E2SHB 1418, and))~~ pursuant to RCW 28A.175.105.

(20) **"School week"** means any seven-day calendar period starting with Sunday and continuing through Saturday.

(21) **"School year"** is the twelve-month period that begins ~~((in))~~ September 1st and ends ~~((in))~~ August 31st during which instruction is provided and FTE is reported.

(22) **"Scope of work"** means the document signed by district superintendent or their authorized official and the authorized official of a program to be included in a contracted services agreement when the program is operated by a provider on behalf of the district and will receive compensation in accordance with WAC 392-700-165. The scope of work will specifically outline all the required elements of a program that the provider and the district agree to implement.

(23) **"Weekly status check"** means a one-to-one interaction between a designated program staff and student. Weekly status check:

(a) Can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication;

(b) Must be for the purposes of instruction, academic counseling, career counseling, or case management;

(c) Must be documented; and

(d) Must occur at least once during a school week.

**AMENDATORY SECTION** (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

**WAC 392-700-035 Student eligibility.** (1) Students are eligible to enroll in a program when they meet the following criteria:

(a) Under twenty-one years of age, but at least sixteen years of age, as of September 1st;

(b) Have not yet met the high school graduation requirements of either the district, or the college under RCW 28B.50.535; and

(c) Are significantly behind in credit as outlined below:

(i) Students who, based on their expected graduation date, participated or could have participated in up to two full years of high school must have an earned to attempted credit ratio that is sixty-five percent or less; or

(ii) Students who, based on their expected graduation date, participated or could have participated in more than two full years of high school must have an earned to attempted ratio that is seventy-five percent or less.

(2) If not credit deficient as outlined in subsection (1)(c) of this section, have been:

(a) Recommended for enrollment by case managers from the department of social and health services, the juvenile justice system, district approved school personnel, or staff from community agencies which provide educational advocacy services;

(b) Are not currently enrolled in any high school or other educational program, excluding an approved skill center program or running start program, receiving state basic education funding; and

(c) Released from their district of residence and accepted by the serving district, if the program is operated by a different district.

(3) Once determined eligible for enrolling in the program, a student will retain eligibility, regardless of breaks in enrollment, until the student does one of the following:

(a) Earns a high school diploma;

(b) Earns an associate degree;

(c) Becomes ineligible because of age which occurs when a student is twenty-one years of age as of September 1st.

(4) A student's eligibility does not guarantee enrollment or continued enrollment in specific programs if the program determines that the student does not meet the program's enrollment criteria or if, after enrollment, a student's academic performance or conduct does not meet established program guidelines.

**AMENDATORY SECTION** (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

**WAC 392-700-042 Program operating agreements and OSPI approval.** (1) Districts, agencies, and colleges are encouraged to work together to design programs and collaborations that will best serve students. Many models of operation are authorized as part of the statewide dropout reengagement system.

(a) In each of these models, the necessary agreement(s) will address whether the program will only serve students who are residents of the district or whether the program will also serve students who are not residents of the district but who petition for release from the resident district, pursuant to RCW 28A.225.220 through 28A.225.230, in order to attend the program. If the resident district does not participate in an OSPI approved program, another district, agency, or college may petition a district other than the resident district to enroll the eligible students under RCW 28A.225.220 through 28A.225.230 with the petitioning entity to provide a program for the eligible students.

(b) Regardless of the model of operation, the state funding is allocated to the district or direct funded technical college that is reporting the student's enrollment for the program.

(2) A district may enter into one of the following models of operations through the OSPI approval process:

~~((i))~~ An interlocal agreement with a college;

~~((ii))~~ A contract with an agency; or

~~((iii))~~ Directly operate a program through a letter of intent.

In each of these models, the necessary agreement will address whether the program will only serve students who are residents of the district or whether the program will also serve students who are not residents of the district but who petition for release from the resident district, under RCW 28A.225.220 through 28A.225.230, in order to attend the program.

(b) A district may work with other districts, with regional partner agencies, with colleges in or near the district to form

~~a consortium.))~~ (a) Directly operate a program where the services are provided by the district resources; or

(b) Enter into a partnership with an agency or college that will provide the services through a defined scope of work or contracted services agreement; or

(c) Become part of a consortium with other districts, colleges, and/or agencies by executing a consortium agreement that is signed by all member districts.

(3) The purpose of the consortium will be to create and operate a program that will serve students enrolled in multiple districts and reduce the administrative burden on districts. If such a regional reengagement consortium is implemented, a consortium lead agency will be identified and assume the following responsibilities:

~~((i))~~ (a) Take the lead in organizing and managing the regional consortium;

~~((ii))~~ (b) Provide information and technical assistance to districts interested in participating in the consortium and providing the opportunity for students from their district to enroll;

~~((iii))~~ Develop a consortium agreement that is signed by all member districts;

~~(iv) Develop interlocal agreements and contracts)~~ (c) Advance scopes of work with agencies and colleges to operate the programs;

~~((v))~~ (d) Provide oversight and technical assistance to the program to ~~(ensure compliance)~~ align with all requirements of this chapter and the delivery of quality programming;

~~((vi))~~ (e) Assist the program with the preparation of required reports, enrollment data, and course records needed by each district to enroll students, award credit, and report FTE and performance to OSPI;

~~((vii))~~ (f) Facilitate data entry of required student data into each district's statewide student information system related to enrollment; and

~~((viii))~~ (g) Work with the districts to facilitate the provision of special education and accommodations under Section 504 of the Rehabilitation Act of 1973.

~~((e))~~ (4) A technical college receiving direct funding and authorized to enroll students under WAC 392-121-187 may directly operate a program and serve students referred from multiple districts. The technical college will assume the responsibilities of operating the program as described in this chapter and will meet all responsibilities outlined in WAC 392-121-187.

~~((2))~~ (5) All programs must be approved by OSPI as follows:

(a) If the program is run by a district, agency or college, the program must be approved.

(b) If the program is run by a consortium, both the program and participating districts must be approved.

~~((3))~~ (6) Dependent on the model of operations, OSPI will specify the necessary documentation required for approval.

~~((4))~~ (7) OSPI will provide ~~((a)) model ~~(interlocal agreement, a model contract, a model letter of intent, and a model consortium agreement)~~ documents that can be modified to include district/college/agency specific language and~~

will indicate which elements of these standard documents must be submitted to OSPI for review and approval.

~~((5))~~ (8) Upon initial approval, OSPI will specify the duration of the approval~~(, assign a school code,~~) and indicate the necessary criteria to obtain reapproval~~(. The school code will be used to uniquely identify this program and all students enrolled in the program in the district's/college's student data system and in CEDARS.~~

~~(6) If a district does not operate a program directly or enter into an interlocal agreement or contract with an agency or college, the agency or college may petition a district other than the resident district to enroll the eligible students under RCW 28A.225.220 through 28A.225.230 and enter into an interlocal agreement or contract with the petitioning entity to provide a program for the eligible students).~~

~~((7))~~ (9) After receiving a notice of approval, each district must request from OSPI the assignment of a school code through the EDS system following current protocol. The school code will be used to uniquely identify this program and all students enrolled in the program in the district's/college's student data system and in CEDARS.

(10) This chapter does not affect the authority of districts, under RCW 28A.150.305 and 28A.320.035, to contract for educational services other than reengagement programs as defined by WAC 392-700-015~~((20))~~ (19).

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

**WAC 392-700-137 Award of credit.** (1) For programs operated by districts and agencies, high school credit will be awarded for all course work in which students are enrolled, including high school equivalency certificate preparation, in accordance with the following:

(a) Determination of credit will take place on a quarterly basis with quarters defined as follows:

(i) September through November;

(ii) December through February;

(iii) March through May; and

(iv) June through August.

(b) Credit will be awarded at the end of each quarter, in accordance with the following guidelines, if the student has been enrolled for at least one month of the quarter:

(i) A maximum of 0.5 high school elective credits will be awarded when a student passes one or more standardized high school equivalency certificate pretests during the quarter and the instructional staff has assessed student learning and determined that a course of study has been successfully completed.

(ii) A 0.5 high school elective credit will be awarded when a student makes a statistically significant standardized assessment post-test gain in a specific subject area during the quarter and the following conditions are met:

(A) The student's standardized skills assessment score at the beginning of the quarter demonstrated high school level skills; and

(B) The instructional staff has assessed student learning and determined that a course of study has been successfully completed. A maximum of 1.0 credit may be awarded for such subject gains in a quarter.

(iii) High school elective credit ranging from at least 0.1 credits to no more than 0.25 credits will be awarded for completion of a work readiness or college readiness curriculum in which the student has demonstrated mastery of specific competencies. The district and the agency will determine the amount of credit to be awarded for each course of study based on the competencies to be attained.

(iv) For students taking part in district approved subject-specific credit recovery course work, the amount and type of credit to be awarded will be defined by the district.

(v) The district may elect to award credit for other course work provided by the agency with amount of credit to be awarded determined in advance, based on the agency's instructional staff's recommendation and on a district review of the curriculum and intended learning outcomes. Credit will only be awarded when:

(A) The student's standardized skills assessment score at the start of the quarter demonstrates high school level skills; and

(B) The instructional staff has assessed student learning and determined that the course of study has been successfully completed.

(2) For programs operated by colleges, high school credit will be awarded for course work in which students are enrolled, in accordance with the following:

(a) The district and the college will determine whether the high school diploma will be awarded by the district or by the college as part of the college's high school completion program.

(b) If the college is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of college course work at or above the one hundred level. The college will determine the type of credit;

(ii) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of ~~((college))~~ below one hundred level course work ~~((that is below the one hundred level))~~ at a college but has been determined by the college to be at the ninth grade level or higher. The college will determine the type of credit. College based high school equivalency certificate and adult basic education (ABE) classes will not be included in this category;

(iii) 0.5 elective credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work; and

(iv) ABE courses or other college courses that have been determined to be below the ninth grade level that does not generate high school credit will be counted as part of the program's instructional programming for the purposes of calculating FTE.

(c) If the district is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of ~~((college))~~ below one hundred level course work ~~((at or above the one hundred level))~~ at a college. The district will determine the type of credit;

(ii) 0.5 or 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of ~~((college))~~ below one hundred level course work ~~((that is below the one hundred level))~~ at a college but has

been determined by the district to be at the ninth grade level or higher. The district will determine the type and amount of credit for each class. College based high school equivalency certificate and ABE classes will not be included in this category;

(iii) 0.5 elective credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work; and

(iv) ABE courses or other college courses that have been determined to be below the ninth grade level will not generate high school credit but the college credits associated with these courses will be included in the total credit count used to calculate and report student FTE.

(3) The district is responsible for reporting all high school credits earned by students in accordance with OSPI regulations. College transcripts and other student records requested by the district will be provided by the college or agency as needed to facilitate this process.

(4) The district will ensure that the process for awarding high school credits under this ~~((contract))~~ scope of work is implemented as part of the district's policy regarding award of credits per WAC 180-51-050 (5) and (6).

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

**WAC 392-700-155 Annual reporting calendar.** (1)

For programs operated by district and agencies and for below one hundred level classes offered in a college operated program, the following requirements will be met in relation to the school calendar:

(a) ~~((The))~~ A school year begins ~~((in))~~ September 1st and ends ~~((in))~~ August 31st.

(b) The program will provide the reporting district a calendar of the school year prior to the beginning of the program's start date for that school year.

(c) The school year calendar must meet the following criteria:

(i) The specific planned days of instruction will be identified; and

(ii) There must be a minimum of ten instructional months.

(d) The number of hours of instruction as defined in WAC 392-700-065 must meet the following criteria:

(i) The calculation for standard instructional day may not exceed six hours per day even ~~((if))~~ when instruction is provided for more than six hours per day; and

(ii) The standard instructional day may not be less than two hours per day.

(e) The total planned hours of instruction for the school year:

(i) Is the sum of the instructional hours for all instructional months of the school year; and

(ii) Must be at a minimum of nine hundred planned hours of instruction for the school year.

(2) For programs operated by colleges ~~((and))~~ and for college level classes, the school year calendar shall meet the following criteria:

~~((if))~~ (a) The specific planned days of instruction will be identified; and

~~((i))~~ (b) There must be a minimum of ten instructional months.

~~((b))~~ The count day for each month is the first college instructional day of the month.)

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

**WAC 392-700-160 Reporting of student enrollment.**

(1) For all programs, the following will apply when reporting student enrollment for each monthly count day:

(a) Met all eligibility criteria pursuant to WAC 392-700-035;

(b) Been accepted for enrollment by the reporting district or the direct funded technical college;

(c) Enrolled in an approved program pursuant to WAC 392-700-042;

(d) Met the ~~((minimum attendance standard by attending at least one instructional day on count day or during the month prior to count day))~~ attendance period requirement pursuant to WAC 392-700-015(3);

(e) Met the weekly status check requirement pursuant to WAC 392-700-015(23);

(f) Has not withdrawn or been dropped prior to the monthly count day;

~~((f))~~ (g) Is not enrolled in course work that has been reported by a college for postsecondary funding;

(h) Is not enrolled at a state institution on count day and reported by a state institution for funding.

(i) Is not enrolled in a high school program, including alternative learning experience or college in the high school, or another reengagement program.

(j) If concurrently enrolled in ~~((any other program for which basic education allocation funding is received, i.e., common high school, running start, alternative learning experience, or college in the high school))~~ a skills center program or running start program, does not exceed the FTE limitation pursuant to WAC 392-121-136;

~~((g))~~ Is not enrolled in course work that has been reported by a college for postsecondary funding; and

~~((h))~~ (k) A student's enrollment in the program is limited to the following:

(i) May not exceed 1.0 FTE in any month (including nonvocational and vocational FTE).

(ii) May not exceed 1.00 AAFTE in any school year as defined in WAC 392-700-015(2).

(2) For ~~((programs operated by districts and agencies))~~ all below one hundred level classes, the student enrollment is dependent upon attaining satisfactory progress during any three month period that a student is reported as 1.0 FTE.

(a) Satisfactory progress is defined as the documented attainment of at least one credential identified in WAC 392-700-015~~((9))~~ (10) and/or of at least one ~~((measure))~~ indicator of academic progress identified in WAC 392-700-015~~((16))~~ (14).

(b) A student who after any three month period of being counted for a 1.0 FTE has not attained a credential or ~~((a measure))~~ an indicator of academic progress cannot be counted until a credential or ~~((measure))~~ an indicator of academic progress is earned.

(i) During this reporting exclusion period, the program may elect to permit the student to continue to attend;

(ii) When the student achieves a credential or ~~((a measure))~~ an indicator of academic progress, the student enrollment may resume to be reported for funding. A new three month period for attaining a credential or ~~((a measure))~~ an indicator of academic progress begins; and

(iii) Rules governing the calculation of the three month period are:

(A) The three month period may occur in two different school years, if the student is enrolled in consecutive school years; and

(B) The three month period is not limited to consecutive months, if there is a break in the student's enrollment~~((; and~~

~~((C))~~ For students claimed less than 1.0 FTE, the three month period is adjusted proportionately to provide additional time to attain a credential or a measure of academic progress).

(3) For ~~((programs operated by districts or agencies))~~ below one hundred level classes, student enrollment will be reported as follows:

(a) ~~((H))~~ When the program's total planned hours of instruction pursuant to WAC 392-700-155 ~~((1)(d))~~ for the school year equals or exceeds nine hundred hours:

(i) The program ~~((will be))~~ is considered a full-time program; and

(ii) An enrolled student is a full-time student and is reported as 1.0 FTE on each monthly count day.

(b) ~~((If the program's total planned hours of instruction for the school year totals less than nine hundred hours:~~

~~((i))~~ The program will be considered a part-time program;

~~((ii))~~ An enrolled student is a part-time student and is reported as a part-time FTE on each monthly count day; and

~~((iii))~~ The part-time FTE is calculated by dividing the program's total planned hours of instruction by nine hundred.

Enrollment in below one hundred level classes is limited to nonvocational funding and the FTE cannot be claimed as vocational.

(4) For ~~((reengagement programs operated by))~~ college(s) level classes, student enrollment will be reported as follows:

(a) ~~((For students enrolled in college level classes;))~~ The FTE is determined by the student's enrolled credits on each monthly count day.

(i) Fifteen college credits equal 1.0 FTE;

(ii) A student enrolled in more than fifteen college credits is limited to be reported as 1.0 FTE for that month; and

(iii) If a student is enrolled for less than fifteen college credits, the FTE is calculated by dividing the enrolled college credits by fifteen.

(b) ~~((For students enrolled in classes below college level pursuant to WAC 392-700-065(3), the student must meet the requirement of attaining satisfactory progress during any three month period pursuant to WAC 392-700-160(2) and the program's FTE for each student is based on the program's total planned hours of instruction pursuant to WAC 392-700-160(3;))~~ Enrollment in state approved vocational college level classes and taught by a certified vocational instructor can be claimed for enhanced vocational funding as a vocational FTE.

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

**WAC 392-700-165 Funding and reimbursement.** (1) OSPI shall apportion funding for an approved program to district or direct funded technical colleges based upon the reported nonvocational and vocational FTE enrollment and the standard reimbursement rates. The standard reimbursement rates are the statewide average annual nonvocational and vocational rates as determined by OSPI pursuant to WAC 392-169-095.

(a) The basic education allocation funded to districts will be as follows:

(i) Monthly payments for the months September through December is based on estimated student enrollment projected by the district.

(ii) Beginning in January, monthly payments shall be adjusted to reflect actual student enrollment.

(b) Direct funded technical colleges will be paid quarterly pursuant to WAC 392-121-187 (7)(c).

(2) Distribution of state funding for programs is as follows:

(a) For programs directly operated by a district, the district will retain one hundred percent of the basic education allocation.

(b) For programs directly operated by a direct funded technical college pursuant to WAC 392-121-187, the technical college will retain one hundred percent of the basic education allocation.

(c) For programs operated by a college or agency under ~~((contract))~~ a scope of work or ~~((interlocal))~~ contracted services agreement with a district:

(i) The district may retain up to seven percent of the basic education allocation; and

(ii) The agency or college will receive the remaining basic education allocation.

(d) For programs operated as part of a consortium with a consortium lead agency:

(i) The district may retain up to five percent of the basic education allocation;

(ii) The consortium lead may retain up to seven percent of the basic education allocation; and

(iii) The operating agency or college will receive the remaining basic education allocation.

(3) In the event that the program closes prior to the end of the school year, the following will occur:

(a) If the planned days of instruction, as provided on the school year calendar are not provided, the ~~((agency))~~ program may make up the scheduled days, as long as the replacement days occur during the school year;

(b) At the end of the school year, prior to the final monthly count day, the ~~((agency))~~ program will report to the district the actual total hours of instruction provided; and

(c) If the program was a full-time program and total hours of instruction provided is less than nine hundred hours of instruction, the amount of basic education funding received by the district and ~~((agency))~~ program will be adjusted retroactively on a proportional status and will be reflected on the final enrollment count~~((and~~

~~((and~~ (d) ~~If the program was a part-time program and total hours of instruction provided is less than the total planned~~

~~hours of instruction, the amount of basic education funding received by the district and agency will be adjusted retroactively on a proportional status and will be reflected on the final enrollment count)).~~

(4) Programs and districts may provide transportation for students but additional funds are not generated or provided.

(5) Reengagement students enrolled in a state-approved K-12 transitional bilingual instructional program pursuant to chapter 392-160 WAC can be claimed by the district for bilingual enhanced funding.

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

**WAC 392-700-175 Required documentation and reporting.** (1) Student documentation:

(a) The program shall submit to the reporting district or direct funded technical college monthly the program's enrollment and maintain and make available upon request the following documentation to support the monthly enrollment claimed ~~((and make available upon request by the reporting district or direct funded technical college))~~:

(i) Each student's eligibility pursuant to WAC 392-700-035;

(ii) Evidence of each student's enrollment requirements under WAC 392-700-160 to include:

(A) Enrollment in district or direct funded technical college;

(B) Evidence of minimum attendance ~~((standard))~~ period; and

(C) Earned credentials or attained ~~((measure))~~ an indicator of progress.

(D) Evidence of weekly status check.

(iii) Case management support pursuant to WAC 392-700-085.

(b) The district, agency, or college operating the program shall comply with all state and federal laws related to the privacy, sharing, and retention of student records.

(c) Access to all student records will be provided in accordance with the Family Educational Rights and Privacy Act (FERPA).

(2) Student reporting:

(a) The district, agency, or college to which the school code is assigned will ensure that there is accurate and timely data entry of all program student information into its student data system.

(b) The district, agency, or college to which the school code is assigned will transmit student data to CEDARS in accordance with OSPI standards and procedures for reengagement programs.

(3) Annual reporting in addition to meeting CEDARS requirements:

(a) The program will prepare and submit an annual performance report to the district, agency, or college to which the school code is assigned no later than ~~((September))~~ October 1st.

(b) The district, agency, or college to which the school code is assigned will review and submit the annual performance report to OSPI no later than ~~((September 30th))~~ November 1st.

(c) The annual report will include the following:

(i) Program's total number of students by gender, age, and race/ethnicity who were enrolled, who were dismissed by program, and ((withdrawn)) who voluntarily withdrew.

(ii) Program's total number of students by gender, age, race/ethnicity, and credential type who earned a credential as defined in WAC 392-700-015(10).

(iii) Program's total number of students by gender, age, race/ethnicity, and indicator of academic progress types who attained an indicator of academic progress as defined in WAC 392-700-015(14). For high school and college credit, detail the subject area.

(iv) Total AAFTE and average annual headcount by program reported for the school year.

~~((iii))~~ (v) Total number of instructional staff FTE.

(A) For programs operated by a district or agency, report total number of instructional staff assigned to the program.

(B) For programs operated by a college, report the number of instructional staff teaching students for the program.

~~((iv) Types and total measures of academic progress completed per AAFTE.~~

~~(v) Types and total credentials earned per AAFTE.~~

~~(vi) Total high school credits earned and high school credits per AAFTE.~~

~~(vii) Total college credits earned and college credits earned per AAFTE.))~~

#### WSR 14-16-065

#### PROPOSED RULES

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed July 30, 2014, 3:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-20-051.

Title of Rule and Other Identifying Information: WAC 392-169-025 Full-time equivalent (FTE) running start enrollment—Definition, 392-169-030 Annual average full-time equivalent (AAFTE) running start enrollment—Definition, 392-169-055 Enrollment—Extent and duration of running start enrollment, and 392-169-100 Running start enrollment count dates.

Hearing Location(s): Office of the Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 South Washington, Olympia, WA, on September 9, 2014, at 10:30 a.m.

Date of Intended Adoption: September 10, 2014.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail [becky.mclean@k12.wa.us](mailto:becky.mclean@k12.wa.us), fax (360) 664-3683, by September 9, 2014.

Assistance for Persons with Disabilities: Contact Wanda Griffin by September 5, 2014, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Sections of the

running start WAC chapter require updating to running start in the high school model.

Reasons Supporting Proposal: With the emergence of running start offered in the high school setting, some sections of the running start WAC chapter require updating to add a month factor to the FTE calculation, to revise the number of months the AAFTE will be calculated, and to add a September count day.

WAC 392-169-005 requires joint agreement with OSPI, state board of community and technical colleges, and Washington student achievement council. Both agencies have reviewed and approved the proposed changes.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact; no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

July 30, 2014

Randy Dorn

State Superintendent

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

**WAC 392-169-025 Full-time equivalent (FTE) running start enrollment—Definition.** For the purposes of this chapter and chapter 392-121 WAC, "full-time equivalent (FTE) running start enrollment" (i.e., college or university enrollment) means the FTE of running start students on an enrollment count date when each student's FTE is determined subject to the limitations of WAC 392-169-022, 392-169-055 and 392-169-115 as follows:

~~(1) ((For college or university courses denominated in quarter credits, the quotient of an eligible student's quarter credits of running start enrollment divided by fifteen.~~

~~(2) For college or university courses denominated in semester credits, the quotient of an eligible student's semester credits of running start enrollment divided by fifteen.~~

~~(3) For college or university courses not denominated in quarter or semester credits, the quotient of an eligible student's average hours of running start enrollment per week divided by twenty-five. Hours of enrollment shall be determined pursuant to WAC 392-121-106 through 392-121-183.~~

(4)) FTE for running start enrollment is the result of multiplying the quotient of a student's enrolled college credits

divided by fifteen and the quotient of three divided by the number of months the running start class is provided.

(2) The sum of the results of running start enrollment under subsection ~~((s (1), (2) and (3)))~~ (1) of this section at all colleges shall not exceed 1.00 FTE per student on any count day ~~((or))~~ except for the month of January or 1.00 annual average FTE in any school year.

**AMENDATORY SECTION** (Amending WSR 94-04-095, filed 2/1/94, effective 3/4/94)

**WAC 392-169-030 Annual average full-time equivalent (AAFTE) running start enrollment—Definition.** For purposes of this chapter and chapter 392-121 WAC, "annual average full-time equivalent (AAFTE) running start enrollment" means:

(1) For running start classes offered at the college campus, the sum of the AAFTE of all running start students for a school year when each running start student's AAFTE equals the sum of the student's running start FTE enrollment on the nine running start count dates divided by nine.

(2) For running start classes offered in the high school setting, the sum of the AAFTE of all running start students for a school year when each running start student's AAFTE equals the sum of the student's running start FTE enrollment on the ten running start count dates divided by ten.

**AMENDATORY SECTION** (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

**WAC 392-169-055 Enrollment—Extent and duration of running start enrollment.** Running start program enrollment under this chapter is limited as follows (and as may be further limited for academic reasons under WAC 392-169-057):

(1) An eligible student who enrolls in grade eleven may enroll in an institution of higher education while in the eleventh grade for no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student (i.e., three college or university quarters as a full-time equivalent college or university student, ~~((or))~~ two semesters as a full-time equivalent college or university student ~~((or))~~, nine months as a full-time equivalent technical college student, or ten months as a full-time equivalent student taking running start classes in the high school setting.

(2) An eligible student who enrolls in grade twelve may enroll in an institution of higher education while in the twelfth grade for no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student (i.e., three college or university quarters as a full-time equivalent community college or university student, ~~((or))~~ two semesters as a full-time equivalent college or university student ~~((and))~~, nine months as a full-time technical college student, or ten months as a full-time equivalent student taking running start classes in the high school setting.

(3) Enrollment in an institution of higher education is limited to the fall, winter and spring quarters, ~~((and))~~ the fall and spring semesters, and the district standard school year (September through June).

(4) As a general rule a student's eligibility for running start program enrollment terminates at the end of the student's twelfth grade regular academic year, notwithstanding the student's failure to have enrolled in an institution of higher education to the full extent permitted by subsections (1) and (2) of this section: Provided, That a student who has failed to meet high school graduation requirements as of the end of the student's twelfth grade regular academic year (September ~~((or))~~ through June) due to the student's absence, the student's failure of one or more courses, or another similar reason may continue running start program enrollment for the sole and exclusive purpose of completing the particular course or courses required to meet high school graduation requirements, subject to the enrollment limitation established by subsection (2) of this section.

**AMENDATORY SECTION** (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

**WAC 392-169-100 Running start enrollment count dates.** Enrollment count dates for the running start program shall be as follows:

(1) For community and technical colleges and for Central Washington University and Eastern Washington University classes offered at the college campus, the first college or university day of each of the months of October through June; and

(2) For Washington State University classes offered at the college campus, the first university day of each of the months of September through May.

(3) For running start classes offered at the high school setting, the first instructional day of each of the months September through June.

## WSR 14-16-073

### PROPOSED RULES

#### HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[PEBB Admin 2014-02—Filed July 31, 2014, 2:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-12-067.

Title of Rule and Other Identifying Information: Public employees benefits board (PEBB) rules related to enrollment in chapter 182-08 WAC; eligibility in chapter 182-12 WAC; and appeals in chapter 182-16 WAC.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on September 9, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 10, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th

Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on September 9, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by September 2, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends existing rules, repeals one rule, and adds twenty-two new rules in Title 182 WAC specific to the PEBB program with the following effect:

1. Implement PEBB policy resolution to amend the error correction process to address retroactive enrollment.

2. Makes technical amendments to:

- Clarify requirements for submitting a medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) enrollment form.
- Clarify which employing agency is responsible for payment of the employer contribution when an employee transfers between agencies.
- Clarify which individuals are not eligible as employees for participation in PEBB benefits.
- Add an exception in the rule that prohibits dual enrollment in a PEBB health plan to address instances where a dependent is dual eligible for a partial month.
- Replace the phrase "comprehensive group medical coverage" with "employer-based group health insurance" throughout.
- Clarify that the employer contribution toward PEBB benefits ends on the last day of the month when an individual ceases to be eligible.
- The retiree dental rule to allow early termination of dental if the retiree becomes eligible for employer dental.
- The retiree deferral rules to provide clarity regarding the effective date of a deferral.
- Clarify that a retiree's dependent may not enroll in dental coverage only.
- The rule that authorizes employees to enroll in PEBB retiree insurance in the case of a retroactive disability retirement awarded by department of retirement systems or a higher education authority so it is clear that the retirement must be due to disability.
- Clarify that references to "registered domestic partner" includes both a state registered domestic partner and a domestic partner who was qualified under PEBB eligibility criteria as a domestic partner before January 1, 2010, and was continuously enrolled under the subscriber in a PEBB health plan or life insurance.
- Clarify the notice required when a dependent is no longer eligible for PEBB benefits.
- The special open enrollment rules to account for dependents that move from the United States to outside the United States.
- Clarify when coverage begins for a child enrolled in coverage based on a national medical support notice or court order.
- The surcharge rules to account for issues identified during the implementation phase.
- The wellness rules to account for issues identified during the implementation phase.
- Provide additional definitions of terms used in the rules.

- The appeal rules to address appeals regarding a denial of FSA or DCAP enrollment.
- Clarify all effected rules to appropriately include "charter schools" with school districts and educational service districts by adding a definition of school districts which includes charter schools.
- Add general hearing rules and procedures that apply to an administrative hearing of a PEBB appeal committee decision.
- To require that forms and paperwork must be received within the stated timelines instead of submitted or sent within the timeline.

3. In addition to these specific changes, HCA conducted a full review of these chapters and made some changes for readability.

Reasons Supporting Proposal: Compliance with federal regulation, state law.

Statutory Authority for Adoption: RCW 41.05.160.

Statute Being Implemented: 3ESSB 5034.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Rob Parkman, Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA, (360) 725-0883; Implementation: Barbara Scott, Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA, (360) 725-0830; and Enforcement: Mary Fliss, Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA, (360) 725-0822.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee has not requested the filing of a small business economic impact statement, and there will be no costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

July 31, 2014

Kevin M. Sullivan  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

**WAC 182-08-015 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates other meaning:

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. Subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll in or waive enrollment in a med-

ical plan, or employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan.

"Authority" or "HCA" means the health care authority.

"Benefits-eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

~~("Comprehensive employer sponsored medical" includes insurance coverage continued by the employee or his or her dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan-)~~ "Calendar days" or "days" means all days including Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB (~~medical insurance~~) health plan by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, e-mails, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, charter schools, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission; as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal retiree plan" means the Federal Employees' Health Benefits Program (FEHB) and Tricare.

"Health plan" (~~or "plan"~~) means a plan offering medical (~~coverage~~) or dental (~~coverage~~), or both developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability (LTD) insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"Mail" or "mailing" means placing a document in the United States Postal system, commercial delivery service, or Washington state consolidated mail services properly addressed.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees (as defined in WAC 182-12-114), eligible retired and disabled employees (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group

health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or registered domestic partner choosing not to enroll in his or her employer-based group medical insurance when:

- Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and
- The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

~~("Premium surcharge implementation period" means the period from April 1 through May 15, 2014, when subscribers may change their health plan enrollment and premium payment plan election to be effective July 1, 2014. Subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in a medical plan and enroll in or change their premium payment plan election.)~~

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"School district" means public schools as defined in RCW 28A.150.010 which includes charter schools established under chapter 28A.710 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. Subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in a medical plan, and may enroll in or change their election under the DCAP, medical FSA, or the premium payment plan. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, chewing tobacco, snuff, and other tobacco products. It does not include United States Food and Drug Administration (FDA) approved quit aids or e-cigarettes until their tobacco related status is determined by the FDA.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other ~~((comprehensive group medical coverage as required))~~ employer-based group medical insurance as allowed under WAC 182-12-128, or is on approved educational leave and obtains ~~((comprehensive group health plan coverage))~~ other employer-based group health insurance as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-08-180 Premium payments and premium refunds.** Premiums are due as described in this section, except when an employing agency is correcting its enrollment error as described in WAC 182-08-187 (2) or (3).

(1) **Premium payments.** Public employees benefits board (PEBB) insurance coverage premiums become due the first of the month in which insurance coverage is effective.

Premium is due from the subscriber for the entire month of insurance coverage and will not be prorated during any month.

(a) If an employee elects optional coverage as described in WAC 182-08-197 (1)(a) or (3)(a), the employee is responsible for payment of premiums from the month that the optional coverage begins.

(b) Unpaid or underpaid accounts must be paid, and are due from the employing agency, subscriber or beneficiary to the health care authority (HCA). If a subscriber's account is past due and it is determined by the authority that full payment of the unpaid balance in a lump sum ~~((is))~~ would be considered a hardship, the ~~((HCA))~~ authority may develop a reasonable repayment plan with the subscriber or beneficiary upon request.

(2) **Premium refunds.** PEBB premiums will be refunded using the following method:

(a) When a subscriber submits an enrollment change affecting subscriber or dependent eligibility, HCA may allow up to three months of accounting adjustments. HCA will refund to the individual or the employing agency any excess premium paid during the three month adjustment period, except as indicated in WAC 182-12-148(4).

(b) If a PEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-16-025,

showing proof of extraordinary circumstances beyond his or her control such that it was effectively impossible to submit the necessary information to accomplish an enrollment change within sixty days after the event that created a change of premium occurred, the PEBB deputy director or the PEBB appeals committee may approve a refund which does not exceed twelve months of premium.

(c) If a federal government entity determines that an enrollee is retroactively enrolled in coverage (for example medicare) the subscriber or beneficiary may be eligible for a refund of all premiums paid during the time he or she was enrolled under the federal program if approved by the PEBB deputy director or designee.

(d) HCA errors will be corrected by returning all excess premiums paid by the employing agency, subscriber, or beneficiary.

(e) Employing agency errors will be corrected by returning all excess premiums paid by the employee or beneficiary.

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

**WAC 182-08-185 What are the requirements regarding premium surcharges?** (1) A subscriber's account will incur a premium surcharge when any enrollee engages in tobacco use.

(a) A subscriber must attest to whether any enrollee on his or her public employees benefits board (PEBB) medical plan engages in tobacco use. The subscriber must attest during the following times:

~~(i) ((During the premium surcharge implementation period from April 1 through May 15, 2014;~~

~~(ii) No later than thirty one days after an employee is))~~  
When an employee who is newly eligible or regains eligibility for the employer contribution toward PEBB benefits submits an enrollment form to add PEBB medical as described in WAC 182-08-197 (1) or (3). If the attestation results in a surcharge it will take effect the same time PEBB medical begins;

~~((iii)) (ii) When there is a change in the tobacco use status of any enrollee on the subscriber's PEBB medical plan((; and~~

~~(iv) Whenever a dependent is enrolled in PEBB medical coverage on the subscriber's account)). If the change in status results in a surcharge being added or removed, the change to the surcharge will take effect the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day;~~

~~(iii) When a subscriber submits an enrollment form to add a dependent to his or her PEBB medical as described in WAC 182-12-262. If enrolling the dependent results in a surcharge being added, it will take effect the same time PEBB medical begins;~~

~~(iv) When an enrollee elects to continue health plan coverage as described in WAC 182-12-146. If the attestation results in a surcharge it will take effect the same time PEBB medical begins. This action is required only if the enrollee has not previously attested as described in (a) of this subsection;~~

~~(v) When an employee or retiree submits an enrollment form to enroll in PEBB medical as described in WAC 182-~~

~~12-171 (1)(a), 182-12-200 (2)(a) and (b), or 182-12-205 (4)(a), (b), and (d). If the attestation results in a surcharge it will take effect the same time PEBB medical begins. This action is required only if the retiree has not previously attested as described in (a) of this subsection; and~~

~~(vi) When a survivor spouse, registered domestic partner, or dependent child submits an enrollment form to enroll in PEBB medical as described in WAC 182-12-250(5) or 182-12-265. If the attestation results in a surcharge it will take effect the same time PEBB medical begins. This action is required only if the survivor has not previously attested as described in (a) of this subsection.~~

Exception: (1) A subscriber enrolled in both medicare parts A and B and in the medicare risk pool is not required to provide an attestation and no premium surcharge will be imposed on the subscriber's account.

(2) An employee who waives medical enrollment according to WAC 182-12-128 is not required to provide an attestation and no premium surcharge will be applied to his or her account until the employee enrolls in a PEBB medical plan.

(b) A subscriber's account will incur a premium surcharge when a subscriber fails to attest to the tobacco use status of all enrollees as described in subsection (1)(a) of this section.

((Note: A subscriber, who failed to submit or submitted an inaccurate attestation, may submit an attestation by August 29, 2014, to seek reimbursement for tobacco use premium surcharges imposed in July and August of 2014.))

(c) The PEBB program will provide a reasonable alternative for enrollees who use tobacco products so a subscriber can avoid the tobacco use premium surcharge:

(i) All enrollees have access to a free tobacco cessation program through their medical plan. A subscriber can avoid the surcharge if enrollees who use tobacco products ~~((enroll))~~ are enrolled in their plan's tobacco cessation program.

~~(ii) ((The PEBB program will work with a subscriber to accommodate a physician's recommendation that addresses an enrollee's use of tobacco products.~~

~~((iii)) A subscriber may contact the PEBB program to accommodate a physician's recommendation that addresses an enrollee's use of tobacco products or for information on how to avoid the tobacco use premium surcharge.~~

(2) A subscriber's account will incur a premium surcharge if an enrolled spouse or registered domestic partner chose not to enroll in employer-based group medical insurance that has premiums less than ninety-five percent of the UMP Classic's premiums and benefits with an actuarial value of at least ninety-five percent of the actuarial value of the UMP Classic's benefits.

(a) A subscriber ~~((who enrolls))~~ with a spouse or registered domestic partner enrolled under his or her PEBB medical must attest during the following times:

~~(i) ((During the premium surcharge implementation period from April 1 through May 15, 2014;~~

~~(ii) No later than thirty-one days after the employee is newly eligible or regains eligibility for the employer contribution towards PEBB benefits as described in WAC 182-08-197;~~

~~(iii) Whenever a spouse or domestic partner is enrolled in medical coverage on the subscriber's account;~~

~~(iv)) When an employee who is newly eligible or regains eligibility for the employer contribution toward PEBB benefits submits an enrollment form to add PEBB medical as described in WAC 182-08-197 (1) or (3). If the attestation results in a surcharge it will take effect the same time PEBB medical begins;~~

~~(ii) When a subscriber submits an enrollment form to add a spouse or registered domestic partner to his or her PEBB medical as described in WAC 182-12-262. If enrolling the spouse or registered domestic partner results in a surcharge being added, the surcharge will take effect the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day;~~

~~(iii) During the annual open enrollment(~~or~~ ~~(iv))~~). If attesting results in a surcharge being added or removed, the change to the surcharge begins January 1st of the following year; and~~

~~(iv) When there is a change in the spouse's or registered domestic partner's employer-based group medical insurance. If attesting results in a surcharge being added or removed, the change to the surcharge will take effect the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day.~~

- Exception:
- (1) A subscriber enrolled in both medicare parts A and B and in the medicare risk pool is not required to provide an attestation and no premium surcharge will be imposed on the subscriber's account.
  - (2) An employee who waives medical enrollment according to WAC 182-12-128 is not required to provide an attestation and no premium surcharge will be applied to his or her account until the employee enrolls in a PEBB medical plan.
  - (3) An employee who covers his or her spouse or registered domestic partner who has waived his or her own PEBB medical must attest, but a premium surcharge will not be applied.

(b) A premium surcharge will be applied to the account of subscribers who do not attest as described in (a) of this subsection.

((Note: A subscriber, who failed to submit or submitted an inaccurate attestation, may submit an attestation by August 29, 2014, to seek reimbursement for the WAC 182-08-185(2) premium surcharges imposed in July and August of 2014.))

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-08-187 How do employing agencies correct enrollment errors and is there a limit on retroactive enrollment?** If an employing agency fails to notify an employee of his or her eligibility for public employees benefits board (PEBB) benefits and the employer contribution as required in WAC 182-12-113 or the employer group contract, or fails to accurately enroll insurance coverage, the agency is authorized and required to correct the error as described in this section.

The employing agency or PEBB designee must enroll the employee in PEBB benefits as described in subsection (1) of this section, reconcile premium payments as described in subsection (2) of this section, and provide recourse as described in subsection (3) of this section.

Note: If the employing agency failed to provide the notice required in WAC 182-12-113 or the employer group contract before the end of the employee's thirty-one day enrollment period described in WAC 182-08-197 (1)(a), ~~((#))~~ the employing agency must provide the employee a written notice of eligibility for PEBB benefits and offer a new enrollment period. Employees who do not return enrollment forms default to enrollment according to WAC 182-08-197 (1)(b).

**(1) Enrollment.**

(a) Medical and dental enrollment is ~~((limited to three months prior to the date enrollment is processed))~~ effective the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (3) of this section. If the enrollment error is identified on the first day of the month, the enrollment correction is effective that day;

(b) Basic life and basic long-term disability (LTD) insurance enrollment is retroactive to the first day of the month following the day the employee became newly eligible, or the first day of the month the employee regained eligibility, as described in WAC 182-08-197. If the employee became newly eligible on the first working day of a month, basic life and basic LTD insurance coverage begins on that date;

(c) Optional life and optional LTD insurance is retroactive to the first day of the month following the day the employee became newly eligible if the employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date of the employee's application for this coverage). If an employing agency enrollment error occurred when the employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-08-197(3):

(i) Optional insurance coverage is enrolled the first day of the month the employee regained eligibility, at the same level of coverage the employee continued during the period of leave, without evidence of insurability.

(ii) If the employee was not eligible to continue optional LTD insurance coverage during the period of leave, optional LTD insurance coverage is reinstated the first day of the month the employee regained eligibility, to the level of cov-

erage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(iii) If the employee was eligible to continue optional insurance coverage under the period of leave but did not, the employee must provide evidence of insurability and receive approval from the contracted vendor.

(d) If the employee is eligible and elects (or elected) to enroll in the medical flexible spending account (FSA) or dependent care assistance program (DCAP), enrollment is limited to three months prior to the date enrollment is processed, but not earlier than the current plan year. If an employee was not enrolled in FSA or DCAP as elected, the employee may adjust his or her election. The employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect.

**(2) Premium payments.**

(a) The employing agency must remit to the authority the employer contribution and the employee contribution for health plan premiums, basic life, and basic LTD from the date insurance coverage begins as described in subsections (1) and (3)(a)(i) of this section. If a state agency failed to notify a newly eligible employee of his or her eligibility for PEBB benefits, the state agency may only collect the employee contribution for coverage for months following notification of a new enrollment period.

(b) When an employing agency fails to correctly enroll the amount of optional life insurance or optional LTD insurance coverage elected by the employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the employee is responsible for premiums for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premiums.

(ii) When premium refunds are due to the employee, the optional (~~coverage~~) life insurance or optional LTD insurance vendor is responsible for premium refunds for the most recent twenty-four months of coverage. The employing agency is responsible for additional months of premium refunds.

**(3) Recourse.**

(a) Eligibility for PEBB benefits begins on the first day of the month following the date eligibility is established as described in WAC 182-12-114. When retroactive correction of an enrollment error is limited as described in subsection (1) of this section, the employing agency must work with the employee, and the authority, to implement retroactive insurance coverage within the following parameters:

- (i) Retroactive enrollment in a PEBB health plan;
- (ii) Reimbursement of claims paid;
- (iii) Reimbursement of amounts paid for medical and dental premiums; or
- (iv) Other recourse, upon approval by the authority.

(b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for non-covered services or in the case of an individual who is not eligible for PEBB benefits.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-08-190** **The employer contribution is set by the health care authority (HCA) and paid to the HCA for all eligible employees.** State agencies and employer groups that participate in the public employees benefits board (PEBB) program under contract with the health care authority (HCA) must pay premium contributions to the HCA for insurance coverage for all eligible employees and their dependents.

(1) Employer contributions for state agencies set by the HCA are subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(2) Employer contributions must include an amount determined by the HCA to pay administrative costs to administer insurance coverage for employees of these groups.

(3) Each employee of a state agency eligible under WAC 182-12-131 or each eligible employee of a state agency on leave under the federal Family and Medical Leave Act (FMLA) is eligible for the employer contribution as described in WAC 182-12-138. The entire employer contribution is due and payable to HCA even if medical is waived.

(4) Employees of employer groups eligible under criteria stipulated under contract with the HCA are eligible for the employer contribution. The entire employer contribution is due and payable to the HCA even if medical is waived.

(5) Washington state patrol officers disabled while performing their duties as determined by the chief of the Washington state patrol are eligible for the employer contribution for PEBB (~~benefits~~) medical insurance as authorized in RCW 43.43.040. No other retiree or disabled employee is eligible for the employer contribution for PEBB benefits unless they are an eligible employee as defined in WAC 182-12-114 or 182-12-131.

(6) The terms of payment to HCA for employer groups shall be stipulated under contract with the HCA.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-08-197** **When must a newly eligible employee(~~s~~), or an employee(~~s~~) who regains eligibility for the employer contribution, select public employees benefits board (PEBB) benefits and complete enrollment forms? An employee(~~s~~) who (~~are~~) is newly eligible or who regains eligibility for the employer contribution toward public employees benefits board (PEBB) benefits enrolls as described in this section.**

(1) When an employee is newly eligible for PEBB benefits:

(a) (~~The~~) An employee must complete the required forms indicating enrollment elections and return the forms to his or her employing agency. Forms must be received by the employing agency no later than thirty-one days (sixty days for life insurance) after the employee becomes eligible for PEBB benefits under WAC 182-12-114.

(i) (~~The~~) An employee may enroll in optional life and optional long-term disability (LTD) insurance up to the guar-

anteed issue without evidence of insurability if enrollment forms are returned to the employee's employing agency as required. An employee may apply for enrollment in optional life and LTD insurance coverage over the guaranteed issue at any time during the calendar year by submitting the evidence of insurability form to the vendor for approval.

((Note: ~~An employee may apply for optional life and optional long-term disability insurance after the period of time described in this subsection by providing evidence of insurability and receiving approval from the contracted vendor.~~))

(ii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee will automatically enroll in the premium payment plan upon enrollment in medical so employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, a new employee must complete the required form and return it to his or her state agency. The form must be received by his or her state agency no later than thirty-one days after ((becoming)) the employee becomes eligible for PEBB benefits.

(iii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both, except as limited by subsection (4) of this section. To enroll in these optional PEBB benefits, the employee must return the required enrollment form to his or her state agency or PEBB designee. The form must be received by the state agency or PEBB designee no later than thirty-one days after ((becoming)) the employee becomes eligible for PEBB benefits.

(b) If a newly eligible ~~((employee does not return enrollment forms to his or her))~~ employee's employing agency does not receive the employee's forms indicating medical, dental, and LTD choice within thirty-one days and life insurance choice within sixty days of the employee becoming eligible, his or her coverage will be enrolled as follows:

(i) Medical enrollment will be Uniform Medical Plan Classic;

(ii) Dental enrollment will be Uniform Dental Plan;

(iii) Basic life insurance;

(iv) Basic long-term disability insurance; and

(v) Dependents will not be enrolled.

(2) The employer contribution toward insurance coverage ends according to WAC 182-12-131. When an employee's employment ends, participation in the state's salary reduction plan ends.

(3) When an employee loses and later regains eligibility for the employer contribution toward insurance coverage following a period of leave described in WAC 182-12-133(1) and 182-12-142 (1) and (2):

(a) The employee must complete and return the required forms indicating enrollment elections to his or her employing agency except as described in (d) of this subsection. Forms must be received no later than thirty-one days after ((regain- ing)) the employee regains eligibility, except as described in subsection (3)(b) of this section:

(i) An employee who self-paid for optional life insurance coverage after losing eligibility will have that level of coverage reinstated without evidence of insurability;

(ii) An employee who was eligible to continue optional life under continuation coverage but discontinued that insurance coverage must submit evidence of insurability;

(iii) An employee who was eligible to continue optional LTD under continuation coverage but discontinued that insurance coverage must submit evidence of insurability for optional LTD insurance when he or she regains eligibility for the employer contribution.

(b) An employee in any of the following circumstances does not have to return an optional LTD insurance election form. His or her optional LTD insurance will be automatically reinstated:

(i) The employee continued to self-pay for his or her optional LTD insurance after losing eligibility for the employer contribution;

(ii) The employee was not eligible to continue optional LTD insurance after losing eligibility for the employer contribution.

Exception: An employee's insurance coverage elections remain the same when an employee transfers from one employing agency to another employing agency without a break in PEBB coverage. This includes movement of employees between any entities described in WAC 182-12-111 and participating in PEBB benefits. Insurance coverage elections also remain the same when employees have a break in employment that does not interrupt his or her employer contribution toward PEBB insurance coverage.

(c) If an ~~((employee does not return the required forms to his or her))~~ employee's employing agency does not receive the forms within thirty-one days of the employee regaining eligibility, medical, dental, life, and LTD enrollment will be as described in subsection (1)(b) of this section, except as described in (b) of this subsection.

(d) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee may enroll in the state's medical FSA or DCAP or both, except as limited by subsection (4) of this section. To enroll in these optional PEBB benefits, the employee must return the required enrollment form to his or her state agency or PEBB designee. The form must be received by the employee's state agency or PEBB designee no later than thirty-one days after ((becoming)) the employee becomes eligible for PEBB benefits.

(4) If an employee who is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is less than thirty days and the employee notifies the new state agency and the DCAP or FSA administrator of his or her employment transfer within the current plan year.

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

**WAC 182-08-198 When may a subscriber change health plans?** Subscribers may change health plans at the following times:

(1) **During annual open enrollment:** Subscribers may change health plans during the public employees benefits board (PEBB) annual open enrollment period. The subscriber must submit the required enrollment forms to change his or her health plan. Employees submit the enrollment forms to their employing agency. All other subscribers submit the enrollment forms to the PEBB program. The required enrollment forms must be received no later than the ((end)) last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** Subscribers may change health plans outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both. To make a health plan change, the subscriber must submit the required enrollment forms (and a completed disenrollment form, if required). The forms must be received no later than sixty days after the event occurs. Employees submit the enrollment forms to their employing agency. All other subscribers submit the enrollment forms to the ~~((public employees benefits board~~ ~~(PEBB~~ ~~(HSA))~~ program. Subscribers must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. Any one of the following events may create a special open enrollment:

- (a) Subscriber acquires a new dependent due to:
  - (i) Marriage or registering a domestic partnership;
  - (ii) Birth, adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;
  - (iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or
  - (iv) A child becoming eligible as a dependent with a disability;
- (b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);
- (c) Subscriber or a subscriber's dependent has a change in employment status that affects the subscriber's or the subscriber's dependent's eligibility for their employer contribution toward employer-based group health ((coverage)) insurance;
- (d) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the sub-

scriber moves and the subscriber's current health plan is not available in the new location the subscriber must select a new health plan. If the subscriber does not select a new health plan, the PEBB program may change the subscriber's health plan as described in WAC 182-08-196(2);

(e) A court order or national medical support notice (see also WAC 182-12-263) requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(f) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(g) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP);

(h) Subscriber or a subscriber's dependent becomes entitled to coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare, or enrolls in or cancels enrollment in a medicare Part D plan. If the subscriber's current health plan becomes unavailable due to the subscriber's or a subscriber's dependent's entitlement to medicare, the subscriber must select a new health plan as described in WAC 182-08-196(1);

(i) Subscriber or a subscriber's dependent's current health plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(j) Subscriber or a subscriber's dependent experiences a disruption of care that could function as a reduction in benefits for the subscriber or the subscriber's dependent for a specific condition or ongoing course of treatment. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

- (i) Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable; or
- (ii) Transplant within the last twelve months; or
- (iii) Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or
- (iv) Recent major surgery still within the postoperative period of up to eight weeks; or
- (v) Third trimester of pregnancy.

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

~~(((3) During the premium surcharge implementation period: Subscribers may change health plans during the premium surcharge implementation period from April 1 through May 15, 2014. The subscriber must submit the required~~

enrollment forms to change his or her health plan no later than May 15, 2014. Enrollment in the new health plan will begin July 1, 2014.)

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

**WAC 182-08-199 When may an employee enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP)?** An employee who is eligible to participate in the state's salary reduction plan as described in WAC 182-12-116 may enroll in or change his or her election under the premium payment plan, medical flexible spending arrangement (FSA), or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-12-114, as described in WAC 182-08-197(1).

(2) **During annual open enrollment:** An eligible employee may enroll in or change his or her election under the state's premium payment plan, medical FSA or DCAP during the annual open enrollment. For the state's premium payment plan, the required enrollment form must be submitted to his or her employing agency. To enroll or reenroll in medical FSA or DCAP the employee must submit (, in paper or online,) the required enrollment form ((to enroll or reenroll)) to his or her employing agency or public employees benefits board (PEBB) designee. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election will be effective January 1st of the following year.

(3) **During a special open enrollment:** An employee may enroll or change his or her election under the state's premium payment plan, medical FSA or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the employee must submit the required enrollment forms as instructed on the forms. The required enrollment forms must be received no later than sixty days after the event occurs. The employee must provide evidence of the event that created the special open enrollment.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the employee for tax purposes under IRC Section 152 without regard to the income limitations of that section. It does not include a ((state)) registered domestic partner unless the domestic partner otherwise qualifies as a dependent for tax purposes under IRC Section 152.

(a) **Premium payment plan.** An employee may enroll or change his or her election under the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or change in election will be effective the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the enrollment or change in elec-

tion begins on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership when the dependent is a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

- A child becoming eligible as an extended dependent through legal custody or legal guardianship; or
- A child becoming eligible as a dependent with a disability;

(ii) Employee's dependent no longer meets ((public employees benefits board (PEBB))) eligibility criteria because:

- Employee has a change in marital status;
- Employee's domestic partnership with a registered domestic partner who is a tax dependent is dissolved or terminated;
- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for their employer contribution toward employer-based group health ((coverage)) insurance;

(v) Employee or an employee's dependent has a change in enrollment under another ((employer)) employer-based group health insurance plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(vi) Employee or an employee's dependent has a change in residence that affects health plan availability;

(vii) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(viii) A court order or national medical support notice (see also WAC 182-12-263) requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(ix) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(x) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health

plan coverage from medicaid or a state children's health insurance program (CHIP);

(xi) Employee or an employee's dependent becomes entitled to coverage under medicare, or the employee or an employee's dependent loses eligibility for coverage under medicare, or enrolls in or cancels enrollment in a medicare Part D plan;

(xii) Employee or an employee's dependent's current health plan becomes unavailable because the employee or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) may require evidence that the employee or employee's dependent is no longer eligible for an HSA;

~~(xiii) ((Employee has a change in the cost of insurance coverage because of a premium surcharge;~~

~~(xiv))~~ Employee or an employee's dependent experiences a disruption of care that could function as a reduction in benefits for the employee or the employee's dependent for a specific condition or ongoing course of treatment. The employee may not change their health plan election if the employee's or dependent's physician stops participation with the employee's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

- Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable; or
- or
- Transplant within the last twelve months; or
- Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or
- Recent major surgery still within the postoperative period of up to eight weeks; or
- Third trimester of pregnancy.

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

(b) **Flexible spending account (FSA).** An employee may enroll or change his or her election under the medical FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or change in election will be effective the first day of the month following ~~((approval by the FSA administrator))~~ the later of the event date or the date the form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

- A child becoming eligible as an extended dependent through legal custody or legal guardianship; or
- A child becoming eligible as a dependent with a disability.

(ii) Employee's dependent no longer meets PEBB eligibility criteria because:

- Employee has a change in marital status;
- Employee's domestic partnership with a registered domestic partner who qualifies as a tax dependent is dissolved or terminated;
- An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;
- An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or
- An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the FSA;

(v) A court order or national medical support notice requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(vi) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) Employee or an employee's dependent becomes entitled to coverage under medicare.

(c) **Dependent care assistance program (DCAP).** An employee may enroll or change his or her election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or change in election will be effective the first day of the month following ~~((approval by the DCAP administrator))~~ the later of the event date or the date the form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

- Marriage;
- Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;
- Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;
- A child becoming eligible as an extended dependent through legal custody or legal guardianship; or
- A child becoming eligible as a dependent with a disability.

(ii) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for DCAP;

(iii) Employee or an employee's dependent has a change in enrollment under another ~~((employer))~~ employer-based group health insurance plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(iv) Employee changes dependent care provider; the change to DCAP can reflect the cost of the new provider;

(v) Employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC Section 21 (b)(1);

(vi) Employee's dependent care provider imposes a change in the cost of dependent care; employee may make a change in the DCAP to reflect the new cost if the dependent care provider is not a relative as defined in Section 152 (d)(1) through (5), incorporating the rules of Section 152 (b)(1) through (3) of the IRC.

~~((4) During the premium surcharge implementation period: An eligible employee may enroll in or change his or her election under the state's premium payment plan from April 1 through May 15, 2014. The employee must submit, in paper or online, the required enrollment form to enroll or change his or her election no later than May 15, 2014. The enrollment or change in election will begin July 1, 2014.))~~

AMENDATORY SECTION (Amending WSR 09-23-102, filed 11/17/09, effective 1/1/10)

**WAC 182-08-200 Which employing agency is responsible to pay the employer contribution for eligible employees changing agency employment or for faculty employed by more than one institution of higher education?** Employing agencies responsible for paying the employer contribution:

(1) **For eligible employees changing agencies:** When an eligible employee's employment relationship terminates with an employing agency at any time before the end of the month for which a premium contribution is due and that employee transfers to another agency, the losing agency is responsible for the payment of the contribution for that employee for that month. The receiving agency ~~((would))~~ is not ~~((be))~~ liable for any employer contribution for that eligible employee until the month following the transfer.

(2) **For eligible faculty employed by more than one institution of higher education:**

(a) When a faculty is eligible for the employer contribution during an anticipated work period (quarter, semester or instructional year), under WAC 182-12-131(3), one institution will pay the entire cost of the employer contribution if the employee ~~((would be))~~ is eligible by virtue of employment at that single institution. Otherwise:

(i) Each institution contributes based on its percentage of the employee's total work at all institutions during the anticipated work period.

(ii) The institution with the greatest percentage coordinates with the other institutions and is responsible for sending the total premium payment to the health care authority (HCA).

(b) When a faculty is eligible for the employer contribution during the summer or off-quarter/semester, under WAC 182-12-131 (3)(c), one institution will pay the entire cost of the employer contribution if the employee ~~((would be))~~ is eligible by virtue of employment at that single institution. Otherwise:

(i) Each institution contributes based on its percentage of the employee's total work at all institutions throughout the instructional year or equivalent nine-month period.

(ii) The institution with the greatest percentage coordinates with the other institutions and is responsible for sending the total premium payment to HCA.

(c) When a faculty is eligible through two-year averaging under WAC 182-12-131 (3)(d) for the employer contribution, one institution will pay the entire cost of the employer contribution if the employee ~~((would be))~~ is eligible by virtue of employment at that single institution. Otherwise:

(i) Each institution contributes to coverage based on its percentage of the employee's total work at all institutions throughout the preceding two academic years. This division of the employer contribution begins the summer quarter or semester following the second academic year and continues through that academic year or until eligibility under two-year averaging ceases.

Note: "Academic year" means summer, fall, winter, and spring quarters or summer, fall, and spring semesters, in that order.

(ii) The institution with the greatest percentage coordinates with the other institutions and is responsible for sending the total premium payment to HCA.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-08-235 Employer group application process.** This section applies to employer groups as defined in WAC 182-08-015. An employer group may apply to obtain insurance coverage through a contract with the health care authority (HCA). With the exception of ~~((K-12))~~ school districts and educational service districts, the authority will approve or deny ~~((the))~~ applications through the evaluation criteria described in WAC 182-08-240. To apply, ~~((the))~~ employer groups must submit the documents and information described in this rule to the public employees benefits board (PEBB) program at least sixty days before the requested coverage effective date. ~~((K-12))~~ School districts and educational service districts are only required to provide the documents described in subsections (1), (2), and (3) of this section. If ~~((a K-12))~~ school ~~((district is))~~ districts or educational service districts are required by the superintendent of public instruction to purchase insurance coverage provided by the authority, ~~((the school district is))~~ they are required to submit documents and information described in subsections (1)(c), (2), and (3) of this section.

(1) A letter of application that includes the information described in (a) through (d) of this subsection:

(a) A reference to the employer group's authorizing statute;

(b) A description of the organizational structure of the employer group and a description of the employee bargaining unit(s) or group of nonrepresented employees for which the employer group is applying;

(c) Employer tax ID number (TIN); and

(d) A statement of whether the employer group is requesting only medical or medical, dental, life and LTD insurance. (~~(K-12)~~) School districts and educational service districts must purchase medical, dental, life, and LTD insurance.

(2) A resolution from the employer group's governing body authorizing the purchase of PEBB insurance coverage.

(3) A signed governmental function attestation document that attests to the fact that employees for whom the employer group is applying are governmental employees whose services are substantially all in the performance of essential governmental functions.

(4) A member level census file for all of the employees for whom the employer group is applying. The file must be provided in the format required by the authority and contain the following demographic data, by member, with each member classified as employee, spouse or (~~(state)~~) registered domestic partner, or child:

(a) Employee ID (any identifier which uniquely identifies the employee; for dependents the employee's unique identifier must be used);

(b) Age;

(c) Gender;

(d) First three digits of the member's zip code based on residence;

(e) Indicator of whether the employee is active or retired, if the employer group is requesting to include retirees; and

(f) Indicator of whether the member is enrolled in coverage.

(5) If the application is for a subset of the employer group's employees (e.g., bargaining unit), the employer group must provide a member level census file of all employees eligible under their current health plan who are not included on the member level census file in subsection (4) of this section. This includes retired employees participating under the employer group's current health plan. The file must include the same demographic data by member.

(6) In addition to the requirements of subsections (1) through (5) of this section, additional information is required based upon the total number of employees that the employer group employs who are eligible under their current health plan:

(a) Employer groups with fewer than eleven eligible employees must provide proof of current coverage or proof of prior coverage within the last twelve months.

(b) Employer groups with three hundred one to two thousand five hundred eligible employees must provide the following:

(i) Large claims history for twenty-four months, by quarter that excludes the most recent three months; and

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history.

(c) Employer groups with greater than two thousand five hundred eligible employees must submit to an actuarial evaluation of the group. The employer group must pay for the

cost of the evaluation. This cost is nonrefundable. An employer group that is approved will not have to pay for an additional actuarial evaluation if it applies to add another bargaining unit within two years of the evaluation. Employer groups of this size must provide the following:

(i) Large claims history for twenty-four months, by quarter that excludes the most recent three months;

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;

(iii) Executive summary of benefits;

(iv) Summary of benefits and certificate of coverage; and

(v) Summary of historical plan costs.

(d) The following definitions apply for purposes of this section:

(i) "Large claim" is defined as a member that received more than twenty-five thousand dollars in allowed cost for services in a quarter; and

(ii) An "ongoing large claim" is a claim where the patient is expected to need ongoing case management into the next quarter for which the expected allowed cost is greater than twenty-five thousand dollars in the quarter.

(e) If the current health plan does not have a case management program then the primary diagnosis code designated by the authority must be reported for each large claimant and if the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim.

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

**WAC 182-08-245 Employer group participation requirements.** This section applies to an employer group as defined in WAC 182-08-015 that is approved to purchase insurance for its employees through a contract with the health care authority (HCA).

(1) Prior to enrollment of employees in public employees benefits board (PEBB) insurance coverage, the employer group must:

(a) Remit to the authority the required start-up fee in the amount publicized by the PEBB program;

(b) Sign a contract with the authority;

(c) Determine employee and dependent eligibility and terms of enrollment for insurance coverage in accordance with the criteria outlined in the employer group's contract with the authority;

(d) Determine eligibility in order to ensure the PEBB program's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. This means that only employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions may be considered eligible by the employer group; and

(e) Ensure PEBB health plans are the only employer-sponsored health plans available to groups of employees eligible for PEBB insurance coverage under the contract.

(2) Pay premiums in accordance with its contract with the authority based on the following premium structure:

(a) The premium rate structure for ((K-12)) school districts and educational service districts will be a composite rate equal to the rate charged to state agencies plus an amount equal to the employee premium based on health plan choice and family enrollment. School districts and educational service districts must collect an amount equal to the premium surcharge(s) applied to an employee's account by the authority from their employees and include the funds in their payment to the authority.

Exception: The authority will allow districts that enrolled prior to September 1, 2002, to continue participation based on a tiered rate structure. The authority may require the district to change to a composite rate structure with ninety days advance written notice.

(b) The premium rate structure for employer groups other than districts described in (a) of this subsection will be a tiered rate based on health plan choice and family enrollment. Employer groups must collect an amount equal to the premium surcharge(s) applied to an employee's account by the authority from their employees and include the funds in their payment to the authority.

Exception: The authority will allow employer groups that enrolled prior to January 1, 1996, to continue to participate based on a composite rate structure. The authority may require the employer group to change to a tiered rate structure with ninety days advance written notice.

(3) If an employer group wants to make subsequent changes to the contract, the changes must be submitted to the authority for approval.

(4) The employer group must maintain participation in PEBB insurance coverage for at least one full year. An employer group may only end participation at the end of a plan year unless the authority approves a mid-year termination. To end participation, an employer group must provide written notice to the PEBB program at least sixty days before the requested termination date.

(5) Upon approval to purchase insurance through a contract with the authority, the employer group must provide a list of employees and dependents that are enrolled in COBRA benefits and the remaining number of months available to them based on their qualifying event. These employees and dependents may enroll in PEBB medical and dental as COBRA enrollees for the remainder of the months available to them based on their qualifying event.

(6) Enrollees in PEBB insurance coverage under one of the continuation of coverage provisions allowed under chapter 182-12 WAC or retirees included in the transfer unit as allowed under WAC 182-08-237 cease to be eligible as of the last day of the contract and may not continue enrollment beyond the end of the month in which the contract is terminated.

Exception: If an employer group, other than a school district or educational service district, ends participation, retired and disabled employees who began participation before September 15, 1991, are eligible to continue enrollment in PEBB insurance coverage if the employee continues to meet the procedural and eligibility requirements of WAC 182-12-171. Employees who enrolled after September 15, 1991, who are enrolled in PEBB retiree insurance coverage cease to be eligible under WAC 182-12-171, but may continue health plan enrollment under COBRA (see WAC 182-12-146).

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

**WAC 182-12-109 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. Subscribers may transfer from one health plan to another, enroll or remove dependents from coverage, enroll or waive enrollment in a medical plan, or employees may enroll in or change their election under the DCAP, the medical FSA, or the premium payment plan.

"Authority" or "HCA" means the health care authority.

"Benefits-eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

~~("Comprehensive employer-sponsored medical" includes insurance coverage continued by the employee or his or her dependent under COBRA. It does not include an employer's retiree coverage, with the exception of a federal retiree plan.)~~ "Calendar days" or "days" means all days including Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB (~~medical insurance~~) health plan by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent

children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, e-mails, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, charter schools, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal Retiree Plan" means the Federal Employees Health Benefits program (FEHB) and Tricare.

"Health plan" (~~(or "plan")~~) means a plan offering medical (~~(coverage)~~) or dental (~~(coverage)~~), or both developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability (LTD) insurance, or property and casualty insurance administered as a PEBB benefit.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" includes basic life insurance paid for by the employing agency, life insurance offered to employees on an optional basis, and retiree life insurance.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Mail" or "mailing" means placing a document in the United States Postal system, commercial delivery service, or Washington state consolidated mail services properly addressed.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees (as defined in WAC 182-12-114), eligible retired and disabled employees (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or registered domestic partner choosing not to enroll in his or her employer-based group medical insurance when:

- Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and
- The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

~~("Premium surcharge implementation period" means the period from April 1 through May 15, 2014, when subscribers may change their health plan enrollment and premium payment plan election to be effective July 1, 2014. Subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in a medical plan and enroll in or change their premium payment plan election.)~~

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"School district" means public schools as defined in RCW 28A.150.010 which includes charter schools established under chapter 28A.710 RCW.

"Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. Subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment in a medical plan, and may enroll in or change their election under the DCAP, medical FSA, or the premium payment plan. For special open enrollment events as they relate to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Termination of the employment relationship" means that an employee resigns or an employee is terminated and the employing agency has no anticipation that the employee will be rehired.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, chewing tobacco, snuff, and other tobacco products. It does not include United States Food and Drug Administration (FDA) approved quit aids or e-cigarettes until their tobacco related status is determined by the FDA.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means to interrupt an eligible employee's enrollment in a PEBB health plan because the employee is enrolled in other ~~((comprehensive group medical coverage as required))~~ employer-based group medical insurance as allowed under WAC 182-12-128, or is on approved educational leave and obtains ~~((comprehensive group health plan coverage))~~ other employer-based group health insurance as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-12-111 Eligible entities and individuals.**

The following entities and individuals shall be eligible for public employees benefits board (PEBB) benefits subject to the terms and conditions set forth below:

(1) **State agencies.** State agencies, as defined in WAC 182-12-109, are required to participate in all PEBB benefits. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(2) **Employer groups.** Employer groups may apply to participate in insurance coverage for groups of employees described in subsection (a) of this section at the option of each employer group:

(a) All eligible employees of the entity must transfer as a unit with the following exceptions:

- Bargaining units may elect to participate separately from the whole group;
- Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group; and
- Members of the employer group's governing authority may participate as described in the employer group's governing statutes and RCW 41.04.205.

(b) The employer group must apply through the process described in WAC 182-08-235. ~~((K-12))~~ School district and educational service district applications ((are required to)) must provide the documents described in WAC 182-08-235 (1), (2), and (3). If a ~~((K-12))~~ school district or educational service district is required by the superintendent of public instruction to purchase insurance coverage provided by the authority, the school district or educational service district is required to submit documents and information described in WAC 182-08-235 (1)(c), (2), and (3). Employer group applications are subject to review and approval by the health care authority (HCA). With the exception of ~~((K-12))~~ a school district((s and)) or educational service district((s)), the authority will approve or deny an employer group's application based on the employer group ~~((eligibility))~~ evaluation criteria described in WAC 182-08-240.

(c) Employer groups participate through a contract with the authority as described in WAC 182-08-245.

(3) **School districts and educational service districts.** In addition to subsection (2) of this section, the following applies to school districts and educational service districts:

(a) The HCA will collect an amount equal to the composite rate charged to state agencies plus an amount equal to the employee premium by health plan and family size as would be charged to state employees for each participating school district or educational service district.

(b) The HCA may collect these amounts in accordance with the district fiscal year, as described in RCW 28A.505.-030.

(4) **The Washington health benefit exchange.** In addition to subsection (2) of this section, the following provisions apply:

(a) The Washington health benefit exchange is subject to the same rules as an employing agency in chapters 182-08, 182-12 and 182-16 WAC.

(b) An employee of the Washington health benefit exchange is subject to the same rules as an employee of an employing agency in chapters 182-08, 182-12 and 182-16 WAC.

**(5) Eligible nonemployees.**

(a) Blind vendors means a "licensee" as defined in RCW 74.18.200: Vendors actively operating a business enterprise program facility in the state of Washington and deemed eligible by the department of services for the blind may voluntarily participate in PEBB medical.

(i) Vendors that do not enroll when first eligible may enroll only during the annual open enrollment period offered by the HCA or the first day of the month following loss of other insurance coverage.

(ii) Department of services for the blind will notify eligible vendors of their eligibility in advance of the date that they are eligible to apply for enrollment in PEBB medical.

(iii) The eligibility requirements for dependents of blind vendors shall be the same as the requirements for dependents of the state employees in WAC 182-12-260.

(iv) An individual licensee or vendor who ceases to actively operate a facility becomes ineligible to participate in PEBB medical as described in (a) of this subsection. Individuals losing coverage may continue enrollment in PEBB medical on a self-pay basis under COBRA as described in WAC 182-12-146(5).

(v) An individual licensee or vendor is not eligible for PEBB retiree insurance coverage.

(b) Dislocated forest products workers enrolled in the employment and career orientation program pursuant to chapter 50.70 RCW shall be eligible for PEBB health plans while enrolled in that program.

(c) School board members or students eligible to participate under RCW 28A.400.350 may participate in insurance coverage as long as they remain eligible under that section.

**(6) Individuals and entities (~~that are~~) not eligible as employees include:**

(a) Adult family home providers as defined in RCW 70.128.010;

(b) Unpaid volunteers;

(c) Patients of state hospitals;

(d) Inmates in work programs offered by the Washington state department of corrections as described in RCW 72.09.100 or an equivalent program administered by a local government;

(e) Employees of the Washington state convention and trade center as provided in RCW 41.05.110;

(f) Students of institutions of higher education as determined by their institutions; and

(g) Any others not expressly defined as employees under RCW 41.05.011.

**AMENDATORY SECTION** (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-12-123 Dual enrollment is prohibited.** Public employees benefits board (PEBB) health plan coverage is limited to a single enrollment per individual.

(1) Effective January 1, 2002, individuals who have more than one source of eligibility for enrollment in PEBB

health plan coverage (called "dual eligibility") are limited to one enrollment.

**Exception:** An enrolled dependent who becomes eligible for PEBB benefits as an employee as described in WAC 182-12-114 may be dual-enrolled in PEBB coverage for one month. This exception is only allowed for the first month the dependent is enrolled as an employee, and only if the dependent becomes enrolled as an employee on the first working day of a month that is not the first day of the month.

(2) An eligible employee may waive medical and enroll as a dependent on the coverage of his or her eligible spouse, eligible ((state)) registered domestic partner, or eligible parent as stated in WAC 182-12-128.

(3) Children eligible for medical and dental under two subscribers may be enrolled as a dependent under the health plan of only one subscriber.

(4) An employee who is eligible for the employer contribution towards insurance coverage due to employment in more than one PEBB-participating employing agency must choose to enroll under only one employing agency.

**Exception:** Faculty who seek to establish or maintain eligibility under WAC 182-12-114(3) with two or more state institutions of higher education will be enrolled under the employing agency responsible to pay the employer contribution according to WAC 182-08-200(2).

**AMENDATORY SECTION** (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

**WAC 182-12-128 When may (~~an~~) employees waive or enroll in public employees benefits board (PEBB) medical (~~plans~~)?** Employees must enroll in dental, basic life, and basic long-term disability insurance (unless the employing agency does not participate in these public employees benefits board (PEBB) insurance coverages). However, employees may waive PEBB medical if they (~~have~~) are enrolled in other ((comprehensive)) employer-based group medical ((coverage)) insurance.

(1) Employees may waive enrollment in PEBB medical by submitting the required enrollment form to their employing agency during the following times:

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

(b) **During the annual open enrollment:** Employees may waive medical during the annual open enrollment (~~if they submit the required enrollment form to~~) period. The required enrollment form must be received by their employing agency before the end of the annual open enrollment.

Medical will be waived beginning January 1st of the following year.

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

~~((d) **During the premium surcharge implementation period:** Employees may waive PEBB medical coverage during the premium surcharge implementation period from April 1 through May 15, 2014. The employee must submit the required enrollment form no later than May 15, 2014. Medical coverage will be waived beginning July 1, 2014.))~~

(2) If an employee waives medical, the employee's eligible dependents may not be enrolled in medical.

(3) Once medical is waived, enrollment is only allowed during the following times:

(a) During the annual open enrollment;

(b) During a special open enrollment created by an event that allows for enrollment outside of the annual open enrollment as described in subsection (4) of this section. In addition to the required forms, the PEBB program will require the employee to provide evidence of eligibility and evidence of the event that creates a special open enrollment((;

~~(c) **During the premium surcharge implementation period from April 1 through May 15, 2014. The employee must submit the required enrollment forms no later than May 15, 2014. Enrollment in medical will begin July 1, 2014.))**~~

(4) **Special open enrollment:** Employees may waive enrollment in medical or enroll in medical if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and correspond to and be consistent with the event that creates the special open enrollment for the employee, the employee's dependent, or both. Employees must provide evidence of the event that created the special open enrollment. Any one of the following events may create a special open enrollment:

(a) Employee acquires a new dependent due to:

(i) Marriage or registering a domestic partnership;

(ii) Birth, adoption or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) A child becoming eligible as a dependent with a disability;

(b) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Employee or an employee's dependent has a change in employment status that affects the employee's or employee's dependent's eligibility for their employer contribution toward employer-based group ((health coverage)) medical insurance;

(d) Employee or an employee's dependent has a change in enrollment under another ((employer)) employer-based group medical insurance plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(e) Employee's dependent has a change in residence from outside of the United States to within the United States,

or from within the United States to outside of the United States;

(f) A court order or national medical support notice (see also WAC 182-12-263) requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(g) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP).

To waive or enroll during a special open enrollment, the employee must submit the required forms to his or her employing agency. The forms must be received by the employing agency no later than sixty days after the event that creates the special open enrollment.

Medical will be waived the end of the month following the later of the event date or the date the form is received. If the later day is the first of the month, medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, medical will be waived the first of the month in which the event occurs.

Enrollment in medical will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption or assumption of legal obligation for total or partial support in anticipation of adoption of a child, enrollment in medical will begin the first of the month in which the event occurs.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-12-131 How do eligible employees maintain the employer contribution toward insurance coverage?** The employer contribution toward insurance coverage begins on the day that public employees benefits board (PEBB) benefits begin under WAC 182-12-114. This section describes under what circumstances ((~~an~~)) employees maintain((~~s~~)) eligibility for the employer contribution toward insurance coverage.

(1) **Maintaining the employer contribution.** Except as described in subsections (2), (3), and (4) of this section, ((~~an~~)) employees who ((~~has~~)) have established eligibility for benefits under WAC 182-12-114 ((~~is~~)) are eligible for the employer contribution each month in which ((~~he or she is~~)) they are in pay status eight or more hours per month.

(2) **Maintaining the employer contribution - Benefits-eligible seasonal employees.**

(a) ((~~A~~)) Benefits-eligible seasonal employees (eligible under WAC 182-12-114(2)) who work((~~s~~)) a season of less than nine months ((~~is~~)) are eligible for the employer contribu-

tion in any month of (~~his or her~~) the season in which (~~he or she is~~) they are in pay status eight or more hours during that month. The employer contribution toward insurance coverage for seasonal employees returning after their off season begins on the first day of the first month of the season in which they are in pay status eight hours or more.

(b) ~~((A))~~ Benefits-eligible seasonal employees (eligible under WAC 182-12-114(2)) who work~~((s))~~ a season of nine months or more ~~((is))~~ are eligible for the employer contribution:

(i) In any month of (~~his or her~~) the season in which (~~he or she is~~) they are in pay status eight or more hours during that month; and

(ii) Through the off season following each season worked.

**(3) Maintaining the employer contribution - Eligible faculty.**

(a) Benefits-eligible faculty anticipated to work the entire instructional year or equivalent nine-month period (eligible under WAC 182-12-114 (3)(a)(i)) are eligible for the employer contribution each month of the instructional year, except as described in subsection (7) of this section.

(b) Benefits-eligible faculty who are hired on a quarter/semester to quarter/semester basis (eligible under WAC 182-12-114 (3)(a)(ii)) are eligible for the employer contribution each quarter or semester in which (~~the~~) employees work~~((s))~~ half-time or more.

(c) Summer or off-quarter/semester coverage: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who work an average of half-time or more throughout the entire instructional year or equivalent nine-month period and work each quarter/semester of the instructional year or equivalent nine-month period are eligible for the employer contribution toward summer or off-quarter/semester insurance coverage.

**Exception:** Eligibility for the employer contribution toward summer or off-quarter/semester insurance coverage ends on the end date specified in an employing agency's termination notice or an employee's resignation letter, whichever is earlier, if the employing agency has no anticipation that the employee will be returning as faculty at any institution of higher education where the employee has employment. If the employing agency deducted the employee's premium for insurance coverage after the employee was no longer eligible for the employer contribution, insurance coverage ends the last day of the month for which employee premiums were deducted.

(d) Two-year averaging: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who worked an average of half-time or more in each of the two preceding academic years are potentially eligible to receive uninterrupted employer contribution to insurance coverage. "Academic year" means summer, fall, winter, and spring quarters or summer, fall, and spring semesters and begins with summer quar-

ter/semester. In order to be eligible for the employer contribution through two-year averaging, the faculty must provide written notification of his or her potential eligibility to his or her employing agency or agencies within the deadlines established by the employing agency or agencies. Faculty continue to receive uninterrupted employer contribution for each academic year in which they:

(i) Are employed on a quarter/semester to quarter/semester basis and work at least two quarters or two semesters; and

(ii) Have an average workload of half-time or more for three quarters or two semesters.

Eligibility for the employer contribution under two-year averaging ceases immediately if the eligibility criteria is not met or if the eligibility criteria becomes impossible to meet.

(e) Faculty who lose eligibility for the employer contribution: All benefits-eligible faculty (eligible under WAC 182-12-114(3)) who lose eligibility for the employer contribution will regain it if they return to a faculty position where it is anticipated that they will work half-time or more for the quarter/semester no later than the twelfth month after the month in which they lost eligibility for the employer contribution. The employer contribution begins on the first day of the month in which the quarter/semester begins.

**(4) Maintaining the employer contribution - Employees on leave and under the special circumstances listed below.**

(a) Employees who are on approved leave under the federal Family and Medical Leave Act (FMLA) continue to receive the employer contribution as long as they are approved under the act.

(b) Unless otherwise indicated in this section, employees in the following circumstances receive the employer contribution only for the months they are in pay status eight hours or more:

(i) Employees on authorized leave without pay;

(ii) Employees on approved educational leave;

(iii) Employees receiving time-loss benefits under workers' compensation;

(iv) Employees called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or

(v) Employees applying for disability retirement.

**(5) Maintaining the employer contribution - Employees who move from an eligible to an otherwise ineligible position due to a layoff** maintain the employer contribution toward insurance coverage under the criteria in WAC 182-12-129.

**(6) Employees who are in pay status less than eight hours in a month.** Unless otherwise indicated in this section, when there is a month in which (~~an employee is~~) employees are not in pay status for at least eight hours, (~~the~~) employees:

(a) Lose~~((s))~~ eligibility for the employer contribution for that month; and

(b) Must reestablish eligibility for PEBB benefits under WAC 182-12-114 in order to be eligible for the employer contribution again.

**(7) The employer contribution toward insurance coverage ends** in any one of these circumstances for all employees:

(a) When ~~((the))~~ employees fail ~~((s))~~ to maintain eligibility for the employer contribution as indicated in the criteria in subsection (1) through (6) of this section.

(b) When the employment relationship is terminated. As long as the employing agency has no anticipation that the employee will be rehired, the employment relationship is terminated:

(i) On the date specified in an employee's letter of resignation; or

(ii) On the date specified in any contract or hire letter or on the effective date of an employer-initiated termination notice.

(c) When ~~((the))~~ employees move ~~((s))~~ to a position that is not anticipated to be eligible for benefits under WAC 182-12-114, not including changes in position due to a layoff.

The employer contribution toward PEBB ~~((medical, dental and life insurance for an employee, spouse, state registered domestic partner, or child ceases at 12:00 midnight,))~~ benefits cease for employees and their enrolled dependents the last day of the month in which ~~((the employee is))~~ employees are eligible for the employer contribution under this section.

**Exception:** If the employing agency deducted the employee's premium for insurance coverage after the employee was no longer eligible for the employer contribution, insurance coverage ends the last day of the month for which employee premiums were deducted.

**(8) Options for continuation coverage by self-paying.** During temporary or permanent loss of the employer contribution toward insurance coverage, employees have options for providing continuation coverage for themselves and their dependents by self-paying the full premium set by the health care authority (HCA). These options are available according to WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270.

AMENDATORY SECTION (Amending WSR 09-23-102, filed 11/17/09, effective 1/1/10)

**WAC 182-12-136 May ~~((an))~~ employees on approved educational leave waive continuation coverage?** In order to avoid duplication of group health plan coverage, the following shall apply to employees during any period of approved educational leave. Employees eligible for continuation coverage provided in WAC 182-12-133 who obtain ~~((comprehensive health plan coverage under another group plan))~~ other employer-based group medical or dental insurance, or both, may waive ~~((continuance))~~ continuation of such coverage for each full calendar month in which they maintain coverage under the other ~~((comprehensive group health plan))~~ insurance. These employees have the right to reenroll in a public employees benefits board (PEBB) health plan effective the first day of the month after the date the other ~~((comprehensive group health plan coverage))~~ employer-based group medical or dental insurance ends, provided evidence of such other ~~((comprehensive group health plan))~~ coverage is provided to the PEBB program upon application for reenrollment.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-12-171 When are retiring employees eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage? (1) Procedural requirements.** Retiring employees must meet these procedural requirements to enroll or defer enrollment in public employees benefits board (PEBB) retiree insurance coverage, as well as have substantive eligibility under subsection (2) or (3) of this section~~((:))~~:

(a) ~~The ~~((employee must submit the appropriate forms))~~ employee's form to enroll or defer enrollment in retiree insurance coverage ~~((within))~~ must be received by the PEBB program no later than sixty days after the employee's employer paid or COBRA coverage ends. The effective date of health plan enrollment will be the first day of the month following the loss of ~~((other))~~ employer paid or COBRA coverage.~~

**Exception:** The effective dates of health plan enrollment for retirees who defer enrollment in a PEBB health plan at or after retirement are identified in WAC 182-12-200 and 182-12-205.

Employees who do not enroll in a ~~((public employees benefits board))~~ PEBB ~~((s))~~ health plan at retirement are only eligible to enroll at a later date if they have deferred enrollment ~~((as identified))~~ and maintained continuous enrollment in other coverage as described in WAC 182-12-200 or 182-12-205 ~~((and maintained comprehensive employer sponsored medical as defined in WAC 182-12-109))~~.

(b) ~~The~~ Employees and enrolled dependents who are entitled to medicare must enroll and maintain enrollment in both medicare parts A and B if the employee retired after July 1, 1991. If the employee or an enrolled dependent becomes entitled to medicare after enrollment in PEBB retiree insurance coverage, he or she must enroll and maintain enrollment in medicare.

**Note:** If an enrollee who is entitled to medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in PEBB retiree insurance coverage. The enrollee may continue PEBB health plan enrollment under COBRA (see WAC 182-12-146).

(2) **Substantive eligibility requirements.** Eligible employees (as described in WAC 182-12-114 and 182-12-131) who end public employment after becoming vested in a Washington state-sponsored retirement plan (as ~~((defined))~~ described in subsection (4) of this section) are eligible to continue insurance coverage as a retiree if they meet procedural and substantive eligibility requirements. To be eligible to continue insurance coverage as a retiree, the employee must be eligible to retire under a Washington state-sponsored retirement plan when the employee's employer paid or COBRA coverage ends.

Employees who do not meet their Washington state-sponsored retirement plan's age requirement when their employer paid or COBRA coverage ends, but who meet the age requirement within sixty days of coverage ending, may request that their eligibility be reviewed by the PEBB appeals committee to determine eligibility (see WAC 182-16-032).

Employees must meet PEBB retiree insurance coverage election procedural requirements as described in subsection (1) of this section.

Employees must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

- Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan;

- Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011(20)), are eligible if they meet their Plan 3 retirement plan's eligibility criteria (~~((when PEBB employee insurance or COBRA coverage ends))~~). They do not have to receive a retirement plan payment to enroll in retiree insurance coverage;

- Employees who are members of a Washington higher education retirement plan are eligible if they immediately begin to receive a monthly retirement plan payment, or meet their plan's retirement eligibility criteria, or are at least age fifty-five with ten years of state service;

- Employees not retiring under a Washington state-sponsored retirement plan must meet the same age and years of service as if the person had been employed as a member of either public employees retirement system Plan 1 or Plan 2 for the same period of employment; or

- Employees who retire from a local government or tribal government that participates in PEBB insurance coverage for their employees are eligible to continue PEBB insurance coverage as retirees if the employees meet the procedural and eligibility requirements under this section.

(a) **Local government employees.** If the local government ends participation in PEBB insurance coverage, employees who enrolled after September 15, 1991, are no longer eligible for PEBB retiree insurance coverage. These employees may continue ~~((PEBB))~~ health plan ~~((enrollment))~~ coverage under COBRA (see WAC 182-12-146).

(b) **Tribal government employees.** If a tribal government ends participation in PEBB insurance coverage, its employees are no longer eligible for PEBB retiree insurance coverage. These employees may continue ~~((PEBB))~~ health plan ~~((enrollment))~~ coverage under COBRA (see WAC 182-12-146).

(c) **Washington state ~~((K-12))~~ school district and educational service district employees for districts that do not participate in PEBB insurance coverage.** Employees of Washington state ~~((K-12))~~ school districts and educational service districts who separate from employment after becoming vested in a Washington state-sponsored retirement system are eligible to enroll in PEBB health plans as a retiree when retired or permanently and totally disabled.

Except for employees who are members of a retirement Plan 3, employees who separate on or after October 1, 1993, must immediately begin to receive a monthly retirement plan payment from a Washington state-sponsored retirement system. Employees who receive a lump-sum payment instead of a monthly retirement plan payment are only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment

and the ongoing monthly payment, as allowed by the plan or the employee enrolled before 1995.

Employees who are members of a Plan 3 retirement, also called separated employees (defined in RCW 41.05.011(20)), are eligible if they meet their Plan 3 retirement plan's eligibility criteria (~~((when employer paid or COBRA coverage ends))~~). They do not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage.

Employees who retired as of September 30, 1993, and began receiving a retirement allowance from a state-sponsored retirement system (as defined in chapters 41.32, 41.35 or 41.40 RCW) are eligible if they enrolled in a PEBB health plan not later than the HCA's annual open enrollment period for the year beginning January 1, 1995.

(3) **Substantive eligibility for elected and full-time appointed officials of the legislative and executive branches.** Employees who are elected and full-time appointed state officials (as defined under WAC 182-12-114(4)) who voluntarily or involuntarily leave public office are eligible to continue ~~((PEBB))~~ insurance coverage as a retiree if they meet procedural requirements of subsection (1) of this section.

(4) **Washington state-sponsored retirement systems include:**

- Higher education retirement plans;
- Law enforcement officers' and firefighters' retirement system;
- Public employees' retirement system;
- Public safety employees' retirement system;
- School employees' retirement system;
- State judges/judicial retirement system;
- Teachers' retirement system; and
- State patrol retirement system.

The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered a Washington state-sponsored retirement system for Washington State University Extension employees covered under ~~((the))~~ PEBB insurance coverage at the time of retirement or disability.

AMENDATORY SECTION (Amending WSR 09-23-102, filed 11/17/09, effective 1/1/10)

**WAC 182-12-200** ~~May~~ ~~((a))~~ retirees who ~~((is))~~ are enrolled as a dependent in a ~~((PEBB health plan or))~~ public employees benefits board (PEBB), a Washington state ~~((K-12))~~ school district, or Washington state educational service district sponsored health plan defer enrollment ~~((in a PEBB retiree health plan))~~ under PEBB retiree insurance coverage? The following provisions apply when retirees defer enrollment under public employees benefits board (PEBB) retiree insurance coverage when enrolled as a dependent in a PEBB, Washington state school district, or Washington state education service district sponsored health plan:

(1) Retirees who are enrolled in a PEBB ~~((or))~~ Washington state ~~((K-12))~~ school district, or Washington state educational service district sponsored medical plan as a dependent may defer enrollment in a PEBB ~~((retiree))~~ health plan. Retir-

ees who defer enrollment in medical cannot remain enrolled in dental.

(2) Retirees who defer may later enroll themselves and their dependents in ~~((PEBB retiree))~~ medical, or medical and dental, if they provide evidence of continuous enrollment in a PEBB ~~((or K-12)), Washington state school district, or Wash-~~ ington state educational service district sponsored medical plan. Continuous enrollment must be from the date the retiree deferred enrollment in PEBB retiree insurance coverage. Retirees may enroll:

~~((4))~~ (a) ~~During (any) the~~ PEBB annual open enrollment period. ((Enrollment in) The required enrollment form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan ((will)) coverage begins January 1st ((after the annual open enrollment period.)) of the following year; or

~~((2) No later than sixty days after)~~ (b) When enrollment in the PEBB ~~((or K-12)), Washington state school district, or Washington state educational service district sponsored medical plan ends ((-Enrollment in the)) or such coverage under COBRA ends. The required enrollment form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan ((will)) coverage begins the first day of the month after the PEBB ~~((or K-12)), Washington state school district, or Washington state educational service district ((health)) sponsored medical plan ends.((3))~~~~

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-12-205 May ~~((a))~~ retirees defer enrollment ~~((in a))~~ under public employees benefits board (PEBB) ~~((health plan))~~ retiree insurance coverage at or after retirement? ~~((Except as stated in subsection (1)(e) of this section, if a))~~ The following provisions apply when retirees defer enrollment under public employees benefits board (PEBB) retiree insurance coverage when enrolled in other coverage:**

(1) Retirees who defer ~~((s))~~ enrollment in a ~~((public employees benefits board (-))~~ PEBB ~~((, they))~~ health plan ~~((, they))~~ also defer enrollment for all eligible dependents, except as stated in subsection (2)(c) of this section.

~~((4))~~ (2) Retirees may defer enrollment in a PEBB health plan at or after retirement if continuously enrolled in other ~~((eoverage))~~ medical as described in this subsection((3)). Retirees who defer enrollment in medical automatically defer enrollment in dental. Retirees must enroll in medical to enroll in dental.

(a) Beginning January 1, 2001, retirees may defer enrollment in a PEBB health plan if they are enrolled in ~~((comprehensive employer sponsored medical))~~ employer-based group medical insurance as an employee or the dependent of an employee, or such medical insurance continued under COBRA.

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

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

(d) Beginning January 1, 2014, retirees who are not eligible for Parts A and B of medicare may defer enrollment in a PEBB health plan if they are enrolled in exchange coverage.

~~((2))~~ (3) To defer PEBB health plan enrollment, ~~((the retiree))~~ retiring employees or enrolled subscribers must submit the required forms to the PEBB program requesting to defer. ~~((The PEBB program must receive the form before health plan enrollment is deferred or no later than sixty days after the date the retiree becomes eligible to apply for PEBB retiree insurance coverage.~~

~~((3))~~ (a) If retiring employees submit the required forms to defer enrollment in a PEBB health plan after their employer paid or COBRA coverage ends as described in WAC 182-12-171 (1)(a), enrollment will be deferred the first of the month following the date their employer paid or COBRA coverage ends. The forms must be received by the PEBB program no later than sixty days after the employer paid or COBRA coverage ends.

(b) If enrolled subscribers submit the required forms to defer enrollment in a PEBB health plan, enrollment will be deferred effective the first of the month following the date their deferral form is received by the PEBB program.

(4) Retirees who defer may later enroll themselves and their dependents in a PEBB ~~((retiree medical, or medical and dental,))~~ health plan as follows:

(a) Retirees who defer enrollment while enrolled in ~~((comprehensive employer sponsored medical))~~ employer-based group medical insurance, or such medical insurance continued under COBRA may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in ~~((comprehensive employer sponsored medi-eat))~~ such coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required enrollment form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) ~~((No later than sixty days after))~~ When their ~~((comprehensive employer sponsored))~~ employer-based group medical insurance or such coverage under COBRA ends. The required enrollment form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan coverage begins the first day of the month after the ~~((comprehensive employer sponsored))~~ employer-based group medical insurance or COBRA ends.

(b) Retirees who defer enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in ~~((a federal retiree medical plan))~~ such coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required enrollment form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) ~~((No later than sixty days after))~~ When the federal retiree medical coverage ends. The required enrollment form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan coverage begins the first day of the month after coverage under the federal retiree medical plan ends.

(c) Retirees who defer enrollment while enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as described in this chapter may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in creditable coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required enrollment form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) ~~((No later than sixty days after))~~ When their medicaid coverage ends. The required enrollment form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan coverage begins the first day of the month after the medicaid coverage ends; or

(iii) No later than the end of the calendar year when their medicaid coverage ends if the retiree was also determined eligible under 42 U.S.C. § 1395w-114 and subsequently enrolled in a medicare Part D plan. Enrollment in the PEBB health plan will begin January 1st following the end of the calendar year when the medicaid coverage ends. The required enrollment form must be received by the PEBB program no later than the last day of the calendar year when the retiree's medicaid coverage ends.

(d) Retirees who defer enrollment while enrolled in exchange coverage will have a one-time opportunity to enroll or reenroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in ~~((exchange))~~ such coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required enrollment form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) ~~((No later than sixty days after))~~ When exchange coverage ends. The required enrollment form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends. PEBB health plan coverage begins the first day of the month after exchange coverage ends.

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

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-12-208** What are the requirements regarding enrollment in ~~((retiree))~~ dental under public employees benefits board (PEBB) retiree insurance coverage? ~~((+))~~ The following provisions apply to a subscriber and his or her dependents enrolled under public employees benefits board (PEBB) retiree insurance coverage:

(1) A subscriber and his or her dependents enrolling in dental must meet procedural requirements (as described in WAC 182-12-171(1) and 182-12-262) and eligibility requirements (as described in WAC 182-12-171(2) and 182-12-260).

(2) A subscriber ~~((or dependent enrolled in retiree insurance coverage, may not))~~ and his or her dependents must be enrolled in medical to enroll in dental ~~((unless he or she is also enrolled in medical)).~~

~~((2))~~ (3) A subscriber enrolling in dental must stay enrolled ~~((in dental))~~ for at least two years before dental can be dropped unless he or she defers coverage as described in WAC 182-12-200 or 182-12-205, or drops dental as described in subsection (4) of this section.

(4) A subscriber enrolled in PEBB dental who becomes eligible for, and enrolls in, employer-based group dental insurance as an employee or the dependent of an employee, or such coverage continued under COBRA, may drop PEBB dental before completing the two-year enrollment requirement. The subscriber and enrolled dependents will be removed from PEBB dental the last day of the month following the date the required enrollment form is received by the PEBB program. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(a) A subscriber may enroll in PEBB dental during the PEBB annual open enrollment period. The required enrollment form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB dental begins January 1st of the following year.

(b) A subscriber may enroll in PEBB dental after his or her employer-based group dental insurance or such coverage under COBRA ends. The required enrollment form must be received by the PEBB program no later than sixty days after such coverage ends. PEBB dental begins the first day of the month after the employer-based group dental insurance or coverage under COBRA ends.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-12-209** Who is eligible for retiree life insurance? Eligible employees who participate in public employees benefits board (PEBB) life insurance as an employee and meet qualifications for retiree insurance coverage as provided in WAC 182-12-171 are eligible for PEBB retiree life insurance. They must submit the required forms to the PEBB program. Forms must be received by the PEBB program no later than sixty days after the date their PEBB employee life insurance ends.

(1) Employees whose life insurance premiums are being waived under the terms of the life insurance contract are not

eligible for retiree term life insurance until their waiver of premium benefit ends.

(2) Retirees may not defer enrollment in retiree term life insurance, except as allowed in subsection (3)(b) of this section.

(3) If a retiree returns to active employment status and becomes eligible for the employer contribution toward PEBB employee life insurance, he or she may choose:

(a) To continue to self-pay premiums and keep retiree life insurance in place during the period he or she is eligible for employee life insurance; or

(b) To stop self-paying premiums during the period he or she is eligible for employee life insurance and resume self-paying premiums for retiree life insurance when he or she is no longer eligible for the employer contribution toward PEBB employee life insurance.

**AMENDATORY SECTION** (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-12-211** ~~((If department of retirement systems or the appropriate higher education authority makes a formal determination of retroactive eligibility, may the retiree))~~ May an employee who is determined to be retroactively eligible for disability retirement enroll in public employees benefits board (PEBB) retiree insurance coverage? (1) ~~((When the Washington state department of retirement systems (DRS), or the appropriate higher education authority, makes a formal determination that a person is retroactively eligible for a pension benefit or a supplemental retirement plan benefit under the higher education HERP plan, that person may apply for enrollment in a public employees benefits board (PEBB) health plan only if the application is made within sixty days after the date of written notice from DRS or from the appropriate higher education authority. Employees must))~~ An employee who is determined to be retroactively eligible for a disability retirement is eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage if:

(a) The employee submits the required form and a copy of the formal determination letter he or she received from the Washington state department of retirement systems (DRS) or the appropriate higher education authority;

(b) The employee's enrollment form and a copy of his or her formal determination letter are received by the PEBB program no later than sixty days after the date on the determination letter; and

(c) The employee immediately begins to receive a monthly pension benefit or a supplemental retirement plan ((payment)) benefit under his or her higher education retirement plan (HERP), with exceptions described in WAC 182-12-171(2).

(2) ~~((A))~~ Premiums are due from the effective date of enrollment in PEBB retiree insurance coverage. The employee, at his or her option, must indicate the effective date of PEBB retiree insurance coverage on the enrollment form. The employee may choose from the following dates:

(a) The employee's retirement ((eligibility)) date as stated in the ((written notice)) formal determination letter; or ((the date of the written notice described in subsection (1) of

~~this section, at the option of the retiree, must be sent with the application to the PEBB program))~~

(b) The first day of the month following the date the formal determination letter was written.

(3) The director may make an exception to the date PEBB retiree insurance coverage ~~((commences or payment of premiums))~~ begins; however, such request((s)) must demonstrate extraordinary circumstances beyond the control of the retiree.

**AMENDATORY SECTION** (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-12-250 Insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty.** Surviving spouses, state registered domestic partners, and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll in ~~((health plans administered by the))~~ public employees benefits board (PEBB) ~~((program within health care authority (HCA)))~~ retiree insurance coverage.

(1) This section applies to the surviving spouse, the surviving state registered domestic partner, and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010.

(3) "Surviving spouse, state registered domestic partner, and dependent children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) A state registered domestic partner as defined in RCW 26.60.020(1); and

(d) Children. The term "children" includes children of the emergency service worker up to age twenty-six. Children with disabilities as defined in RCW 41.26.030(6) are eligible at any age. "Children" is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren or children of a state registered domestic partner;

(iii) Legally adopted children;

(iv) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(v) Children specified in a court order or divorce decree; or

(vi) Children as defined in RCW 26.26.101.

(4) Surviving spouses, state registered domestic partners, and children who are entitled to medicare must enroll in both parts A and B of medicare.

(5) The survivor (or agent acting on his or her behalf) must submit the required forms to the PEBB program to either enroll or defer enrollment in ~~((a PEBB health plan))~~ retiree insurance coverage as described in subsection (7) of

this section. The forms must be received by the PEBB program no later than one hundred eighty days after the later of:

- (a) The death of the emergency service worker;
- (b) The date on the letter from the department of retirement systems or the board for volunteer firefighters and reserve officers that informs the survivor that he or she is determined to be an eligible survivor;
- (c) The last day the surviving spouse, state registered domestic partner, or child was covered under any health plan through the emergency service worker's employer; or
- (d) The last day the surviving spouse, state registered domestic partner, or child was covered under the Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage from the emergency service worker's employer.

(6) Survivors who do not choose to defer enrollment in ~~((a PEBB health plan))~~ retiree insurance coverage may choose among the following options for when their enrollment in a PEBB health plan will begin:

- (a) June 1, 2006, for survivors whose required forms are received by the PEBB program no later than September 1, 2006;
- (b) The first of the month that is not earlier than sixty days before the date that the PEBB program receives the required forms (for example, if the PEBB program receives the required forms on August 29, the survivor may request health plan enrollment to begin on July 1); or
- (c) The first of the month after the date that the PEBB program receives the required forms.

For surviving spouses, state registered domestic partners, and children who enroll, monthly health plan premiums must be paid by the survivor except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) Survivors must choose one of the following two options to maintain eligibility for ~~((PEBB))~~ retiree insurance coverage:

- (a) Enroll in a PEBB health plan:
  - (i) Enroll in medical; or
  - (ii) Enroll in medical and dental.
  - (iii) Survivors enrolling in dental must stay enrolled ~~((in dental))~~ for at least two years before dental can be dropped, unless they defer coverage as described in WAC 182-12-205, or drop dental as described in WAC 182-12-208(4).
  - (iv) Dental only is not an option.
- (b) Defer enrollment:
  - (i) Survivors may defer enrollment in a PEBB health plan if continuously enrolled in other coverage as described in WAC 182-12-205~~((+))~~ (2).
  - (ii) Survivors may enroll in a PEBB health plan as described in WAC 182-12-205(4) when they lose ~~((comprehensive employer-sponsored medical))~~ other coverage. Survivors ~~((will need to))~~ must provide evidence that they were continuously enrolled in ~~((comprehensive employer-sponsored medical when applying for a PEBB health plan, and apply within sixty days after the date their other coverage ended))~~ other such coverage when enrolling in a PEBB health plan. The required enrollment form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends.
  - (iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the

other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during annual open enrollment. In addition to annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

(9) Survivors will lose their right to enroll in ~~((a PEBB health plan))~~ retiree insurance coverage if they:

- (a) Do not apply to enroll or defer PEBB health plan enrollment within the timelines stated in subsection (5) of this section; or
- (b) Do not maintain continuous enrollment in other coverage during the deferral period, as provided in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-12-260 Who are eligible dependents?** To be enrolled in a health plan, a dependent must be eligible under this section and the subscriber must comply with enrollment procedures outlined in WAC 182-12-262.

The public employees benefits board (PEBB) program verifies the eligibility of all dependents and reserves the right to request documents from subscribers that provide evidence of a dependent's eligibility. The PEBB program will remove a subscriber's enrolled dependents from health plan enrollment if the PEBB program is unable to verify a dependent's eligibility. The PEBB program will not enroll or reenroll dependents into a health plan if the PEBB program is unable to verify a dependent's eligibility.

The subscriber must notify the PEBB program, in writing, when his or her dependent is not eligible under this section. The notification must be received by the PEBB program no later than sixty days after the date his or her dependent is no longer eligible under this section. See WAC 182-12-262 (2)(a) for the consequences of not removing an ineligible dependent from coverage.

The following are eligible as dependents:

(1) Lawful spouse. Former spouses are not eligible dependents upon finalization of a divorce or annulment, even if a court order requires the subscriber to provide health insurance for the former spouse.

(2) Registered domestic partner((-) is defined to include the following:

(a) Effective January 1, 2010, a state registered domestic partner, as defined in RCW 26.60.020(1)((-));

(b) A domestic partner who was qualified under PEBB eligibility criteria as a domestic partner before January 1, 2010, and was continuously enrolled under the subscriber in a PEBB health plan or life insurance((-); and

(c) Former ~~((state))~~ registered domestic partners are not eligible dependents upon dissolution or termination of a partnership, even if a court order requires the subscriber to provide health insurance for the former partner.

(3) Children. Children are eligible up to age twenty-six except as described in (i) of this subsection. Children are defined as the subscriber's:

(a) Children as defined in RCW 26.26.101 establishment of parent-child relationship;

(b) Biological children, where parental rights have not been terminated;

(c) Stepchildren. The stepchild's relationship to a subscriber (and eligibility as a PEBB dependent) ends, for purposes of this rule, on the same date the subscriber's legal relationship with the spouse or registered domestic partner ends through divorce, annulment, dissolution, termination, or death;

(d) Legally adopted children;

(e) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(f) Children of the subscriber's ((state)) registered domestic partner;

(g) Children specified in a court order or divorce decree;

(h) Extended dependents in the legal custody or legal guardianship of the subscriber, the subscriber's spouse, or subscriber's ((state)) registered domestic partner. The legal responsibility is demonstrated by a valid court order and the child's official residence with the custodian or guardian. "Children" does not include foster children for whom support payments are made to the subscriber through the state department of social and health services foster care program; and

(i) Children of any age with a developmental disability or physical handicap that renders the child incapable of self-sustaining employment and chiefly dependent upon the ((employee)) subscriber for support and maintenance provided such condition occurs before the age twenty-six:

(i) The subscriber must provide evidence of the disability and evidence that the condition occurred before age twenty-six;

(ii) The subscriber must notify the PEBB program, in writing, when his or her dependent is not eligible under this section. The notification must be received by the PEBB program no later than sixty days after the date that a child age twenty-six or older no longer qualifies under this subsection;

(iii) A child with a developmental disability or physical handicap who becomes self-supporting is not eligible under this subsection as of the last day of the month in which he or she becomes capable of self-support;

(iv) A child with a developmental disability or physical handicap age twenty-six and older who becomes capable of self-support does not regain eligibility under (i) of this subsection if he or she later becomes incapable of self-support;

(v) The PEBB program will periodically certify the eligibility of a dependent child with a disability beginning at age twenty-six, but no more frequently than annually after the two-year period following the child's twenty-sixth birthday.

(4) Parents.

(a) Parents covered under PEBB medical before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous enrollment in PEBB medical;

(ii) The parent qualifies under the Internal Revenue Code as a dependent of the subscriber;

(iii) The subscriber continues enrollment in insurance coverage; and

(iv) The parent is not covered by any other group medical plan.

(b) Parents eligible under this subsection may be enrolled with a different health plan than that selected by the subscriber. Parents may not add additional dependents to their insurance coverage.

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

**WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) Enrolling dependents in ~~(health plan coverage)~~ public employees benefits board (PEBB) benefits.** A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled to enroll his or her dependent except as provided in WAC 182-12-205 ~~((+))~~ (2)(c). Subscribers may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in public employees benefits board (PEBB) ~~(insurance coverage)~~ benefits. If eligibility is verified and the dependent is enrolled, the dependent's effective date will be the same as the subscriber's effective date.

(b) **During the annual open enrollment.** PEBB health plan coverage begins January 1st of the following year.

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section. The subscriber must satisfy the enrollment requirements as described in subsection (4) of this section.

~~((d) During the premium surcharge implementation period. Subscribers may enroll dependents during the premium surcharge implementation period from April 1 through May 15, 2014. Employees must submit the required enrollment forms to their employing agency and all other subscribers submit the required forms to the PEBB program no later than May 15, 2014. PEBB health plan coverage will begin July 1, 2014.))~~

(2) **Removing dependents from a subscriber's health plan coverage.**

(a) **A dependent's eligibility for enrollment in health plan coverage ends the last day of the month the dependent** meets the eligibility criteria in WAC 182-12-250 or 182-12-260. Employees must notify their employing agency when a dependent is no longer eligible. All other subscribers must notify the PEBB program when a dependent is no longer eligible. Consequences for not submitting notice within sixty days of ~~((any))~~ the last day of the month the dependent ~~((ceasing to be eligible))~~ loses eligibility for health plan coverage may include, but are not limited to:

(i) The dependent may lose eligibility to continue health plan coverage under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

**(b) Employees have the opportunity to remove dependents:**

(i) During the annual open enrollment. The dependent will be removed the last day of December; or

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section ~~(or~~

~~(iii) During the premium surcharge implementation period. Subscribers may remove dependents during the premium surcharge implementation period from April 1 through May 15, 2014. To remove a dependent the employee must submit the required form no later than May 15, 2014. The dependent will be removed June 30, 2014).~~

**(c) Retirees, survivors, and enrollees with PEBB continuation coverage under WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148 may remove dependents** from their coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. Unless otherwise approved by the PEBB program, the dependent will be removed from the subscriber's coverage prospectively.

**(3) Special open enrollment.** Subscribers may enroll or remove their dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both.

- Health plan coverage will begin the first of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day.

- Enrollment of extended dependents or dependents with a disability will be the first day of the month following eligibility certification.

- Dependents will be removed from the subscriber's health plan coverage the last day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

- If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin or end the month in which the event occurs.

Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a domestic partnership;

(ii) Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

(iv) A child becoming eligible as a dependent with a disability;

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber or a subscriber's dependent has a change in employment status that affects the subscriber's or the sub-

scriber's dependent's eligibility for their employer contribution toward employer-based group health ((coverage)) insurance;

(d) Subscriber or a subscriber's dependent has a change in enrollment under another ~~((employer))~~ employer-based group health insurance plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(e) Subscriber's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(f) A court order or national medical support notice (see also WAC 182-12-263) requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP).

**(4) Enrollment requirements. Subscribers must submit the required enrollment forms within the time frames described in this subsection.** Employees submit the required forms to their employing agency. All other subscribers submit the required forms to the PEBB program. In addition to the required forms indicating dependent enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment.

(a) If a subscriber wants to enroll his or her eligible dependent(s) when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the required forms that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-08-187, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the PEBB annual open enrollment period, the ~~((subscriber must submit the))~~ required forms must be received no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the ~~((subscriber must submit the))~~ required enrollment forms must be received no later than sixty days after the dependent becomes eligible except as provided in (d) of this subsection.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption, the subscriber should notify the PEBB program by submitting an enrollment form as soon as possible to ensure timely payment of claims. If adding the child increases the premium, ~~((the subscriber must submit the))~~ the required enrollment form must be received no later than twelve months after the date of

the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption.

(e) If the subscriber wants to enroll a child age twenty-six or older as a child with a disability, the ~~((subscriber must submit the))~~ required form(s) must be received no later than sixty days after the last day of the month in which the child reaches age twenty-six or within the relevant time frame described in WAC 182-12-262 (4)(a), (b), and (f).

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

~~((g) If a subscriber wants to enroll eligible dependents during the premium surcharge implementation period from April 1 through May 15, 2014, the subscriber must submit required forms no later than May 15, 2014.))~~

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

**WAC 182-12-263 National Medical Support Notice (NMSN) or court order.** When a National Medical Support Notice (NMSN) or court order requires a subscriber to provide health plan coverage for a dependent child the following provisions apply:

(1) The subscriber may enroll his or her dependent child and request changes to his or her health plan coverage as described under subsection (3) of this section. Employees submit the required forms to their employing agency. All other subscribers submit the required forms to the public employees benefits board (PEBB) program.

(2) If the subscriber fails to request enrollment or health plan coverage changes as directed by the NMSN or court order, the employing agency or the PEBB program may make enrollment or health plan coverage changes according to subsection (3) of this section upon request of:

- (a) The child's other parent; or
- (b) Child support enforcement program.

(3) Changes to health plan coverage or enrollment are allowed as directed by the NMSN or court order:

(a) The dependent will be enrolled under the subscriber's health plan coverage as directed by the NMSN or court order;

(b) An employee who has waived medical under WAC 182-12-128 will be enrolled in medical ~~((coverage))~~ as directed by the NMSN or court order, in order to enroll the dependent;

(c) The subscriber's selected health plan will be changed if directed by the NMSN or court order;

(d) If the dependent is already enrolled under another PEBB subscriber, the dependent will be removed from the other health plan coverage and enrolled as directed by the NMSN or court order.

(4) ~~((Health plan enrollment))~~ Changes to health plan coverage or enrollment described in subsection (3)(a) through (c) of this section will begin the first day of the month following receipt of the NMSN or court order. If the NMSN or court order ~~((requires a change from the subscriber's selected health plan, the change will begin the first day of the month following receipt of the NMSN or court~~

~~order))~~ is received on the first day of the month, the change to health plan coverage or enrollment begins on that day. A dependent will be removed from the subscriber's health plan coverage as described in subsection (3)(d) of this section the last day of the month the NMSN or court order is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

**WAC 182-12-265 What options for continuing health plan enrollment are available to widows, widowers and dependent children if the employee or retiree dies?** The dependent of an eligible employee or retiree who meets the eligibility criteria in subsection (1), (2), or (3) of this section is eligible to enroll as a survivor under public employees benefits board (PEBB) retiree insurance coverage. An eligible survivor must submit the appropriate forms to enroll or defer enrollment in ~~((a PEBB medical plan))~~ retiree insurance coverage. The forms must be received by the PEBB program no later than sixty days after the date of the employee's or retiree's death.

(1) An employee's spouse, ~~((state))~~ registered domestic partner or child who loses eligibility due to the death of an eligible employee may enroll or defer enrollment as a survivor under retiree insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system.

(a) The employee's spouse or ~~((state))~~ registered domestic partner may continue health plan enrollment until death.

(b) The employee's children may continue health plan enrollment until they lose eligibility under WAC 182-12-260.

**Note:** If a spouse, ~~((state))~~ registered domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit, the dependent is not eligible to enroll as a survivor under retiree insurance coverage. However, the dependent may continue health plan enrollment as described in WAC 182-12-146.

(2) A retiree's spouse, ~~((state))~~ registered domestic partner or child who loses eligibility due to the death of an eligible retiree may enroll or defer enrollment as a survivor under retiree insurance coverage.

(a) The retiree's spouse or ~~((state))~~ registered domestic partner may continue health plan enrollment until death.

(b) The retiree's children may continue health plan enrollment until they lose eligibility under WAC 182-12-260.

(c) If a spouse, ~~((state))~~ registered domestic partner or child of an eligible retiree is not enrolled in a PEBB health plan at the time of the retiree's death, the dependent is eligible to enroll or defer enrollment ~~((in a PEBB health plan))~~ as a survivor under retiree insurance coverage. The dependent must submit the appropriate form(s) to enroll or defer PEBB health plan enrollment. The forms must be received by the PEBB program no later than sixty days after the retiree's death. To enroll in a PEBB health plan, the dependent must provide evidence of continuous enrollment in medical coverage from the most recent open enrollment for which the

dependent was not enrolled in a PEBB medical plan prior to the retiree's death.

(3) The spouse, ((state)) registered domestic partner, or child of a deceased school district or educational service district employee is eligible to enroll or defer enrollment (~~in a health plan~~) as a survivor under PEBB retiree insurance coverage at the time of the employee's death provided the employee died on or after October 1, 1993. The dependent must immediately begin receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW and submit the appropriate form to enroll or defer enrollment in ~~((a PEBB medical plan))~~ PEBB retiree insurance coverage. The form must be received by the PEBB program no later than sixty days after the date of the employee's death.

(a) The employee's spouse or ((state)) registered domestic partner may continue health plan enrollment until death.

(b) The employee's children may continue health plan enrollment until they lose eligibility under WAC 182-12-260.

(4) If a premium payment received by the authority is sufficient to maintain PEBB health plan enrollment after the employee's or retiree's death, the PEBB program will consider the payment as notice of the survivor's intent to continue enrollment.

If the dependent's enrollment ended due to the death of the employee or retiree, the PEBB program will reinstate the survivor's enrollment without a gap subject to payment of premium.

(5) In order to avoid duplication of group medical coverage, surviving dependents may defer enrollment in a PEBB health plan under WAC 182-12-200 and 182-12-205.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

**WAC 182-12-270 What options for continuation coverage are available to dependents who cease to meet the eligibility criteria in WAC 182-12-260?** If eligible, dependents may continue health plan enrollment under one of the continuation coverage options in subsection (1) or (2) of this section by self-paying the full premiums set by the health care authority (HCA), with no contribution from the employer, following their loss of eligibility under the subscriber's health plan coverage. The public employees benefits board (PEBB) program must receive the appropriate forms as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*. Options for continuing health plan enrollment are based on the reason that eligibility was lost.

(1) Spouses, ((state)) registered domestic partners, or children who lose eligibility due to the death of an employee or retiree may be eligible to continue health plan enrollment under provisions of WAC 182-12-250 or 182-12-265; or

(2) Dependents who lose eligibility because they no longer meet the eligibility criteria in WAC 182-12-260 are eligible to continue health plan enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). See WAC 182-12-146 for more information on COBRA.

**Exception:** A dependent who loses eligibility because a domestic partnership or same-sex marriage is dissolved may continue health plan enrollment under an extension of PEBB insurance coverage for a maximum of thirty-six months.

No PEBB continuation coverage will be offered unless the PEBB program is notified through hand-delivery or United States Postal Service mail of the qualifying event as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

**WAC 182-16-010 (~~Adoption of model rules of procedure~~) Appeals—Purpose and scope.** (1) For WAC 182-16-025 through 182-16-040, the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by the authority in public employees benefits board (PEBB) benefits related proceedings. ((Those)) The model rules of procedure may be found in chapter 10-08 WAC. Other procedural rules adopted in ((this title)) chapters 182-08, 182-12, and 182-16 WAC are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and the procedural rules adopted in ((this title)) WAC 182-16-025 through 182-16-040, the procedural rules adopted ((in this title)) shall govern.

(2) WAC 182-16-050 through 182-16-110 describes the general rules and procedures that apply to an administrative hearing, requested under WAC 182-16-050, of a PEBB appeal committee decision.

(a) WAC 182-16-050 through 182-16-110 supplements the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules of procedure in chapter 10-08 WAC. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended are adopted for use in a hearing. In the case of a conflict between the model rules of procedure and the rules adopted in WAC 182-16-050 through 182-16-110, the rules adopted in WAC 182-16-050 through 182-16-110 shall prevail.

(b) If there is a conflict between WAC 182-16-050 through 182-16-110 and specific PEBB program rules, the specific PEBB program rules prevail. PEBB program rules are found in chapters 182-08, 182-12, and 182-16 WAC.

(c) Nothing in WAC 182-16-050 through 182-16-110 is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine if a hearing right exists, including the APA and program rules or laws.

(d) The hearing rules for the PEBB program in WAC 182-16-050 through 182-16-110 do not apply to any other health care authority program.

AMENDATORY SECTION (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

**WAC 182-16-020 Definitions.** As used in this chapter the term:

"Authority" or "HCA" means the health care authority.

"Business days" means all days except Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Continuance" means a change in the date or time of a hearing.

"Denial" or "denial notice" means an action by, or communication from, either an employing agency, or the PEBB program that aggrieves an employee, or his or her dependent, with regard to PEBB benefits including, but not limited to, actions or communications expressly designated as a "denial," "denial notice," or "cancellation notice."

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, e-mails, electronic files, or other printed or written items.

"Employer group" means those employee organizations representing state civil service employees, counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, charter schools, and educational service districts participating in PEBB insurance coverage under contractual agreement as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Final order" means an order that is the final PEBB program decision.

"Health plan" (~~(or "plan")~~) means a plan offering medical (~~(coverage)~~) or dental (~~(coverage)~~), or both developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing" means a proceeding before a presiding officer that gives a party an opportunity to be heard in a dispute about a decision made by the PEBB appeals committee, including prehearing conferences, dispositive motion hearings, and evidentiary hearings.

"Hearing representative" means a person who is authorized to represent the PEBB program in an administrative hearing. The person may be an assistant attorney general, a licensed attorney, or authorized HCA employee.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Insurance coverage" means any health plan, life insurance, long-term care insurance, long-term disability (LTD) insurance, or property and casualty insurance administered as a PEBB benefit.

"LTD insurance" includes basic long-term disability insurance paid for by the employing agency and long-term disability insurance offered to employees on an optional basis.

"Mail" or "mailing" means placing a document in the United States Postal system, commercial delivery service, or Washington state consolidated mail services properly addressed.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB program" means the program within the HCA which administers insurance and other benefits for eligible employees (as defined in WAC 182-12-114), eligible retired and disabled employees (as defined in WAC 182-12-171), eligible dependents (as defined in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011.

"Prehearing conference" means a proceeding scheduled and conducted by a presiding officer to address issues in preparation for a hearing.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or registered domestic partner choosing not to enroll in his or her employer-based group medical insurance when:

- Premiums are less than ninety-five percent of Uniform Medical Plan (UMP) Classic premiums; and
- The actuarial value of benefits is at least ninety-five percent of the actuarial value of UMP Classic benefits.

"Presiding officer" means an impartial decision maker who is an attorney, presides at an administrative hearing, and is either a director designated HCA employee or an administrative law judge employed by the office of administrative hearings.

"Record" means the official documentation of the hearing process. The record includes recordings or transcripts.

admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the DCAP, medical FSA, or premium payment plan as authorized in chapter 41.05 RCW.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary or eligible survivor who has been designated by the HCA as the individual to whom the HCA and contracted vendors will issue all notices, information, requests and premium bills on behalf of enrollees.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, chewing tobacco, snuff, and other tobacco products. It does not include United States Food and Drug Administration (FDA) approved quit aids or e-cigarettes until their tobacco related status is determined by the FDA.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

**AMENDATORY SECTION** (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

**WAC 182-16-025 Where do members appeal decisions regarding eligibility, enrollment, premium payments, premium surcharges, a public employees benefits board (PEBB) wellness incentive, or the administration of benefits?** (1) Any employee of a state agency or his or her dependent aggrieved by a decision made by the employing state agency with regard to public employees benefits board (PEBB) eligibility, enrollment, or premium surcharge may appeal that decision to the employing state agency by the process outlined in WAC 182-16-030.

**Note:** Eligibility decisions address whether a subscriber or a subscriber's dependent is entitled to insurance coverage, as described in public employees benefits board (PEBB) rules and policies. Enrollment decisions address the application for PEBB benefits as described in PEBB rules and policies including, but not limited to, the submission of proper documentation and meeting enrollment deadlines.

(2) Any employee of an employer group or his or her dependent who is aggrieved by a decision made by an

employer group with regard to PEBB eligibility, enrollment, or premium surcharge ~~((, or a PEBB wellness incentive,))~~ may appeal that decision to the employer group through the process established by the employer group.

**Exception:** ~~((Appeals by an))~~ Any employee of an employer group ~~((or his or her dependent based on eligibility or enrollment))~~ aggrieved by a decision((s)) regarding life insurance ((or), LTD insurance ((must be made)), eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive may appeal that decision to the PEBB appeals committee by the process described in WAC 182-16-032.

(3) Any subscriber or dependent aggrieved by a decision made by the PEBB program with regard to ~~((public employee benefits))~~ PEBB eligibility, enrollment, premium payments, premium surcharge, ~~((or))~~ eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive, may appeal that decision to the PEBB appeals committee by the process described in WAC 182-16-032.

(4) Any PEBB enrollee aggrieved by a decision regarding the administration of a PEBB medical plan, self-insured dental plan, insured dental plan, life insurance or LTD insurance may appeal that decision by following the appeal provisions of those plans, with the exception of eligibility, enrollment, and premium payment determinations.

(5) Any PEBB enrollee aggrieved by a decision regarding the administration of PEBB long-term care insurance or property and casualty insurance may appeal that decision by following the appeal provisions of those plans.

(6) Any PEBB ~~((enrollee))~~ employee aggrieved by a decision regarding the ~~((medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) offered))~~ administration of a benefit offered under the state's salary reduction plan may appeal that decision by the process described in WAC 182-16-036.

(7) Any subscriber aggrieved by a decision made by the third-party administrator contracted to administer the PEBB wellness incentive program regarding the completion of the PEBB wellness incentive program requirements, or a request for a reasonable alternative to a wellness incentive program requirement, may appeal that decision by the process described in WAC 182-16-035.

**AMENDATORY SECTION** (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

**WAC 182-16-030 How can an employee or an employee's dependent appeal a decision made by a state agency about eligibility, premium surcharge, or enrollment in benefits?** (1) An eligibility, premium surcharge, or enrollment decision made by an employing state agency may be appealed by submitting a written request for review to the employing state agency. The employing state agency must receive the request for review ~~((within))~~ no later than thirty days ~~((or))~~ after the date of the initial denial notice. The con-

tents of the request for review are to be provided in accordance with WAC 182-16-040.

(a) Upon receiving the request for review, the employing state agency shall make a complete review of the initial denial by one or more staff who did not take part in the initial denial. As part of the review, the employing state agency may hold a formal meeting or hearing, but is not required to do so.

(b) The employing state agency shall render a written decision within thirty days of receiving the request for review. The written decision shall be sent to the appellant.

(c) A copy of the employing state agency's written decision shall be sent to the employing state agency's administrator or designee and to the public employees benefits board (PEBB) appeals manager. The employing state agency's written decision shall become the employing state agency's final decision effective fifteen days after the date it is rendered.

(d) The employing state agency may reverse eligibility, premium surcharge, or enrollment decisions based only on circumstances that arose due to delays caused by the employing state agency or error(s) made by the employing state agency.

(2) Any employee or employee's dependent who disagrees with the employing state agency's decision in response to a request for review, as described in subsection (1) of this section, may appeal that decision by submitting a notice of appeal to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal ~~((within))~~ no later than thirty days ~~((of))~~ after the date of the employing state agency's written decision on the request for review.

The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good ((cause)) reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

**AMENDATORY SECTION** (Amending WSR 14-08-040, filed 3/26/14, effective 4/26/14)

**WAC 182-16-032 How can a decision made by the public employees benefits board (PEBB) program regarding eligibility, enrollment, premium payments, premium surcharge, ~~((of))~~ eligibility to participate in the PEBB wellness incentive program or receive a PEBB wellness incentive; or a decision made by an employer group regarding life insurance or LTD insurance be appealed? (1) ~~((A))~~ A decision made by the public employees benefits board (PEBB) program regarding eligibility, enrollment, premium payment, premium surcharge, or eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive ~~((decision made by the public employees benefits board (PEBB) pro-~~**

~~gram))~~, may be appealed by submitting a notice of appeal to the PEBB appeals committee.

(2) ~~((An eligibility or enrollment))~~ A decision made by an employer group regarding life insurance ~~((or))~~ LTD insurance, eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive may be appealed by submitting a notice of appeal to the PEBB appeals committee.

(3) The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(4) The notice of appeal from an employee or employee's dependent must be received by the PEBB appeals manager ~~((within))~~ no later than thirty days ~~((of))~~ after the date of the denial notice.

(5) The notice of appeal from a retiree, self-pay enrollee, or dependent of a retiree or self-pay enrollee must be received by the PEBB appeals manager ~~((within))~~ no later than sixty days ~~((of))~~ after the date of the denial notice.

(6) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(7) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good ((cause)) reason explaining the cause for the delay.

(8) Any appellant who disagrees with the decisions of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

#### NEW SECTION

**WAC 182-16-035 How can a subscriber appeal a decision regarding the administration of wellness incentive program requirements?** (1) Any subscriber aggrieved by a decision regarding the completion of the wellness incentive program requirements or request for a reasonable alternative to a wellness incentive program requirement may appeal that decision to the third-party administrator contracted to administer the PEBB wellness incentive program.

(2) Any subscriber who disagrees with a decision in response to an appeal filed with the third-party administrator that administers the wellness incentive program may appeal to the public employees benefits board (PEBB) appeals committee.

(a) The notice of appeal from an employee must be received by the PEBB appeals manager no later than thirty days after the date of the denial notice. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(b) The notice of appeal from a retiree or self-pay enrollee must be received by the PEBB appeals manager no later than sixty days after the date of the denial notice. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(3) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(4) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day

time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(5) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

**WAC 182-16-036 How can an ~~((enrollee))~~ employee appeal a decision regarding the administration of benefits offered under the state's salary reduction plan?** (1) Any ~~((enrollee))~~ employee who disagrees with a decision that denies enrollment in a benefit offered under the state's salary reduction plan may appeal that decision to the public employees benefits board (PEBB) appeals committee. The PEBB appeals manager must receive the notice of appeal no later than thirty days after the date of the denial notice by the PEBB program. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

(2) Any employee aggrieved by a decision regarding a claim for benefits under the medical flexible spending arrangement (FSA) and dependent care assistance program (DCAP) offered under the state's salary reduction plan may appeal that decision to the third-party administrator contracted to administer the plan by following the appeal process of the third-party administrator.

~~((2))~~ Any ~~((enrollee))~~ employee who disagrees with a decision in response to an appeal filed with the third-party administrator that administers the medical FSA and DCAP under the state's salary reduction plan may appeal to the ~~((public employees benefits board))~~ PEBB ~~((y))~~ appeals committee. The PEBB appeals manager must receive the notice of appeal ~~((within))~~ no later than thirty days ~~((of))~~ after the date of the appeal decision by the third-party administrator that administers the medical FSA and DCAP ~~((offered under the state's salary reduction plan))~~. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good ~~((cause))~~ reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

(3) Any ~~((enrollee))~~ employee aggrieved by a decision regarding the administration of the premium payment plan offered under the state's salary reduction plan may appeal that decision to the PEBB appeals committee. The PEBB appeals manager must receive the notice of appeal ~~((within))~~ no later than thirty days ~~((of))~~ after the date of the denial notice by the PEBB program. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good ~~((cause))~~ reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

**WAC 182-16-038 How can an entity or organization appeal a decision of the health care authority to deny an employer group application?** An entity or organization whose employer group application is denied by the authority may appeal the decision to the public employees benefits board (PEBB) appeals committee. For rules regarding eligible entities, see WAC 182-12-111. The PEBB appeals manager must receive the notice of appeal ~~((within))~~ no later than thirty days ~~((of))~~ after the date of the denial notice. The contents of the notice of appeal are to be provided in accordance with WAC 182-16-040.

(1) The PEBB appeals manager shall notify the appealing party in writing when the notice of appeal has been received.

(2) The PEBB appeals committee shall render a written decision to the appellant on the notice of appeal within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good ~~((cause))~~ reason explaining the cause for the delay.

(3) Any appealing party aggrieved with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

**WAC 182-16-050 How can an enrollee or entity request ~~((a))~~ an administrative hearing if aggrieved by a decision made by the public employees benefits board (PEBB) appeals committee?** (1) Any party aggrieved by a decision of the public employees benefits board (PEBB) appeals committee, may request an administrative hearing.

(2) The request must be made in writing to the PEBB appeals manager. The PEBB appeals manager must receive

the request for an administrative hearing (~~within~~) no later than thirty days of the date (~~of~~) after the written decision by the PEBB appeals committee.

~~(3) (The authority shall set the time and place of the hearing and give not less than twenty days notice to all parties.~~

~~(4))~~ The director, or his or her designee, shall preside at all hearings resulting from the filings of appeals under this ~~(chapter)~~ section.

~~((5))~~ (4) All hearings must be conducted in compliance with ~~(these rules)~~ WAC 182-16-050 through 182-16-110, chapter 34.05 RCW, and chapter 10-08 WAC (as applicable.

~~(6) Within ninety days after the hearing record is closed, the director or his or her designee shall render a decision which shall be the final decision of the authority. A copy of that decision shall be mailed to all parties), as described in WAC 182-16-010(2).~~

#### NEW SECTION

**WAC 182-16-052 Requirements to appear and represent a party in the administrative hearing process.** (1) All parties must provide the presiding officer and all other parties with their name, address, and telephone number.

(2) If the party who requested a hearing is represented by a party who is not an attorney admitted to practice in Washington state, the representative must provide the presiding officer and other parties with the representative's name, address, and telephone number. In cases involving confidential information, the nonattorney representative must provide the hearing representative with a signed, written consent permitting release to the nonattorney representative of personal health information protected by state or federal law.

(3) An attorney admitted to practice law in Washington state, who wishes to represent the party who requested a hearing, must file a written notice of appearance containing the attorney's name, address, and telephone number. The attorney must file a written notice of withdrawal of representation.

#### NEW SECTION

**WAC 182-16-055 Mailing address changes.** (1) The party who requested the hearing must tell the hearing representative and the presiding officer as soon as possible, when the party's mailing address changes.

(2) If that party does not notify the hearing representative and the presiding officer of a change in the party's mailing address and the presiding officer and hearing representative continue to mail notices and other important documents to the last known mailing address, the documents will be deemed received by the party.

#### NEW SECTION

**WAC 182-16-061 Presiding officers—Assignment, motions of prejudice, and disqualification.** (1) **Assignment:** A presiding officer will be assigned at least five business days before a hearing. A party may ask which presiding officer is assigned to a hearing by contacting the presiding officer's office listed on the notice of hearing. If requested by a party, the presiding officer's office must send the name of

the assigned presiding officer to all parties, by e-mail or in writing, at least five business days before the scheduled hearing date.

(2) **Motion of prejudice:** Any party requesting a different presiding officer may file a written motion of prejudice against the presiding officer assigned to the matter before the presiding officer rules on a discretionary issue in the case, admits evidence, or takes testimony.

(a) A motion of prejudice must include a declaration stating that a party does not believe the presiding officer can hear the case fairly. Copies of the motion must also be mailed to all parties listed on the notice of hearing.

(b) Any party's first motion of prejudice will be automatically granted. Any subsequent motion of prejudice made by a party may be granted or denied at the discretion of the presiding officer no later than seven days after receiving the motion.

(c) A party may make an oral motion of prejudice at the beginning of a hearing before the presiding officer rules on a discretionary issue in the matter, admits evidence, or takes testimony if:

(i) The presiding officer was not assigned at least five business days before the date of the hearing; or

(ii) The presiding officer was changed within five business days of the date of the hearing.

(3) **Disqualification:** A presiding officer may be disqualified from presiding over a hearing for bias, prejudice, conflict of interest, or ex parte contact with a party to the hearing.

(a) Any party may file a petition to disqualify a presiding officer pursuant to RCW 34.05.425. A petition to disqualify must be in writing and promptly mailed to all parties and the presiding officer upon discovering facts of possible grounds for disqualification.

(b) The presiding officer whose disqualification is requested will determine whether to grant the petition in a written order, stating facts and reasons for the determination. The presiding officer must mail the order no later than seven days after receiving the petition for disqualification.

#### NEW SECTION

**WAC 182-16-062 Authority of the presiding officer.**

(1) A presiding officer must hear and decide the issues de novo (anew) based on what is presented during a hearing and admitted into the record.

(2) A presiding officer has no inherent or common law powers, and is limited to those powers granted by the state constitution, statutes, or rules.

(3) A presiding officer may not decide that a rule is invalid or unenforceable. If the validity of a rule is raised during a hearing, the presiding officer may allow only argument to preserve the record for judicial review.

#### NEW SECTION

**WAC 182-16-064 Applicable rules and laws.** During a hearing, a presiding officer must first apply the applicable public employees benefits board (PEBB) program rules adopted in the Washington Administrative Code (WAC). If no PEBB program rule applies, the presiding officer must

decide the issue according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, regulations, significant decisions indexed as described in WAC 182-16-130, and court decisions.

#### NEW SECTION

**WAC 182-16-066 Burden of proof and presumptions.** (1) The burden of proof is a party's responsibility to provide evidence regarding disputed facts and persuade the presiding officer that a position is correct based on the standard of proof.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless stated otherwise in rules or law, the standard of proof in a hearing is a preponderance of the evidence, meaning that something is more likely to be true than not.

(3) Public officers and agencies are presumed to have properly performed their duties and acted in accordance with the law, unless substantial evidence to the contrary is presented. A party challenging this presumption bears the burden of proof.

#### NEW SECTION

**WAC 182-16-070 Calculating when a hearing deadline ends.** (1) When counting days to calculate when a hearing deadline ends under WAC 182-16-050 through 182-16-110:

(a) Do not include the day of the action, notice, or order. For example, if a hearing decision is mailed on Tuesday and the party has twenty-one calendar days to request a review, start counting the days with Wednesday.

(b) If the last day of the period is a Saturday, Sunday, or legal holiday, the deadline is the next business day.

(2) The deadline is 5:00 p.m. on the last day.

#### NEW SECTION

**WAC 182-16-071 Time requirements for notices mailed by the presiding officer.** (1) The presiding officer must mail a notice of a hearing to all parties and their representatives at least fourteen calendar days before the hearing date. The parties may agree to, but the presiding officer cannot impose, a shorter notice period.

(2) If a prehearing conference or dispositive motion hearing is scheduled, the presiding officer must mail a notice of the prehearing conference or dispositive motion hearing to the parties and their representatives at least seven business days before the date of the prehearing conference or dispositive motion hearing except:

(a) The presiding officer may change any scheduled hearing into a prehearing conference or dispositive motion hearing and provide less than seven business days' notice of the prehearing conference or dispositive motion hearing; and

(b) The presiding officer may give less than seven business days' notice if the only purpose of the prehearing conference is to consider whether to grant a continuance.

(3) The presiding officer must reschedule a hearing if necessary to comply with the notice requirements in this section.

#### NEW SECTION

**WAC 182-16-072 Hearing location.** (1) A presiding officer must be present at all hearings. Hearings may be held either in person or telephonically.

(a) A telephonic hearing is where all parties and the presiding officer are present by telephone.

(b) An in-person hearing is where the party that requested the hearing appears face-to-face with the presiding officer. The other parties can choose to appear either in person or by telephone, but cannot be ordered to appear in person.

(2) Whether a hearing is held in person or telephonically, the parties have the right to see all documents, hear all testimony, and question all witnesses.

(3) If a hearing is originally scheduled to be held in-person, the party that requested the hearing may ask the presiding officer to change the in-person hearing to a telephonic hearing. Once a telephonic hearing begins, the presiding officer may stop, reschedule, and change the telephonic hearing to an in-person hearing if any party makes such a request.

#### NEW SECTION

**WAC 182-16-073 Rescheduling and continuances.** (1) Any party may request the presiding officer to reschedule a hearing if a rule requires notice of a hearing and the amount of notice required was not provided.

(a) The presiding officer must reschedule the hearing under circumstances identified in this subsection (1) if requested by any party.

(b) The parties may agree to shorten the amount of notice required by any rule.

(2) Any party may request a continuance of a hearing either orally or in writing.

(a) Before contacting the presiding officer to request a continuance, the party seeking a continuance must contact the other parties, if possible, to find out if they will agree to a continuance.

(b) The party making the request for a continuance must let the presiding officer know whether the other parties agreed to the continuance. If the parties agree to a continuance, the presiding officer must grant the continuance. If the parties do not agree to a continuance, the presiding officer must schedule a prehearing conference in accordance with the requirements of WAC 182-16-071 to decide whether to grant the continuance.

(c) After granting a continuance, the presiding officer must mail a new hearing notice at least fourteen calendar days before the new hearing date unless the parties agree to a shorter time period.

(d) If the presiding officer denies the continuance request after a prehearing conference is held pursuant to (b) of this subsection, the presiding officer must mail a written order setting forth the basis for denying the continuance request and may proceed with the hearing on the originally scheduled hearing date.

NEW SECTION

**WAC 182-16-080 Determining if an administrative hearing right exists.** (1) A party has a right to a hearing only if a law or program rule gives that right. If the party is not sure whether a hearing right exists, they may request a hearing to protect their rights.

(2) The right to a hearing does not exist unless:

(a) The public employees benefits board (PEBB) appeals committee has issued a written decision under WAC 182-16-030 (2)(b), 182-16-032(7), 182-16-035(4), 182-16-036(1)(b), (3)(b), (4)(b), or 182-16-038(2); and

(b) A hearing of the PEBB appeals committee's written decision has been timely requested pursuant to WAC 182-16-050.

(3) If the hearing representative or the presiding officer questions the right to a hearing, the presiding officer must decide whether a hearing right exists, in a written ruling, prior to reviewing and ruling on any other issues.

(4) If the presiding officer decides a person or entity does not have a right to a hearing, the matter must be dismissed.

NEW SECTION

**WAC 182-16-081 Prehearing conferences.** (1) A prehearing conference is a formal proceeding conducted on the record by a presiding officer to prepare for a hearing.

(a) The presiding officer must record a prehearing conference using audio recording equipment.

(b) The presiding officer may conduct a prehearing conference in person, by telephone conference call, or in any other manner acceptable to the parties.

(2) Any party can request a prehearing conference. The presiding officer must grant each party's first request for a prehearing conference if it is filed with the presiding officer at least seven business days before the next scheduled hearing date. The presiding officer may grant requests for additional prehearing conferences.

(3) The party requesting the hearing must attend or participate in any scheduled prehearing conference. If the party requesting the hearing does not attend or participate in a scheduled prehearing conference, the presiding officer will enter an order of default dismissing the matter.

(4) During a prehearing conference the parties and the presiding officer may:

(a) Identify the issue(s) to be decided;

(b) Agree to the date, time, and place of any requested or necessary hearing(s);

(c) Identify accommodation and safety issues; or

(d) Set a deadline to exchange a proposed witness list and proposed exhibits before the hearing.

(5) After the prehearing conference ends, the presiding officer must enter a written order that recites the action taken at the prehearing conference, a case schedule outlining hearing dates and deadlines for exchanging witness lists and exhibits, and any other agreements reached by the parties.

(6) The presiding officer must mail the prehearing order to the parties at least fourteen calendar days before the next scheduled hearing.

(7) A party may object to the prehearing order by notifying the presiding officer in writing no later than ten days after

the mailing date of the order. The presiding officer must mail a written ruling on the objection.

(8) If no objection is made to the prehearing order, the order determines how the case will be conducted by the presiding officer, including whether a hearing will be in person or held by telephone conference, unless the presiding officer enters an amended prehearing conference order.

NEW SECTION

**WAC 182-16-082 Dispositive motions.** (1) A dispositive motion is a written motion that could dispose of one or all the issues in an administrative hearing request, such as a motion to dismiss or motion for summary judgment. The presiding officer may only consider written dispositive motions filed with the presiding officer.

(2) Any party may request a dispositive motion hearing by filing a written dispositive motion with the presiding officer and mailing a copy of the motion to all other parties. The presiding officer may also set a dispositive motion hearing, and request briefing from the parties, to address any possible dispositive issues the presiding officer believes must be addressed before the hearing.

(3) The deadline to mail a timely dispositive motion shall be ten calendar days before the scheduled hearing.

(4) Upon receiving a dispositive motion, a presiding officer:

(a) Must convert the scheduled hearing to a dispositive motion hearing when:

(i) The dispositive motion is timely filed with the presiding officer at least ten calendar days before the date of the hearing; and

(ii) The party filing the dispositive motion has not previously filed a dispositive motion.

(b) May schedule a dispositive motion hearing in all instances other than described in (a) of this subsection.

(5) The presiding officer may conduct the dispositive motion hearing in person or by telephone conference. For dispositive motion hearings scheduled to be held in person, the hearing representative may choose to attend and participate in person or by telephone conference call.

(6) The party requesting the dispositive motion hearing must attend and participate in the dispositive motion hearing. If the party requesting the hearing does not attend and participate in the dispositive motion hearing, the presiding officer will enter an order of default.

(7) During a dispositive motion hearing, the presiding officer can only consider the filed dispositive motion(s), any response to that motion(s), and argument on the motion(s). Prior to rescheduling any necessary hearings, the presiding officer must mail a written order on the dispositive motion(s).

(8) The presiding officer must mail the written order on the dispositive motion(s) to all parties no later than eighteen calendar days after the dispositive motion hearing is held. Orders on dispositive motions are subject to motions for reconsideration or petitions for judicial review pursuant to WAC 182-16-105 and 182-16-110.

NEW SECTION

**WAC 182-16-090 Orders of dismissal—Reinstating a hearing after an order of dismissal.** (1) An order of dismissal is an order from the presiding officer ending the matter. The order is entered because the party who requested the hearing withdrew the administrative hearing request, the appellant is no longer aggrieved, the presiding officer granted a dispositive motion dismissing the matter, or the presiding officer entered an order of default because the party who requested a hearing failed to attend or refused to participate in the hearing.

(2) The order of dismissal becomes a final order if no party files a request to vacate the order pursuant to subsections (3) through (7) of this section.

(3) If the presiding officer enters and mails an order dismissing the hearing, the party that originally requested the hearing may file a written request to vacate (set aside) the order of dismissal. Upon receipt of a request to vacate an order of dismissal, the presiding officer must schedule and mail notice of a prehearing conference in accordance with WAC 182-16-071. At the prehearing conference, the party asking that the order of dismissal be vacated has the burden to show good cause according to subsection (8) of this section for an order of dismissal to be vacated and the matter to be reinstated.

(4) The request to vacate an order of dismissal must be filed with the presiding officer and the other parties. The party requesting that an order of dismissal be vacated should specify in the request why the order of dismissal should be vacated.

(5) The request to vacate an order of dismissal must be filed with the presiding officer no later than twenty-one calendar days after the date the order of dismissal was entered. If no request is received within that deadline, the dismissal order becomes a final order and the public employees benefits board (PEBB) appeals committee decision will stand.

(6) If the presiding officer finds good cause, as described in subsection (8) of this section, for the order of dismissal to be vacated, the presiding officer must enter and mail a written order to the parties setting forth the findings of fact, conclusions of law, and reinstatement of the matter.

(7) If the order of dismissal is vacated, the presiding officer will conduct a hearing at which the parties may present argument and evidence about issues raised in the original request for hearing. The hearing may occur immediately following the prehearing conference on the request to vacate only if agreed to by the parties and the presiding officer, otherwise a hearing date must be scheduled by the presiding officer.

(8) Good cause is a substantial reason or legal justification for failing to appear, act, or respond to an action using the provisions of Superior Court Civil Rule 60 as a guideline. This good cause exception applies only to this section. This good cause exception does not apply to any other chapter(s) or section(s) in Title 182 WAC.

NEW SECTION

**WAC 182-16-091 Settlement agreements.** (1) If the parties reach a mutually agreeable solution the agreement must be in writing.

(2) Any written agreements will be entered into the record by either party for consideration by the presiding officer.

(3) If all of the issues are resolved by the written agreement, the presiding officer will enter and mail an order of dismissal.

(4) If all of the issues are not resolved by a written agreement, either party, or the presiding officer, may request a prehearing conference before a hearing on any remaining issues can occur.

NEW SECTION

**WAC 182-16-092 Withdrawing the request for an administrative hearing.** (1) The party who requested an administrative hearing of a public employees benefits board (PEBB) appeals committee decision may withdraw the administrative hearing request for any reason, and at any time, by contacting the hearing representative who will coordinate the withdrawal with the presiding officer.

(2) The request for withdrawal must generally be made in writing. An oral withdrawal by the appellant is permitted during a hearing when both the presiding officer and hearing representative are present.

(3) After a withdrawal request is received, the presiding officer must cancel any scheduled hearings and enter and mail a written order dismissing the case. If a hearing request is withdrawn, the party will not be able to request another administrative hearing on the same PEBB appeals committee decision.

(4) If a party withdraws an administrative hearing request, the order of dismissal may only be vacated (set aside) according to WAC 182-16-090.

NEW SECTION

**WAC 182-16-100 Final order deadline—Required information.** (1) Within ninety days after the hearing record is closed, the presiding officer shall mail a final order that shall be the final decision of the authority. The presiding officer shall mail a copy of the final order to all parties.

(2) The presiding officer must include the following information in the written final order:

(a) Identify the order as a final order of the public employees benefits board (PEBB) program;

(b) List the name and docket number of the case and the names of all parties and representatives;

(c) Enter findings of fact used to resolve the dispute based on the evidence admitted in the record;

(d) Explain why evidence is, or is not, credible when describing the weight given to evidence related to disputed facts;

(e) State the law that applies to the dispute;

(f) Apply the law to the facts of the case in the conclusions of law;

- (g) Discuss the reasons for the decision based on the facts and the law;
- (h) State the result and remedy ordered; and
- (i) Include any other information required by law or program rules.

#### NEW SECTION

**WAC 182-16-105 Motion for reconsideration and response—Process.** (1) Reconsideration means asking the presiding officer to reconsider his or her final order because the party believes the presiding officer made a mistake of law, mistake of fact, or clerical error.

(2) A motion for reconsideration must state in writing why the party wants the final order to be reconsidered.

(3) The other parties may respond to the motion for reconsideration. The response must state in writing why the final order should stand. Responses are optional. If a party chooses not to respond, that party will not be prejudiced because of that choice.

(4) Motions for reconsideration must be filed with the presiding officer who entered the final order.

(5) If a party files a motion for reconsideration:

(a) The presiding officer must receive the motion for reconsideration on or before the tenth business day after the final order was mailed.

(b) The party filing the motion must send copies of the motion to all other parties.

(c) Within five business days of receiving a motion for reconsideration, the presiding officer must mail to all parties a notice that provides the date the motion for reconsideration was received.

(d) Responses to a motion for reconsideration must be received by the presiding officer no later than seven business days after the presiding officer's notice in (c) of this subsection was mailed, or the response will not be considered.

(e) Responses to a motion for reconsideration must be mailed to all parties.

(6) If a party needs more time to file a motion for reconsideration or respond to a motion for reconsideration, the presiding officer may extend the deadline if the party makes a written request by the deadline.

#### NEW SECTION

**WAC 182-16-106 Decisions on motions for reconsideration.** (1) Unless the motion for reconsideration is denied as untimely filed under WAC 182-16-105 (5)(a), the same presiding officer who entered the final order, if reasonably available, will also dispose of the motion as well as any responses received.

(2) The decision on the motion for reconsideration must be in the form of a written order denying the motion, or granting the motion and issuing a new written final order.

(3) If the presiding officer does not send an order on the motion for reconsideration within twenty calendar days of the date of the notice described in WAC 182-16-105 (5)(c), the motion is deemed denied.

(4) If any party files a motion for reconsideration of the final order, the reconsideration process must be completed before any judicial review may be requested. However, the

filing of a petition for reconsideration is not required before requesting judicial review.

(5) An order denying a motion for reconsideration is not subject to judicial review.

#### NEW SECTION

**WAC 182-16-110 Judicial review of final order.** (1) Judicial review is the process of appealing a final order to a court.

(2) The party that requested the administrative hearing may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. The public employees benefits board (PEBB) program may not request judicial review.

(3) The party should consult RCW 34.05.510 through 34.05.598 for further details and requirements of the judicial review process.

#### NEW SECTION

**WAC 182-16-130 Index of significant decisions.** (1) A final decision may be relied upon, used, or cited as precedent by a party if the final order has been indexed in the authority's index of significant decisions in accordance with RCW 34.05.473 (1)(b).

(2) The index of significant decisions is available to the public at the health care authority (HCA) internet page. As decisions are indexed they will be linked on this page. For additional information on how to obtain a copy of the index, contact the HCA hearing representative.

(3) A final decision published in the index of significant decisions may be removed from the index when:

(a) A precedential published decision entered by the court of appeals or the supreme court reverses an indexed final decision; or

(b) HCA determines that the indexed final decision is no longer precedential due to changes in statute, rule or policy.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-16-060 Index of significant decisions.

#### **WSR 14-16-079**

#### **PROPOSED RULES**

#### **GAMBLING COMMISSION**

[Filed August 1, 2014, 10:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-070.

Title of Rule and Other Identifying Information: WAC 230-05-020 Charitable or nonprofit organization fees, 230-05-025 Commercial stimulant fees, 230-05-030 Fees for other businesses, and 230-05-035 Individual license fees.

Hearing Location(s): Comfort Inn Conference Center, 1620 74th Avenue S.W., Tumwater, WA 98501, (360) 352-0691, on September 11 or 12, 2014, at 9:00 a.m or 1:00 p.m.

Note: Meeting dates and times are tentative. Visit our web site at [www.wsgc.wa.gov](http://www.wsgc.wa.gov) and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: September 11 or 12, 2014.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail [Susan.Newer@wsgc.wa.gov](mailto:Susan.Newer@wsgc.wa.gov), fax (360) 486-3625, by September 1, 2014.

Assistance for Persons with Disabilities: Contact Michelle Rancour by September 1, 2014, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Two alternative fee increases were filed for further discussion at the July 2014 commission meeting.

- **Alternative #1:** Six percent fee increase effective November 1, 2014.
- **Alternative #2:** Four percent fee increase effective November 1, 2014, and a two percent increase effective November 1, 2015.

The commission is a nonappropriated agency. RCW 9.46.070(5) requires the commission to set fees to generate funds necessary to cover all costs of licensing and enforcement. Fees for all licensees were last increased effective January 1, 2008.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required under RCW 34.05.310 (4)(f).

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

August 1, 2014  
Susan Newer  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 13-19-056, filed 9/16/13, effective 10/17/13)

**WAC 230-05-020 Charitable or nonprofit organization fees.** Bona fide charitable and nonprofit organizations must pay the following fees to us when applying for gambling licenses, permits, miscellaneous changes, or inspection services:

1. Amusement games

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	\$((58)) <u>61</u>
Class B	Up to \$10,000	\$((58)) <u>61</u>
Class C	Up to \$25,000	\$((319)) <u>338</u>
Class D	Up to \$50,000	\$((513)) <u>544</u>
Class E	Over \$50,000	\$((894)) <u>948</u>

2. Bingo

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$25,000	\$((58)) <u>61</u>	\$1,000
Class B	Up to \$75,000	\$((185)) <u>196</u>	\$1,000
Class C	Up to \$150,000	\$((380)) <u>403</u>	\$2,000
Class D	Up to \$350,000	\$((1,026)) <u>1,088</u>	\$4,000
Class E	Up to \$650,000	\$((1,732)) <u>1,836</u>	\$8,000
Class F	Up to \$1,500,000	\$((3,486)) <u>3,695</u>	\$15,000
Class G	Up to \$2,000,000	\$((5,028)) <u>5,330</u>	\$23,000
Class H	Up to \$3,000,000	\$((6,722)) <u>7,125</u>	\$30,000
Class I	Up to \$4,000,000	\$((8,400)) <u>8,904</u>	\$38,000
Class J	Up to \$5,000,000	\$((10,078)) <u>10,683</u>	\$45,000
Class K	Up to \$6,000,000	\$((11,306)) <u>11,984</u>	\$53,000
Class L	Up to \$7,000,000	\$((12,922)) <u>13,697</u>	\$60,000
Class M	Up to \$8,000,000	\$((14,542)) <u>15,415</u>	\$65,000
Class N	Up to \$9,000,000	\$((15,818)) <u>16,767</u>	\$70,000
Class O	Up to \$10,000,000	\$((17,454)) <u>18,501</u>	\$75,000
Class P	Up to \$11,000,000	\$((19,090)) <u>20,235</u>	\$80,000
Class Q	Up to \$12,000,000	\$((22,908)) <u>24,282</u>	\$85,000
Class R	Up to \$13,000,000	\$((26,180)) <u>27,751</u>	\$90,000
Class S	Up to \$14,000,000	\$((29,454)) <u>31,221</u>	\$95,000

\*See chapter 230-06 WAC, Exceeding license class.

3. Card games

License	Description	Fee
Class A	Nonhouse-banked - fee to play	\$((644)) <u>679</u>
Class B	Limited card games - hearts, rummy, pitch, pinochle, and cribbage - fee to play	\$((185)) <u>196</u>
Class C	Tournament only - no more than thirty consecutive days per tournament	\$((58)) <u>61</u>
Class D	Nonhouse-banked - no fee to play	\$((58)) <u>61</u>

4. Fund-raising event

License	Description	Fee
Class A	One event - not more than 24 consecutive hours	
	First time applicant	\$((380)) <u>403</u>
	Previously licensed applicant	\$((223)) <u>236</u>
Class B	One event - not more than 72 consecutive hours	
	First time applicant	\$((644)) <u>679</u>
	Previously licensed applicant	\$((393)) <u>417</u>
Class C	Additional participant in joint event - not lead organization	\$((185)) <u>196</u>
Class D	Limited fund-raising event - one event - not more than six consecutive hours	
	First time applicant	\$((167)) <u>177</u>
	Previously licensed applicant	\$((111)) <u>118</u>
Class E	Fund-raising event equipment distributor - rents or leases equipment no more than ten times per year	\$((253)) <u>268</u>
Class F	Fund-raising event equipment distributor - rents or leases equipment more than ten times per year	\$((644)) <u>679</u>

5. Punch boards/pull-tabs

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	\$((611)) <u>648</u>	\$5,000
Class B	Up to \$100,000	\$((1,090)) <u>1,155</u>	\$5,000
Class C	Up to \$200,000	\$((2,062)) <u>2,186</u>	\$10,000
Class D	Up to \$300,000	\$((2,998)) <u>3,178</u>	\$10,000
Class E	Up to \$400,000	\$((3,874)) <u>4,106</u>	\$10,000
Class F	Up to \$500,000	\$((4,676)) <u>4,957</u>	\$10,000
Class G	Up to \$600,000	\$((5,420)) <u>5,745</u>	\$10,000
Class H	Up to \$700,000	\$((6,100)) <u>6,466</u>	\$10,000

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class I	Up to \$800,000	\$((6,722)) <u>7,125</u>	\$10,000
Class J	Up to \$1,000,000	\$((7,620)) <u>8,077</u>	\$20,000
Class K	Up to \$1,250,000	\$((8,460)) <u>8,968</u>	\$25,000
Class L	Up to \$1,500,000	\$((9,240)) <u>9,794</u>	\$25,000
Class M	Up to \$1,750,000	\$((9,880)) <u>10,473</u>	\$25,000
Class N	Up to \$2,000,000	\$((10,466)) <u>11,094</u>	\$25,000
Class O	Up to \$2,500,000	\$((11,500)) <u>12,190</u>	\$30,000
Class P	Up to \$3,000,000	\$((12,218)) <u>12,951</u>	\$35,000
Class Q	Up to \$4,000,000	\$((14,400)) <u>15,264</u>	\$40,000
Class R	Up to \$5,000,000	\$((16,362)) <u>17,344</u>	\$50,000
Class S	Up to \$6,000,000	\$((18,544)) <u>19,657</u>	\$60,000
Class T	Up to \$7,000,000	\$((20,728)) <u>21,972</u>	\$70,000
Class U	Up to \$8,000,000	\$((22,908)) <u>24,282</u>	\$80,000
Class V	Over \$8,000,000	\$((25,090)) <u>26,595</u>	\$80,000

\*See chapter 230-06 WAC, Exceeding license class.

6. Raffles

License	Annual Gross Gambling Receipts	Fee
Class A	Up to \$5,000	\$((58)) <u>61</u>
Class B	Up to \$10,000	\$((185)) <u>196</u>
Class C	Up to \$25,000	\$((380)) <u>403</u>
Class D	Up to \$50,000	\$((644)) <u>679</u>
Class E	Up to \$75,000	\$((1,026)) <u>1,088</u>
Class F	Over \$75,000	\$((1,540)) <u>1,632</u>

7. Enhanced raffles

License	Fee
Annual	\$((6,000)) <u>6,360</u>
Additional fee per enhanced raffle	\$((7,800)) <u>8,268</u>

**8. Combination license**

License	Description	Fee
Class A	Allows gross gambling receipts of up to \$25,000 from bingo, \$7,500 from raffles, and \$7,500 from amusement games, not to exceed \$30,000 combined gross gambling receipts from all such activities. Allows Class D card games.	<del>\$(115))</del> 122
Class B	Allows gross gambling receipts of up to \$60,000 from bingo, \$15,000 from raffles, and \$15,000 from amusement games, not to exceed \$75,000 combined gross gambling receipts from all such activities. Allows Class D card games.	<del>\$(300))</del> 318
Class C	Allows gross gambling receipts of up to \$125,000 from bingo, \$30,000 from raffles, and \$30,000 from amusement games, not to exceed \$150,000 combined gross gambling receipts from all such activities. Allows Class D card games.	<del>\$(696))</del> 738

**9. Special property bingo**

Once annually	<del>\$(27))</del> 29
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**10. Permits**

Recreational gaming activity	<del>\$(58))</del> 61
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**11. Changes**

Type	Fee
Name	<del>\$(27))</del> 29
Location	<del>\$(27))</del> 29
Fund-raising event date or time	<del>\$(27))</del> 29
License class	<del>\$(27))</del> 29
Duplicate license	<del>\$(27))</del> 29

**12. Other fees**

Type	Fee
Replacement identification stamps	<del>\$(27))</del> 29
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus <del>\$(26))</del> 28
Review, inspection and/or evaluation of equipment, paraphernalia, services, or schemes	Deposit and fees as required

**13. Two-part payment plan participation**

Annual participation	<del>\$(27))</del> 29
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AMENDATORY SECTION (Amending WSR 07-23-083, filed 11/20/07, effective 1/1/08)

**WAC 230-05-025 Commercial stimulant fees.** All commercial stimulant license applicants must pay the following fees to us when applying for gambling licenses:

**1. Card games - Nonhouse-banked**

License	Description	Fee
<b>Class B</b>	Up to five tables of limited card games - hearts, rummy, pitch, pinochle, and/or cribbage - fee to play	<del>\$(189))</del> 200
<b>Class C</b>	Tournament only, no more than thirty consecutive days per tournament	
C-5	Up to five tables	<del>\$(189))</del> 200
C-10	Up to ten tables	<del>\$(346))</del> 367
C-15	Up to fifteen tables	<del>\$(576))</del> 611
<b>Class D</b>	Up to five tables - no fee to play	<del>\$(59))</del> 63
<b>Class E</b>	Fee to play	
E-1	One table only	<del>\$(460))</del> 488
E-2	Up to two tables	<del>\$(792))</del> 840
E-3	Up to three tables	<del>\$(1,318))</del> 1,397
E-4	Up to four tables	<del>\$(2,644))</del> 2,803
E-5	Up to five tables	<del>\$(3,980))</del> 4,219
Additional tables	Per table - up to a maximum of fifteen tables	<del>\$(1,152))</del> 1,221
<b>Class F</b>	Endorsement/upgrade of Class E includes permission to use alternative fee collections and use of player-supported jackpots	<del>\$(1,732))</del> 1,836

**2. Card games - House-banked**

All tables within a card room operating any house-banked card game must be licensed under this license class.

License	Fee
Annual	<del>\$(6,944))</del> 7,361
Additional fee per table - up to fifteen tables	<del>\$(1,732))</del> 1,836

**3. Punch boards and pull-tabs**

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	<del>\$(628))</del> 666	\$5,000
Class B	Up to \$100,000	<del>\$(1,122))</del> 1,189	\$5,000
Class C	Up to \$200,000	<del>\$(2,116))</del> 2,243	\$10,000

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class D	Up to \$300,000	\$((3,080)) <u>3,265</u>	\$10,000
Class E	Up to \$400,000	\$((3,980)) <u>4,219</u>	\$10,000
Class F	Up to \$500,000	\$((4,806)) <u>5,094</u>	\$10,000
Class G	Up to \$600,000	\$((5,570)) <u>5,904</u>	\$10,000
Class H	Up to \$700,000	\$((6,270)) <u>6,646</u>	\$10,000
Class I	Up to \$800,000	\$((6,906)) <u>7,320</u>	\$10,000
Class J	Up to \$1,000,000	\$((7,832)) <u>8,302</u>	\$20,000
Class K	Up to \$1,250,000	\$((8,692)) <u>9,214</u>	\$25,000
Class L	Up to \$1,500,000	\$((9,494)) <u>10,064</u>	\$25,000
Class M	Up to \$1,750,000	\$((10,156)) <u>10,765</u>	\$25,000
Class N	Up to \$2,000,000	\$((10,756)) <u>11,401</u>	\$25,000
Class O	Up to \$2,500,000	\$((11,820)) <u>12,529</u>	\$30,000
Class P	Up to \$3,000,000	\$((12,218)) <u>12,951</u>	\$35,000
Class Q	Up to \$4,000,000	\$((14,400)) <u>15,264</u>	\$40,000
Class R	Up to \$5,000,000	\$((16,362)) <u>17,344</u>	\$50,000
Class S	Up to \$6,000,000	\$((18,544)) <u>19,657</u>	\$60,000
Class T	Up to \$7,000,000	\$((20,728)) <u>21,972</u>	\$70,000
Class U	Up to \$8,000,000	\$((22,908)) <u>24,282</u>	\$80,000
Class V	Over \$8,000,000	\$((25,090)) <u>26,595</u>	\$80,000

\*See chapter 230-06 WAC, Exceeding license class.

**AMENDATORY SECTION** (Amending WSR 13-19-056, filed 9/16/13, effective 10/17/13)

**WAC 230-05-030 Fees for other businesses.** All other business license applicants must pay the following fees to us when applying for gambling licenses, miscellaneous changes, or inspection services:

**1. Commercial amusement games**

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	*\$((327/\$150)) <u>347/\$159</u>
Class B	Up to \$50,000	\$((460)) <u>488</u>
Class C	Up to \$100,000	\$((1,184)) <u>1,255</u>

License	Annual Gross Gambling Receipts	Fee
Class D	Up to \$250,000	\$((2,644)) <u>2,803</u>
Class E	Up to \$500,000	\$((4,640)) <u>4,918</u>
Class F	Up to \$1,000,000	\$((7,968)) <u>8,446</u>
Class G	Over \$1,000,000	\$((9,970)) <u>10,568</u>

\* We reduce the license fee by \$177 when you apply for additional licenses at the same business premises, apply for multiple licenses at the same business premises, or a licensee is renewing an annual license.

**2. Distributor**

License	Annual Gross Sales	Fee
Class A	Nonpunch board/pull-tab only	\$((659)) <u>699</u>
Class B	Up to \$250,000	\$((1,318)) <u>1,397</u>
Class C	Up to \$500,000	\$((1,980)) <u>2,099</u>
Class D	Up to \$1,000,000	\$((2,644)) <u>2,803</u>
Class E	Up to \$2,500,000	\$((3,446)) <u>3,653</u>
Class F	Over \$2,500,000	\$((4,242)) <u>4,497</u>

**3. Fund-raising event equipment distributor**

License	Description	Fee
Class A	Rents or leases equipment for fund-raising event or recreational gaming activity up to 10 times per year.	\$((260)) <u>276</u>
Class B	Rents or leases equipment for fund-raising event or recreational gaming activity more than 10 times per year.	\$((659)) <u>699</u>

**4. Gambling service supplier**

License	Fee
Annual	\$((687)) <u>728</u>
Financing, consulting, and management contract review	\$((143)) <u>152</u>

**5. Linked bingo prize provider**

License	Fee
Annual	\$((4,414)) <u>4,679</u>

**6. Call centers for enhanced raffles**

License	Fee
Annual	\$((4,500)) <u>4,770</u>

**7. Manufacturer**

License	Annual Gross Sales	Fee
Class A	Pull-tab dispensing devices only	\$((659)) <u>699</u>
Class B	Up to \$250,000	\$((1,318)) <u>1,397</u>
Class C	Up to \$500,000	\$((1,980)) <u>2,099</u>
Class D	Up to \$1,000,000	\$((2,644)) <u>2,803</u>
Class E	Up to \$2,500,000	\$((3,446)) <u>3,653</u>
Class F	Over \$2,500,000	\$((4,242)) <u>4,497</u>

**8. Permits**

Type	Description	Fee
Agricultural fair	One location and event only	\$((27)) <u>29</u>
Agricultural fair annual permit	Annual permit for specified different events and locations	\$((189)) <u>200</u>
Recreational gaming activity		\$((59)) <u>63</u>
Manufacturer's special sales permit		\$((211)) <u>224</u>
Punch board and pull-tab service business permit	Initial application fee	\$((236)) <u>250</u>
Punch board and pull-tab service business permit	Renewal	\$((56)) <u>59</u>

**9. Changes**

Application	Description	Fee
Name		\$((27)) <u>29</u>
Location		\$((27)) <u>29</u>
Business classification	Same owners	\$((59)) <u>63</u>
Exceeding license class	New class fee, less previous fee paid, plus	\$((27)) <u>29</u>
Duplicate license		\$((27)) <u>29</u>
Corporate stock/limited liability company shares/units		\$((59)) <u>63</u>
License transfers		\$((59)) <u>63</u>

**10. Other fees**

Type	Fee
Defective punch board/pull-tab cost recovery fees	Up to \$100

Type	Fee
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$((27)) <u>29</u>
Review of gambling equipment, supplies, services, or games	Cost reimbursement

**11. Identification stamps**

Type	Fee
<b>(a) Punch boards and pull-tabs</b>	
(i) Standard	Wagers fifty cents and below \$((28)) <u>.30</u>
	Wagers over fifty cents \$((11)) <u>1.18</u>
(ii) Progressive jackpot pull-tab series	Per series \$((11.19)) <u>11.86</u>
(iii) Pull-tab series with carry-over jackpots and cumulative prize pool pull-tab series	Per series \$((11)) <u>1.18</u>
<b>(b) Pull-tab dispensing devices</b>	
(i) Mechanical and electro-mechanical	\$((28)) <u>.30</u>
(ii) Electronic	Dispensing devices that require initial and ongoing evaluation of electronic components or functions, such as reading encoded data on pull-tabs, accounting for income or prizes \$((112.04)) <u>118.76</u> annually
Replacement of identification stamps	\$((26)) <u>.28</u>
<b>(c) Disposable bingo cards</b>	
(i) Single game sets of individual cards or sheets of cards	\$((28)) <u>.30</u>
(ii) Multigame card packets	\$((1.22)) <u>1.29</u>
(iii) Cards used to play for linked bingo prizes	Fee per 250 cards \$((.44)) <u>.47</u>
(iv) Cards used to play for linked bingo prizes	Fee per 5,000 cards \$((8.96)) <u>9.50</u>
<b>(d) Coin or token-activated amusement games</b>	
Annually - operated at any Class A amusement game license location	\$((28.00)) <u>29.68</u>
<b>(e) Electronic bingo card daubers</b>	
Annual	\$((11.19)) <u>11.86</u>
<b>(f) Electronic card facsimile table</b>	
Annual	\$((381.50)) <u>404.39</u>

**12. Two-part payment plan participation**

Annual participation	\$((27)) <u>29</u>
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AMENDATORY SECTION (Amending WSR 13-19-056, filed 9/16/13, effective 10/17/13)

**WAC 230-05-035 Individuals license fees.** Individuals must pay the following fees to us when they apply for gambling licenses, permits, miscellaneous changes:

**1. Charitable or nonprofit gambling manager**

License	Fee
Original	\$((185)) <u>196</u>
Renewal	\$((88)) <u>93</u>
Change of employer	\$((88)) <u>93</u>

**2. Linked bingo prize provider representative**

License	Fee
Original	\$((260)) <u>276</u>
Renewal	\$((158)) <u>167</u>

**3. Commercial gambling manager**

License	Fee
Original	\$((189)) <u>200</u>
Renewal	\$((90)) <u>95</u>
Change of employer	\$((90)) <u>95</u>

**4. Distributor's or gambling services supplier's representative**

License	Fee
Original	\$((260)) <u>276</u>
Renewal	\$((158)) <u>167</u>

**5. Representatives for manufacturers or call centers for enhanced raffles**

License	Fee
Original	\$((260)) <u>276</u>
Renewal	\$((158)) <u>167</u>

**6. Public card room employee**

License	Fee
<b>Class A</b> - Performs card room employee duties in a Class E card room	

License	Fee
Original	\$((189)) <u>200</u>
Renewal	\$((90)) <u>95</u>
<b>Class B</b> - Performs card room employee duties in enhanced and house-banked card rooms	
Original, in-state	\$((258)) <u>273</u>
Original, out-of-state	\$((320)) <u>339</u>
Renewal	\$((158)) <u>167</u>
Transfer/additional employee/conversion/emergency waiver request	\$((64)) <u>65</u>

**7. Other fees**

Change of name	\$((27)) <u>29</u>
Duplicate license	\$((27)) <u>29</u>

**8. Military personnel returning from service**

If a license expires while an individual is on active military service, the individual may apply to have their license reissued at the renewal fee. The application must be received within six months after completing their active military service. The applicant must provide evidence of the completion date of active military service.

**ALTERNATIVE 2**

AMENDATORY SECTION (Amending WSR 13-19-056, filed 9/16/13, effective 10/17/13)

**WAC 230-05-020 Charitable or nonprofit organization fees.** Bona fide charitable and nonprofit organizations must pay the following fees to us when applying for gambling licenses, permits, miscellaneous changes, or inspection services:

**1. Amusement games**

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014	Fee effective November 1, 2015
Class A	Premises only	\$((58)) <u>60</u>	\$61
Class B	Up to \$10,000	\$((58)) <u>60</u>	\$61
Class C	Up to \$25,000	\$((319)) <u>332</u>	\$339
Class D	Up to \$50,000	\$((513)) <u>534</u>	\$545
Class E	Over \$50,000	\$((894)) <u>930</u>	\$949

2. Bingo

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014	Fee effective November 1, 2015	One Time Variance*
Class A	Up to \$25,000	\$((58)) 60	\$61	\$1,000
Class B	Up to \$75,000	\$((185)) 192	\$196	\$1,000
Class C	Up to \$150,000	\$((380)) 395	\$403	\$2,000
Class D	Up to \$350,000	\$((1,026)) 1,067	\$1,088	\$4,000
Class E	Up to \$650,000	\$((1,732)) 1,801	\$1,837	\$8,000
Class F	Up to \$1,500,000	\$((3,486)) 3,625	\$3,698	\$15,000
Class G	Up to \$2,000,000	\$((5,028)) 5,229	\$5,334	\$23,000
Class H	Up to \$3,000,000	\$((6,722)) 6,991	\$7,131	\$30,000
Class I	Up to \$4,000,000	\$((8,400)) 8,736	\$8,911	\$38,000
Class J	Up to \$5,000,000	\$((10,078)) 10,481	\$10,691	\$45,000
Class K	Up to \$6,000,000	\$((11,306)) 11,758	\$11,993	\$53,000
Class L	Up to \$7,000,000	\$((12,922)) 13,439	\$13,708	\$60,000
Class M	Up to \$8,000,000	\$((14,542)) 15,124	\$15,426	\$65,000
Class N	Up to \$9,000,000	\$((15,818)) 16,451	\$16,780	\$70,000
Class O	Up to \$10,000,000	\$((17,454)) 18,152	\$18,515	\$75,000
Class P	Up to \$11,000,000	\$((19,090)) 19,854	\$20,251	\$80,000
Class Q	Up to \$12,000,000	\$((22,908)) 23,824	\$24,300	\$85,000
Class R	Up to \$13,000,000	\$((26,180)) 27,227	\$27,772	\$90,000
Class S	Up to \$14,000,000	\$((29,454)) 30,632	\$31,245	\$95,000

\*See chapter 230-06 WAC, Exceeding license class.

3. Card games

License	Description	Fee effective November 1, 2014	Fee effective November 1, 2015
Class A	Nonhouse-banked - fee to play	\$((64)) 667	\$680
Class B	Limited card games - hearts, rummy, pitch, pinochle, and cribbage - fee to play	\$((185)) 192	\$196
Class C	Tournament only - no more than thirty consecutive days per tournament	\$((58)) 60	\$61

License	Description	Fee effective November 1, 2014	Fee effective November 1, 2015
Class D	Nonhouse-banked - no fee to play	\$((58)) 60	\$61

4. Fund-raising event

License	Description	Fee effective November 1, 2014	Fee effective November 1, 2015
Class A	One event - not more than 24 consecutive hours		
	First time applicant	\$((380)) 395	\$403
	Previously licensed applicant	\$((223)) 232	\$237
Class B	One event - not more than 72 consecutive hours		
	First time applicant	\$((644)) 667	\$680
	Previously licensed applicant	\$((393)) 409	\$417
Class C	Additional participant in joint event - not lead organization	\$((185)) 192	\$196
Class D	Limited fund-raising event - one event - not more than six consecutive hours		
	First time applicant	\$((167)) 174	\$177
	Previously licensed applicant	\$((111)) 115	\$117
Class E	Fund-raising event equipment distributor - rents or leases equipment no more than ten times per year	\$((253)) 263	\$268
Class F	Fund-raising event equipment distributor - rents or leases equipment more than ten times per year	\$((644)) 667	\$680

5. Punch boards/pull-tabs

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014	Fee effective November 1, 2015	One Time Variance*
Class A	Up to \$50,000	\$((611)) 635	\$648	\$5,000
Class B	Up to \$100,000	\$((1,090)) 1,134	\$1,157	\$5,000
Class C	Up to \$200,000	\$((2,062)) 2,144	\$2,187	\$10,000
Class D	Up to \$300,000	\$((2,998)) 3,118	\$3,180	\$10,000
Class E	Up to \$400,000	\$((3,874)) 4,029	\$4,110	\$10,000
Class F	Up to \$500,000	\$((4,676)) 4,863	\$4,960	\$10,000
Class G	Up to \$600,000	\$((5,420)) 5,637	\$5,750	\$10,000
Class H	Up to \$700,000	\$((6,100)) 6,344	\$6,471	\$10,000

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014	Fee effective November 1, 2015	One Time Variance*
Class I	Up to \$800,000	\$((6,722)) 6,991	\$7,131	\$10,000
Class J	Up to \$1,000,000	\$((7,620)) 7,925	\$8,084	\$20,000
Class K	Up to \$1,250,000	\$((8,460)) 8,798	\$8,974	\$25,000
Class L	Up to \$1,500,000	\$((9,240)) 9,610	\$9,802	\$25,000
Class M	Up to \$1,750,000	\$((9,880)) 10,275	\$10,481	\$25,000
Class N	Up to \$2,000,000	\$((10,466)) 10,885	\$11,103	\$25,000
Class O	Up to \$2,500,000	\$((11,500)) 11,960	\$12,199	\$30,000
Class P	Up to \$3,000,000	\$((12,218)) 12,707	\$12,961	\$35,000
Class Q	Up to \$4,000,000	\$((14,400)) 14,976	\$15,276	\$40,000
Class R	Up to \$5,000,000	\$((16,362)) 17,016	\$17,356	\$50,000
Class S	Up to \$6,000,000	\$((18,544)) 19,286	\$19,672	\$60,000
Class T	Up to \$7,000,000	\$((20,728)) 21,557	\$21,988	\$70,000
Class U	Up to \$8,000,000	\$((22,908)) 23,824	\$24,300	\$80,000
Class V	Over \$8,000,000	\$((25,090)) 26,094	\$26,616	\$80,000

\*See chapter 230-06 WAC, Exceeding license class.

6. Raffles

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014	Fee effective November 1, 2015
Class A	Up to \$5,000	\$((58)) 60	\$61
Class B	Up to \$10,000	\$((185)) 192	\$196
Class C	Up to \$25,000	\$((380)) 395	\$403
Class D	Up to \$50,000	\$((641)) 667	\$680
Class E	Up to \$75,000	\$((1,026)) 1,067	\$1,088
Class F	Over \$75,000	\$((1,540)) 1,601	\$1,633

7. Enhanced raffles

License	Fee effective November 1, 2014	Fee effective November 1, 2015
Annual	\$((6,000)) 6,240	\$6,365

License	Fee effective November 1, 2014	Fee effective November 1, 2015
Additional fee per enhanced raffle	\$((7,800)) 8,112	\$8,274

8. Combination license

License	Description	Fee effective November 1, 2014	Fee effective November 1, 2015
Class A	Allows gross gambling receipts of up to \$25,000 from bingo, \$7,500 from raffles, and \$7,500 from amusement games, not to exceed \$30,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$((115)) 120	\$122
Class B	Allows gross gambling receipts of up to \$60,000 from bingo, \$15,000 from raffles, and \$15,000 from amusement games, not to exceed \$75,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$((300)) 312	\$318
Class C	Allows gross gambling receipts of up to \$125,000 from bingo, \$30,000 from raffles, and \$30,000 from amusement games, not to exceed \$150,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$((696)) 724	\$738

9. Special property bingo

	Fee effective November 1, 2014	Fee effective November 1, 2015
Once annually	\$((27)) 28	\$29

10. Permits

	Fee effective November 1, 2014	Fee effective November 1, 2015
Recreational gaming activity	\$((58)) 60	\$61

11. Changes

Type	Fee effective November 1, 2014	Fee effective November 1, 2015
Name	\$((27)) 28	\$29

Type	Fee effective November 1, 2014	Fee effective November 1, 2015
Location	\$((27)) 28	\$29
Fund-raising event date or time	\$((27)) 28	\$29
License class	\$((27)) 28	\$29
Duplicate license	\$((27)) 28	\$29

12. Other fees

Type	Fee effective November 1, 2014	Fee effective November 1, 2015
Replacement identification stamps	\$((27)) 28	\$29
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$((26)) 27	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$28
Review, inspection and/or evaluation of equipment, paraphernalia, services, or schemes	Deposit and fees as required	Deposit and fees as required

13. Two-part payment plan participation

	Fee effective November 1, 2014	Fee effective November 1, 2015
Annual participation	\$((27)) 28	\$29

AMENDATORY SECTION (Amending WSR 07-23-083, filed 11/20/07, effective 1/1/08)

WAC 230-05-025 Commercial stimulant fees. All commercial stimulant license applicants must pay the following fees to us when applying for gambling licenses:

1. Card games - Nonhouse-banked

License	Description	Fee effective November 1, 2014	Fee effective November 1, 2015
Class B	Up to five tables of limited card games - hearts, rummy, pitch, pinochle, and/or cribbage - fee to play	\$((489)) 197	\$201
Class C	Tournament only, no more than thirty consecutive days per tournament		
C-5	Up to five tables	\$((489)) 197	\$201

License	Description	Fee effective November 1, 2014	Fee effective November 1, 2015
C-10	Up to ten tables	\$((346)) 360	\$367
C-15	Up to fifteen tables	\$((576)) 599	\$611
Class D	Up to five tables - no fee to play	\$((59)) 61	\$62
Class E	Fee to play		
E-1	One table only	\$((460)) 478	\$488
E-2	Up to two tables	\$((792)) 824	\$840
E-3	Up to three tables	\$((1,318)) 1,371	\$1,398
E-4	Up to four tables	\$((2,644)) 2,750	\$2,805
E-5	Up to five tables	\$((3,980)) 4,139	\$4,222
Additional tables	Per table - up to a maximum of fifteen	\$((1,152)) 1,198	\$1,222
Class F	Endorsement/upgrade of Class E includes permission to use alternative fee collections and use of player-supported jackpots	\$((1,732)) 1,801	\$1,837

2. Card games - House-banked

All tables within a card room operating any house-banked card game must be licensed under this license class.

License	Fee effective November 1, 2014	Fee effective November 1, 2015
Annual	\$((6,944)) 7,222	\$7,366
Additional fee per table - up to fifteen tables	\$((1,732)) 1,801	\$1,837

3. Punch boards and pull-tabs

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014	Fee effective November 1, 2015	One Time Variance*
Class A	Up to \$50,000	\$((628)) 653	\$666	\$5,000
Class B	Up to \$100,000	\$((1,122)) 1,167	\$1,190	\$5,000
Class C	Up to \$200,000	\$((2,116)) 2,201	\$2,245	\$10,000
Class D	Up to \$300,000	\$((3,080)) 3,203	\$3,267	\$10,000
Class E	Up to \$400,000	\$((3,980)) 4,139	\$4,222	\$10,000
Class F	Up to \$500,000	\$((4,806)) 4,998	\$5,098	\$10,000

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014	Fee effective November 1, 2015	One Time Variance*
Class G	Up to \$600,000	\$((5,570)) 5,792	\$5,908	\$10,000
Class H	Up to \$700,000	\$((6,270)) 6,521	\$6,651	\$10,000
Class I	Up to \$800,000	\$((6,906)) 7,182	\$7,325	\$10,000
Class J	Up to \$1,000,000	\$((7,832)) 8,145	\$8,308	\$20,000
Class K	Up to \$1,250,000	\$((8,692)) 9,040	\$9,221	\$25,000
Class L	Up to \$1,500,000	\$((9,494)) 9,874	\$10,071	\$25,000
Class M	Up to \$1,750,000	\$((10,156)) 10,562	\$10,773	\$25,000
Class N	Up to \$2,000,000	\$((10,756)) 11,186	\$11,410	\$25,000
Class O	Up to \$2,500,000	\$((11,820)) 12,293	\$12,539	\$30,000
Class P	Up to \$3,000,000	\$((12,218)) 12,707	\$12,961	\$35,000
Class Q	Up to \$4,000,000	\$((14,400)) 14,976	\$15,276	\$40,000
Class R	Up to \$5,000,000	\$((16,362)) 17,016	\$17,356	\$50,000
Class S	Up to \$6,000,000	\$((18,544)) 19,286	\$19,672	\$60,000
Class T	Up to \$7,000,000	\$((20,728)) 21,557	\$21,988	\$70,000
Class U	Up to \$8,000,000	\$((22,908)) 23,824	\$24,300	\$80,000
Class V	Over \$8,000,000	\$((25,090)) 26,094	\$26,216	\$80,000

\*See chapter 230-06 WAC, Exceeding license class.

**AMENDATORY SECTION** (Amending WSR 13-19-056, filed 9/16/13, effective 10/17/13)

**WAC 230-05-030 Fees for other businesses.** All other business license applicants must pay the following fees to us when applying for gambling licenses, miscellaneous changes, or inspection services:

**1. Commercial amusement games**

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014	Fee effective November 1, 2015
Class A	Premises only	*\$((327/\$150)) 340/\$156	\$347/\$159
Class B	Up to \$50,000	\$((460)) 478	\$488
Class C	Up to \$100,000	\$((1,184)) 1,231	\$1,256
Class D	Up to \$250,000	\$((2,644)) 2,750	\$2,805

License	Annual Gross Gambling Receipts	Fee effective November 1, 2014	Fee effective November 1, 2015
Class E	Up to \$500,000	\$((4,640)) 4,826	\$4,923
Class F	Up to \$1,000,000	\$((7,968)) 8,287	\$8,453
Class G	Over \$1,000,000	\$((9,970)) 10,369	\$10,576

\* We reduce the license fee by \$177 when you apply for additional licenses at the same business premises, apply for multiple licenses at the same business premises, or a licensee is renewing an annual license.

**2. Distributor**

License	Annual Gross Sales	Fee effective November 1, 2014	Fee effective November 1, 2015
Class A	Nonpunch board/pull-tab only	\$((659)) 685	\$699
Class B	Up to \$250,000	\$((1,318)) 1,371	\$1,398
Class C	Up to \$500,000	\$((1,980)) 2,059	\$2,100
Class D	Up to \$1,000,000	\$((2,644)) 2,750	\$2,805
Class E	Up to \$2,500,000	\$((3,446)) 3,584	\$3,656
Class F	Over \$2,500,000	\$((4,242)) 4,412	\$4,500

**3. Fund-raising event equipment distributor**

License	Description	Fee effective November 1, 2014	Fee effective November 1, 2015
Class A	Rents or leases equipment for fund-raising event or recreational gaming activity up to 10 times per year.	\$((260)) 270	\$275
Class B	Rents or leases equipment for fund-raising event or recreational gaming activity more than 10 times per year.	\$((659)) 685	\$699

**4. Gambling service supplier**

License	Fee effective November 1, 2014	Fee effective November 1, 2015
Annual	\$((687)) 714	\$728
Financing, consulting, and management contract review	\$((143)) 149	\$152

5. Linked bingo prize provider

License	Fee effective November 1, 2014	Fee effective November 1, 2015
Annual	\$((4,414)) 4,591	\$4,683

6. Call centers for enhanced raffles

License	Fee effective November 1, 2014	Fee effective November 1, 2015
Annual	\$((4,500)) 4,680	\$4,774

7. Manufacturer

License	Annual Gross Sales	Fee effective November 1, 2014	Fee effective November 1, 2015
Class A	Pull-tab dispensing devices only	\$((659)) 685	\$699
Class B	Up to \$250,000	\$((1,318)) 1,371	\$1,398
Class C	Up to \$500,000	\$((1,980)) 2,059	\$2,100
Class D	Up to \$1,000,000	\$((2,644)) 2,750	\$2,805
Class E	Up to \$2,500,000	\$((3,446)) 3,584	\$3,656
Class F	Over \$2,500,000	\$((4,242)) 4,412	\$4,450

8. Permits

Type	Description	Fee effective November 1, 2014	Fee effective November 1, 2015
Agricultural fair	One location and event only	\$((27)) 28	\$29
Agricultural fair annual permit	Annual permit for specified different events and locations	\$((189)) 197	\$201
Recreational gaming activity		\$((59)) 61	\$62
Manufacturer's special sales permit		\$((211)) 219	\$223
Punch board and pull-tab service business permit	Initial application fee	\$((236)) 245	\$250
Punch board and pull-tab service business permit	Renewal	\$((56)) 58	\$59

9. Changes

Application	Description	Fee effective November 1, 2014	Fee effective November 1, 2015
Name		\$((27)) 28	\$29
Location		\$((27)) 28	\$29
Business classification	Same owners	\$((59)) 61	\$62
Exceeding license class	New class fee, less previous fee paid, plus	\$((27)) 28	\$29
Duplicate license		\$((27)) 28	\$29
Corporate stock/limited liability company shares/units		\$((59)) 61	\$62
License transfers		\$((59)) 61	\$62

10. Other fees

Type	Fee effective November 1, 2014	Fee effective November 1, 2015
Defective punch board/pull-tab cost recovery fees	Up to \$100	Up to \$100
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$((27)) 28	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$29
Review of gambling equipment, supplies, services, or games	Cost reimbursement	Cost reimbursement

11. Identification stamps

Type	Fee effective November 1, 2014	Fee effective November 1, 2015
<b>(a) Punch boards and pull-tabs</b>		
(i) Standard	Wagers fifty cents and below	\$((28)) 29
	Wagers over fifty cents	\$((11)) 1.15
(ii) Progressive jackpot pull-tab series	Per series	\$((11.19)) 11.64
(iii) Pull-tab series with carry-over jackpots and cumulative prize pool pull-tab series	Per series	\$((11)) 1.15

Type		<u>Fee effective November 1, 2014</u>	<u>Fee effective November 1, 2015</u>
<b>(b) Pull-tab dispensing devices</b>			
(i) Mechanical and electro-mechanical		\$((-28)) 29	\$30
(ii) Electronic	Dispensing devices that require initial and ongoing evaluation of electronic components or functions, such as reading encoded data on pull-tabs, accounting for income or prizes	\$((-112.04)) 116.52 annually	\$118.85 annually
Replacement of identification stamps		\$((-26)) 27	\$28
<b>(c) Disposable bingo cards</b>			
(i) Single game sets of individual cards or sheets of cards		\$((-28)) 29	\$30
(ii) Multigame card packets		\$((-1-22)) 1.27	\$1.30
(iii) Cards used to play for linked bingo prizes	Fee per 250 cards	\$((-44)) 46	\$47
(iv) Cards used to play for linked bingo prizes	Fee per 5,000 cards	\$((-8-96)) 9.32	\$9.51
<b>(d) Coin or token-activated amusement games</b>			
Annually - operated at any Class A amusement game license location		\$((-28-00)) 29.12	\$29.70
<b>(e) Electronic bingo card daubers</b>			
Annual		\$((-11-19)) 11.64	\$11.87
<b>(f) Electronic card facsimile table</b>			
Annual		\$((-381-50)) 396.76	\$404.70

**12. Two-part payment plan participation**

	<u>Fee effective November 1, 2014</u>	<u>Fee effective November 1, 2015</u>
Annual participation	\$((-27)) 28	\$29

**AMENDATORY SECTION** (Amending WSR 13-19-056, filed 9/16/13, effective 10/17/13)

**WAC 230-05-035 Individuals license fees.** Individuals must pay the following fees to us when they apply for gambling licenses, permits, miscellaneous changes:

**1. Charitable or nonprofit gambling manager**

	<u>Fee effective November 1, 2014</u>	<u>Fee effective November 1, 2015</u>
<b>License</b>		
Original	\$((-185)) 192	\$196
Renewal	\$((-88)) 92	\$94
Change of employer	\$((-88)) 92	\$94

**2. Linked bingo prize provider representative**

	<u>Fee effective November 1, 2014</u>	<u>Fee effective November 1, 2015</u>
<b>License</b>		
Original	\$((-260)) 270	\$275
Renewal	\$((-158)) 164	\$167

**3. Commercial gambling manager**

	<u>Fee effective November 1, 2014</u>	<u>Fee effective November 1, 2015</u>
<b>License</b>		
Original	\$((-189)) 197	\$201
Renewal	\$((-90)) 94	\$96
Change of employer	\$((-90)) 94	\$96

**4. Distributor's or gambling services supplier's representative**

	<u>Fee effective November 1, 2014</u>	<u>Fee effective November 1, 2015</u>
<b>License</b>		
Original	\$((-260)) 270	\$275
Renewal	\$((-158)) 164	\$167

**5. Representatives for manufacturers or call centers for enhanced raffles**

	<u>Fee effective November 1, 2014</u>	<u>Fee effective November 1, 2015</u>
<b>License</b>		
Original	\$((-260)) 270	\$275
Renewal	\$((-158)) 164	\$167

6. Public card room employee

License	Fee effective November 1, 2014	Fee effective November 1, 2015
<b>Class A</b> - Performs card room employee duties in a Class E card room		
Original	\$((189)) 197	\$201
Renewal	\$((90)) 94	\$96
<b>Class B</b> - Performs card room employee duties in enhanced and house-banked card rooms		
Original, in-state	\$((258)) 268	\$273
Original, out-of-state	\$((320)) 333	\$340
Renewal	\$((158)) 164	\$167
Transfer/additional employee/conversion/emergency waiver request	\$((6+)) 63	\$64

7. Other fees

	Fee effective November 1, 2014	Fee effective November 1, 2015
Change of name	\$((27)) 28	\$29
Duplicate license	\$((27)) 28	\$29

8. Military personnel returning from service

If a license expires while an individual is on active military service, the individual may apply to have their license reissued at the renewal fee. The application must be received within six months after completing their active military service. The applicant must provide evidence of the completion date of active military service.

**WSR 14-16-086**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
 [Filed August 4, 2014, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-018.

Title of Rule and Other Identifying Information: WAC 392-121-257 Finance—General apportionment—Definition—In-service credits.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street 9, Wanamaker Conference Room, Olympia, WA 98502, on September 16, 2014, at 11:00 a.m.

Date of Intended Adoption: September 16, 2014.

Submit Written Comments to: Ross Bunda, P.O. Box 47200, Olympia, WA 98504-7200, e-mail ross.bunda@k12.wa.us, fax (360) 753-4201, by September 16, 2014.

Assistance for Persons with Disabilities: Contact Wanda Griffin by September 11, 2014, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rule revisions retract the rule revisions to WAC 392-121-257 that were implemented earlier this year in error. Therefore, the WAC section will be restored back to its original wording at the beginning of the 2013–14 school year.

Statutory Authority for Adoption: RCW 28A.150.290(1) and 28A.415.023.

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

Name of Proponent: [OSPI], governmental.

Name of Agency Personnel Responsible for Drafting: Ross Bunda, OSPI, (360) 725-6308; Implementation: T. J. Kelly, OSPI, (360) 725-6301; and Enforcement: JoLynn Berge, OSPI, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact; no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

August 4, 2014  
 Randy Dorn  
 State Superintendent  
 of Public Instruction

AMENDATORY SECTION (Amending WSR 14-07-005, filed 3/6/14, effective 4/6/14)

**WAC 392-121-257 Definition—In-service credits.** As used in this chapter, "in-service credits" means credits determined as follows:

- (1) Credits are earned:
  - (a) After August 31, 1987; and
  - (b) After the awarding or conferring of the employee's first bachelor's degree.
- (2) Credits are earned on or before October 1 of the year for which allocations are being calculated pursuant to this chapter.
- (3) Credits are earned in either:
  - (a) A locally approved in-service training program which means a program approved by a school district board of directors, and meeting standards adopted by the professional educator standards board pursuant to the standards in WAC 181-85-200 and the development of which has been participated in by an in-service training task force whose membership is the same as provided under RCW 28A.415.-040; or
  - (b) A state approved continuing education program offered by an education agency approved to provide in-service for the purposes of continuing education as provided for under rules adopted by the professional educator standards board pursuant to chapter 181-85 WAC(~~Provided, That~~

~~continuing education credit for educational staff associates pursuant to WAC 181-85-077 shall not be subject to the requirement in WAC 181-85-030(6) of a minimum of three continuing education credit hours).~~

(4) Credits are not earned for the purpose of satisfying the requirements of the employee's next highest degree.

(5) Credits earned after September 1, 1995, must satisfy the additional requirements of WAC 392-121-262.

(6) Credits are not counted as academic credits pursuant to WAC 392-121-255 or nondegree credits pursuant to WAC 392-121-259.

(7) Ten locally approved in-service or state approved continuing education credit hours defined in WAC 181-85-030 equal one in-service credit.

(8) Each forty hours of participation in an approved internship with a business, industry, or government agency pursuant to chapter 181-83 WAC equals one in-service credit.

(a) No more than two in-service credits may be earned as a result of an internship during any calendar-year period.

(b) Each individual is limited to a maximum of fifteen in-service credits earned from internships.

(9) Accumulate credits rounded to one decimal place.

Reasons Supporting Proposal: Stakeholder comments are welcome and will continue to be considered.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: Chapter 88.16 RCW.

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

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The application of the proposed modifications is clear in the description of the proposal and its anticipated effects as well as the proposed language shown below.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

August 4, 2014

Peggy Larson

Executive Director

**WSR 14-16-087  
PROPOSED RULES  
BOARD OF  
PILOTAGE COMMISSIONERS**

[Filed August 4, 2014, 2:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-114.

Title of Rule and Other Identifying Information: WAC 363-116-082 Limitations on new pilots.

Hearing Location(s): 2901 Third Avenue, 5th Floor, Alki Conference Room, Seattle, WA 98121, on September 18, 2014, at 9:30 a.m.

Date of Intended Adoption: September 18, 2014.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail [larsonp@wsdot.wa.gov](mailto:larsonp@wsdot.wa.gov), fax (206) 515-3906, by September 11, 2014.

Assistance for Persons with Disabilities: Contact Shawna Erickson by September 15, 2014, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule modifies license limitations and upgrade requirements for a new pilot in the Grays Harbor pilotage district. These changes will allow a pilot in his/her first five years to perform pilotage services on vessels more in line with the traffic currently calling in the Grays Harbor district.

A review of all vessels of all tonnages calling in Grays Harbor was made which necessitates adjusting certain tonnage categories within the license limitation table (subsection (4)) and the corresponding license upgrade trip requirements (subsection (5)) in order to move through the process of upgrading one's license more efficiently.

AMENDATORY SECTION (Amending WSR 08-15-119, filed 7/21/08, effective 8/21/08)

**WAC 363-116-082 Limitations on new pilots.** (1) The following limitations and pilot license upgrade requirements shall apply to a newly licensed pilot during his/her first five years of active service. For purposes of this section, the term "tank vessel" shall, in addition to tank ships, include any articulated or integrated tug and tank barge combinations, and any tonnage restrictions thereon shall be calculated by including the gross tonnage of the tug and tank barge combined. For purposes of this section, the term "petroleum products" shall include crude oil, refined products, liquefied natural gas, and liquefied petroleum gas. GT (ITC) as used in this section refers to gross tonnages measured in accordance with the requirements of the 1969 International Convention on Tonnage Measurement of Ships.

(2) Puget Sound pilotage district - License limitation periods. Except for trips being made for pilot license upgrades, licenses issued in the Puget Sound pilotage district shall have the following limitations:

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	30,000 GT (ITC) or 660 feet except for passenger vessels which may only have a maximum size of 5000 GT (ITC)
2	30,000 GT (ITC)	38,000 GT (ITC)
3	38,000 GT (ITC)	48,000 GT (ITC)
4	45,000 GT (ITC)	60,000 GT (ITC)
5	55,000 GT (ITC)	75,000 GT (ITC)

(3) Puget Sound pilotage district - Pilot license upgrade requirements. Progressive lifting of tonnage limitations requires a newly licensed pilot to satisfactorily pilot vessels on the trips specified in this section. The trainee evaluation committee shall recommend to the board a series of eight trips to be made by each pilot in the last one hundred twenty days of each year of the license limitation periods specified in subsection (2) of this section (~~(-except that pilots whose license anniversary date is less than one hundred twenty days after the effective date of this section shall only be required to make three such trips prior to the first license anniversary subsequent to the effective date of this section)~~). As to these trips, the trainee evaluation committee shall specify the size and type of the vessel; origin and destination, whether the transit is to include a docking, waterway transit or other particular maneuvering requirement, whether any tank vessel trips are to be made while in ballast or loaded and whether the trip shall be taken with training pilots, trainee evaluation committee member pilots or pilots with a specified experience level. To the extent practical, the trips shall be on vessels of at least a size that falls between the upper limit in the expiring license limitation and the upper limit in the upcoming license limitation period. All of these trips shall be complete trips between one port and another port, or between the pilot station and a port. The supervising pilots shall complete and submit to the board an evaluation form provided by the board for each trip a new pilot performs.

(4) Grays Harbor pilotage district - License limitation periods. Pilots licensed in the Grays Harbor pilotage district shall not pilot vessels in violation of the restrictions set forth in the table below during the indicated license year.

License Year	Maximum Size of Tank Vessels Carrying Petroleum Products as Bulk Cargo	Maximum Size of Other Vessels
1	Piloting on vessels of any size prohibited	<del>((25,000))</del> <u>32,000</u> GT (ITC) except that piloting on vessels of any size is prohibited through the Chehalis River Bridge unless vessel is in ballast and does not exceed <del>((25,000))</del> <u>32,000</u> GT (ITC)
2	<del>((10,000))</del> <u>15,000</u> GT (ITC)	<del>((30,000))</del> <u>42,000</u> GT (ITC)
3	<del>((45,000))</del> <u>30,000</u> GT (ITC)	<del>((45,000))</del> <u>52,000</u> GT (ITC)
4	<del>((60,000 GT (ITC)))</del> <u>Unlimited</u>	<del>((60,000))</del> <u>62,000</u> GT (ITC)
5	<del>((75,000 GT (ITC)))</del>	<del>((75,000 GT (ITC)))</del> <u>Unlimited</u>

Notwithstanding subsection (7) of this section, upon determination that a bona fide safety concern may result from no pilot without license restrictions being available within a reasonable time to pilot a vessel requiring pilotage services, the chairperson or acting chairperson of the board, on a single trip basis, may authorize a newly licensed pilot holding a restricted license to provide pilotage services to the vessel, irrespective of the tonnage, service or location of the assigned berth of the vessel.

(5) Grays Harbor pilotage district - Pilot license upgrade requirements.

(a) Prior to the expiration of the first license year, a new pilot must make five license upgrade trips. Three of these trips shall be through the Chehalis River Bridge on loaded or partially loaded vessels. The other trips shall be on vessels in excess of ~~((25,000))~~ 32,000 GT (ITC) and involve docking and passage to or from the sea buoy; and one of these trips shall involve turning the vessel in the waterway.

(b) Prior to the expiration of the second license year, a new pilot must make two license upgrade trips on tank vessels in excess of ~~((10,000))~~ 15,000 GT (ITC) and ~~((one))~~ two trips on ~~((a))~~ other vessels in excess of ~~((30,000))~~ 42,000 GT (ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and ~~((one))~~ two of these trips shall involve turning the vessel in the waterway. Upon satisfactory completion of the two upgrade trips upon tank vessels and completion of the second license year, the pilot will be authorized to pilot tank vessels in accordance with the limitations specified in subsection (4) of this section. Upon satisfactory completion of the ~~((one))~~ two upgrade trips upon ~~((a))~~ other vessels in excess of ~~((30,000))~~ 42,000 GT (ITC) and completion of the second license year, the pilot will be authorized to pilot vessels in accordance with the limitations specified in subsection (4) of this section.

(c) Prior to the expiration of the third license year, a new pilot must make ~~((three))~~ two license upgrade trips on tank vessels in excess of 30,000 GT (ITC) and two trips on other vessels in excess of ((45,000)) 52,000 GT (ITC). Two of these trips shall involve docking and passage to or from the sea buoy; and ~~((one))~~ two of these trips shall involve turning the vessel in the waterway.

(d) Prior to the expiration of the fourth license year, a new pilot must make two license upgrade trips on vessels in excess of ~~((60,000))~~ 62,000 GT (ITC).

~~((Prior to the expiration of the fifth license year, a new pilot must make two license upgrade trips on vessels in excess of 75,000 GT (ITC)-~~

~~((f)))~~ If vessels are not available in the Grays Harbor pilotage district to allow a pilot to comply with ~~((c))~~ ~~((through (e)))~~ and (d) of this subsection in a timely manner, the board may designate substitute trips in the Puget Sound pilotage district as allowed by law and in so doing may specify the size of the vessel and any other characteristics of the trips that the board deems appropriate. Such designation shall be considered a modification of the pilot's state license to authorize the specified trips in the Puget Sound pilotage district.

(6) The initial license shall contain the limitations contained above and list the date of commencement and expiration of such periods. If a newly licensed pilot is unable to pilot for forty-five days or more in any one of the five years, he/she shall notify the board and request a revised schedule of limitations.

(7) Except as provided in subsection (4) of this section, no pilot shall be dispatched to, or accept an assignment on, any vessel which exceeds the limitations of his/her license. On vessels in which there is more than one pilot assigned, the license limitations shall apply only to the pilot in charge.

(8) All limitations on a pilot's license shall be lifted at the beginning of the sixth year of piloting provided he/she has

submitted to the board a statement attesting to the fact that he/she has completed all the required license upgrade trips and the vessel simulator courses.

**WSR 14-16-103**  
**PROPOSED RULES**  
**STATE BOARD OF EDUCATION**

[Filed August 5, 2014, 4:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-09-042.

Title of Rule and Other Identifying Information: Amendments to chapter 180-19 WAC, Charter schools.

Hearing Location(s): ESD 171, North Central, 430 Old Station Road, P.O. Box 1847, Wenatchee, WA 98801, on September 10, 2014, at 1:00 p.m.

Date of Intended Adoption: September 10, 2014.

Submit Written Comments to: Jack Archer, Old Capitol Building, Room 223, 600 Washington Street S.E., Olympia, WA 98504, e-mail jack.archer@k12.wa.us, fax (360) 586-2357, by September 4, 2014.

Assistance for Persons with Disabilities: Contact Denise Ross, by September 5, 2014, TTY (360) 664-3361 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to make selected revisions to rules adopted, against close deadlines, in February and May 2013. The proposed rules:

- Alter prospectively the dates for required actions stipulated in WAC 180-19-020, 180-19-030, 180-19-040, 180-19-070 and 180-19-080, in order to ensure sufficient time for each participant in the charter application cycle to carry out its work to a high standard of quality.
- Incorporate in WAC 180-19-040 a process for review, evaluation and decision making on applications by school districts to be authorizers of charter schools under RCW 28A.710.090.
- Clarify provisions of WAC 180-19-090 on the use of a lottery to certify charter approvals as within the limits on the maximum number of charter schools, pursuant to RCW 28A.710.150(3).
- Make various technical improvements, including but not limited to, deletion of obsolete language and changes to WAC 180-19-010 Definitions, in order to clarify, correct and streamline the rules for the benefit of school districts, the board, and the public.

Statutory Authority for Adoption: RCW 28A.710.090, 28A.710.130, 28A.710.140, 28A.710.150.

Statute Being Implemented: Chapter 28A.710 RCW, Charter schools.

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

Name of Proponent: State board of education, public.

Name of Agency Personnel Responsible for Drafting: Jack Archer, Old Capitol Building, 600 Washington Street

S.E., Olympia, WA 98504, (360) 725-6035; Implementation and Enforcement: Ben Rarick, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504, (360) 725-6025.

A school district fiscal impact statement has been prepared under section 1, chapter 210, Laws of 2012.

**SCHOOL DISTRICT FISCAL IMPACT STATEMENT**

<b>WSR:</b>	<b>Title of Rule:</b> Chapter 180-19 WAC, Charter schools.	<b>Agency:</b> SDF - School District Fiscal Impact - SPI.
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**Part I: Estimates:** No fiscal impact - There is no additional impact due to this rule adoption.

**Part IV: Capital Budget Impact:** None.

A copy of the statement may be obtained by contacting JoLynn Berge, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504, phone (360) 725-6292, e-mail JoLynn.Berge@k12.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328.

August 1, 2014  
 Ben Rarick  
 Executive Director

AMENDATORY SECTION (Amending WSR 13-07-065, filed 3/19/13, effective 4/19/13)

**WAC 180-19-010 Definitions.** (1) (~~"Authorizer" shall have the same meaning as set forth in RCW 28A.710.010(3).~~

(2) ~~"Authorizer application" or "application" means the form developed by the state board of education that must be completed and timely filed as set forth in these rules with the state board of education by a school district seeking approval to be a charter school authorizer.~~

(3) ~~"Board" means the state board of education.~~

(4) ~~(2) "School district" or "district" means a school district board of directors.~~

(3) ~~"NACSA Principles and Standards" means the "Principles and Standards for Quality Charter Authorizing (2012 Edition)" developed by the National Association of Charter School Authorizers.~~

AMENDATORY SECTION (Amending WSR 13-07-065, filed 3/19/13, effective 4/19/13)

**WAC 180-19-020 Notice of intent to submit an authorizer application.**

**(Effective until May 15, 2015)**

A school district intending to file an application during a calendar year to be approved as a charter school authorizer must submit to the state board of education a notice of intent to file such application by October 1st of ~~((the prior)) that same year((; provided, however, that a district seeking approval as an authorizer in 2013 must provide such notice of intent to submit an application by April 1, 2013)).~~ A district may not file an authorizer application in a calendar year

unless it has filed a timely notice of intent as provided for herein. A notice of intent shall not be construed as an obligation to submit an application under these rules. The board shall post on its public web site a form for use by districts in submitting notice of intent, and shall post ~~((on its web site))~~ all notices of intent upon receipt.

**(Effective May 15, 2015)**

A school district intending to file an application during a calendar year to be approved as a charter school authorizer must submit to the state board of education a notice of intent to file such application by June 15th of that same year. A district may not file an authorizer application in a calendar year unless it has filed a timely notice of intent as provided for herein. A notice of intent shall not be construed as an obligation to submit an application under these rules. The board shall post on its public web site a form for use by districts in submitting notice of intent, and shall post all notices of intent upon receipt.

AMENDATORY SECTION (Amending WSR 13-07-065, filed 3/19/13, effective 4/19/13)

**WAC 180-19-030 Submission of authorizer application.**

**(Effective until May 15, 2015)**

(1) The state board of education shall develop and make available on its web site, no later than October 1st of each year, an "authorizer application" that must be used by school districts seeking to be approved as a charter school authorizer ~~((; provided, however, that the board shall make available on its web site the authorizer application for those districts seeking approval in 2013 by April 1, 2013))~~. The application may include such attachments as deemed required by the board to support and complete the application.

(2) A school district seeking approval to be a charter school authorizer must submit an "authorizer application" to the state board of education by December 31st of the year ~~((in which))~~ prior to the year the district seeks approval as an authorizer ~~((; provided, however, that a district application for approval to be a charter school authorizer in 2013 must be submitted to the board, as provided herein, no later than July 1, 2013))~~. The district's completed application must ~~((sent))~~ submitted via electronic mail to sbe@k12.wa.us ~~((with the original hand delivered or mailed to the board at the following address:~~

~~Washington State Board of Education  
600 Washington St. S.E.  
Olympia, WA 98504~~

~~The original and electronic version of the application must be received by the board no later than the date provided above))~~ by the date specified in this section. The board shall post on its web site each application received from a school district.

(3) A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:

(a) **The district's strategic vision for chartering.** The district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with ~~((specific))~~ reference to the ~~((statutory purposes))~~ findings and intents set forth in RCW 28A.710.005, as well as any district-specific purposes that are a ~~((particular))~~ priority for the district; the characteristics of the school or schools it is most interested in authorizing, while maintaining a commitment to considering all charter applicants based on the merits of their proposals and the likelihood of success ~~((; how the school or schools it wishes to authorize might differ from the schools the district currently operates with regard to such features as staffing, schedule, curriculum, and community engagement))~~; the educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will ~~((protect))~~ respect the autonomy and ~~((promote))~~ ensure the accountability of the charter schools it oversees.

(b) **A plan to support the vision presented,** including explanations and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient ~~((assistance,))~~ oversight ~~((and)),~~ monitoring, and assistance to ensure that the charter schools it authorizes will meet all fiscal, academic and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:

(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its authorizing responsibilities in accordance with the ~~((<sup>(2)</sup>))~~ NACSA Principles and Standards ~~((for Quality Charter Authorizing" developed by the National Association of Charter School Authorizers))~~ and the provisions of chapter 28A.710 RCW;

(ii) Job titles, job descriptions, and ~~((qualifications))~~ brief bios and resumes of district personnel with anticipated authorizing responsibilities under RCW 28A.710.030, demonstrating the district's access to ~~((competent and necessary))~~ expertise in all areas essential to charter school oversight including, but not limited to: School leadership; curriculum, instruction and assessment; special education, English language learners ~~((;))~~ and other diverse learning needs; performance management ~~((;))~~ and law, finance and facilities, through staff and any contractual relationships or ~~((inter-agency collaborations))~~ partnerships with other public entities; and

(iii) An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection, to the extent feasible, of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with ~~((National))~~ the NACSA Principles and Standards ~~((developed by the National Association of Charter School Authorizers))~~ and the provisions of chapter 28A.710 RCW.

(c) **A draft or preliminary outline of the request for proposal**~~((s))~~ that the district would, if approved as an authorizer, issue to solicit charter school ~~((applicants))~~ applications. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130 (1)(b) and demonstrate that the ~~((applicant intends to))~~ district will implement a comprehensive charter application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of ~~((chapter 28A.710))~~ RCW 28A.710.170.

(d) **A draft of the performance framework** that the district would, if approved as an authorizer, use to guide the ~~((establishment))~~ execution of a charter contract and for ongoing oversight and performance evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein~~((s))~~, and shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.

(e) **A draft of the district's proposed renewal, revocation, and nonrenewal processes**, consistent with RCW 28A.710.190 and 28A.710.200. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:

(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;

(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;

(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;

(iv) Outline a plan to take appropriate corrective actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal compliance, in accordance with the charter contract and the provisions of ~~((chapter 28A.710))~~ RCW 28A.710.180.

(4) A district must sign a statement of assurances submitted with its application, ~~((that))~~ which shall be included as an attachment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:

(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsibilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;

(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;

(c) Solicit applications for both new charter schools and conversion charter schools, while appropriately distinguish-

ing the two types of charter schools in proposal requirements and evaluation criteria;

(d) Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to the extent authorized by chapter 28A.710 RCW, in such areas as ~~((budget))~~ budgeting, personnel and ~~((educational programs))~~ instructional programming and design;

(e) Ensure that any contract it may execute with the governing board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited English proficient, and any other special populations of students as required by state and federal laws;

(f) Include in any charter contract it may execute with the governing board of an approved charter school, in accordance with RCW 28A.710.160(2), educational services that at a minimum meet the basic education standards set forth in RCW 28A.150.220.

**(Effective May 15, 2015)**

(1) The state board of education shall develop and make available on its web site, no later than May 15th of each year, an "authorizer application" that must be used by school districts seeking to be approved as a charter school authorizer. The application may include such attachments as deemed required by the board to support and complete the application.

(2) A school district seeking approval to be a charter school authorizer must submit an "authorizer application" to the state board of education by October 15th of the year prior to the year the district seeks approval as an authorizer. The district's completed application must be submitted via electronic mail to [sbe@k12.wa.us](mailto:sbe@k12.wa.us) by the date specified in this section. The board shall post on its web site each application received from a school district.

(3) A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:

(a) The district's strategic vision for chartering. The district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with reference to the findings and interests set forth in RCW 28A.710.005, as well as any district-specific purposes that are a priority for the district; the characteristics of the school or schools it is most interested in authorizing, while maintaining a commitment to considering all charter applicants based on the merits of their proposals and the likelihood of success; the educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will respect the autonomy and ensure the accountability of the charter schools it oversees.

(b) A plan to support the vision presented, including explanations and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient oversight, monitoring, and assistance to ensure that the charter schools it authorizes will meet all fiscal, academic

and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:

(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW;

(ii) Job titles, job descriptions, and brief bios and resumes of district personnel with anticipated authorizing responsibilities under RCW 28A.710.030, demonstrating the district's access to expertise in all areas essential to charter school oversight including, but not limited to: School leadership; curriculum, instruction and assessment; special education, English language learners and other diverse learning needs; performance management and law, finance and facilities, through staff and any contractual relationships or partnerships with other public entities; and

(iii) An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection, to the extent feasible, of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW.

(c) **A draft or preliminary outline of the request for proposal** that the district would, if approved as an authorizer, issue to solicit charter school applications. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130 (1)(b) and demonstrate that the district will implement a comprehensive charter application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of RCW 28A.710.170.

(d) **A draft of the performance framework** that the district would, if approved as an authorizer, use to guide the execution of a charter contract and for ongoing oversight and performance evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein, and shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.

(e) **A draft of the district's proposed renewal, revocation, and nonrenewal processes**, consistent with RCW 28A.710.190 and 28A.710.200. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:

(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;

(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;

(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;

(iv) Outline a plan to take appropriate corrective actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal compliance, in accordance with the charter contract and the provisions of RCW 28A.710.180.

(4) A district must sign a statement of assurances submitted with its application, which shall be included as an attachment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:

(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsibilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;

(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;

(c) Solicit applications for both new charter schools and conversion charter schools, while appropriately distinguishing the two types of charter schools in proposal requirements and evaluation criteria;

(d) Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to the extent authorized by chapter 28A.710 RCW, in such areas as budgeting, personnel and instructional programming and design;

(e) Ensure that any contract it may execute with the governing board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited-English proficient, and any other special populations of students as required by state and federal laws;

(f) Include in any charter contract it may execute with the governing board of an approved charter school, in accordance with RCW 28A.710.160(2), educational services that at a minimum meet the basic education standards set forth in RCW 28A.150.220.

**AMENDATORY SECTION** (Amending WSR 13-07-065, filed 3/19/13, effective 4/19/13)

**WAC 180-19-040 Evaluation and approval or denial of authorizer applications.**

**(Effective until May 15, 2015)**

(1) The board shall evaluate an application submitted by a school district seeking to be an authorizer and issue a decision approving or denying the application by April 1st of each year (as provided, however, that the board shall issue a decision approving or denying a district's application timely submitted for approval in 2013 by no later than September 12, 2013. The state board may utilize the services of external reviewers with expertise in educational, organizational and financial matters in evaluating applications. The board may,

at its discretion, require personal interviews with district personnel for the purpose of reviewing an application).

(2) ~~((For an application to be approved, the state board must find it to be satisfactory in providing all of the information required to be set forth in the application.))~~ In evaluating each application, the board will rate each part of the application as set forth in WAC 180-19-030 (3)(a) through (e) as well-developed, partially developed, or undeveloped, based on criteria for evaluation included in the authorizer application developed and made publicly available pursuant to WAC 180-19-030(1).

(a) "Well-developed" shall mean that the application response meets the expectations established by the board and the *NACSA Principles and Standards* in material respects and warrants approval subject to execution of an authorizing contract with the board.

(b) "Partially developed" shall mean that the application response contains some aspects of a well-developed practice, is limited in its execution, or otherwise falls short of satisfying the expectations established by the board and the *NACSA Principles and Standards*.

(c) "Undeveloped" shall mean that the application response is wholly inadequate in that the applicant district has not considered or anticipated the well-developed practice at all, or proposes to carry out its authorizing duties in a way that is not recognizably connected to the expectations established by the board and the *NACSA Principles and Standards*.

(3) In its evaluation the board will ~~((also))~~ consider whether the district's proposed ~~((policies))~~ policies and practices are consistent with the *NACSA Principles and Standards* ~~((for quality charter school authorizing developed by the National Association of Charter School Authorizers)),~~ as required by RCW 28A.710.100(3), in at least the following areas:

(a) Organizational capacity: Commit human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(b) Solicitation and evaluation of charter applications: Implement a comprehensive application process that includes clear application questions and rigorous criteria, and grants charters only to applicants who demonstrate strong capacity to establish and operate a charter school;

(c) Performance contracting: Execute contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms;

(d) Ongoing charter school oversight and evaluation: Conduct contract oversight that competently evaluates performance and monitors compliance, ensures schools' legally entitled autonomy, protects student rights, informs intervention, revocation and renewal decisions, and provides annual reports as required by chapter 28A.710 RCW; and

(e) Charter renewal and revocation processes: Design and implement a transparent and rigorous process that uses comprehensive academic, financial and operational performance data to make merit-based renewal decisions, and revokes charters when necessary to protect student and public interests.

(4) The board shall develop and post on its public web site rubrics for determination of the extent to which each criterion for evaluation has been met.

(5) The board may utilize the services of external reviewers with expertise in educational, organizational or financial matters in evaluating applications.

(6) Prior to approving any application, the board shall require an in-person interview with district leadership for the purpose of reviewing and evaluating the application. The in-person interview will be used to supplement or clarify information provided by the district in the written application. The information received in the in-person interview shall be considered in formulating the overall ratings of the application under subsection (2) of this section.

(7) For an application to be approved, the board must find it to be well developed in each part of the application as set forth in WAC 180-19-030(3). A determination that an application does not ~~((provide the required information, or does not))~~ meet standards of quality authorizing in any ~~((component))~~ part, shall constitute grounds for disapproval. If the state board disapproves an application, it shall state in writing the reasons for the disapproval, with specific reference to the criteria included in the authorizer application.

~~((3))~~ (8) The ~~((state))~~ board ~~((of education))~~ shall post on its public web site the applications of all school districts approved as authorizers. A school district approved as an authorizer shall post its application on a public web site.

~~((4))~~ If the state board disapproves an application, it shall state in writing the reasons for the disapproval, with specific reference to the criteria established in these rules.))

**(Effective May 15, 2015)**

(1) The board shall evaluate an application submitted by a school district seeking to be an authorizer and issue a decision approving or denying the application by February 1st of each year.

(2) In evaluating each application, the board will rate each part of the application as set forth in WAC 180-19-030 (3)(a) through (e) as well-developed, partially developed, or undeveloped, based on criteria for evaluation included in the authorizer application developed and made publicly available pursuant to WAC 180-19-030(1).

(a) "Well-developed" shall mean that the application response meets the expectations established by the board and the *NACSA Principles and Standards* in material respects and warrants approval subject to execution of an authorizing contract with the board.

(b) "Partially developed" shall mean that the application response contains some aspects of a well-developed practice, is limited in its execution, or otherwise falls short of satisfying the expectations established by the board and the *NACSA Principles and Standards*.

(c) "Undeveloped" shall mean that the application response is wholly inadequate in that the applicant district has not considered or anticipated the well-developed practice at all, or proposes to carry out its authorizing duties in a way that is not recognizably connected to the expectations established by the board and the *NACSA Principles and Standards*.

(3) In its evaluation the board will consider whether the district's proposed policies and practices are consistent with

the *NACSA Principles and Standards* as required by RCW 28A.710.100(3), in at least the following areas:

(a) Organizational capacity: Commit human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(b) Solicitation and evaluation of charter applications: Implement a comprehensive application process that includes clear application questions and rigorous criteria, and grants charters only to applicants who demonstrate strong capacity to establish and operate a charter school;

(c) Performance contracting: Execute contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms;

(d) Ongoing charter school oversight and evaluation: Conduct contract oversight that competently evaluates performance and monitors compliance, ensures schools' legally entitled autonomy, protects student rights, informs intervention, revocation and renewal decisions, and provides annual reports as required by chapter 28A.710 RCW; and

(e) Charter renewal and revocation processes: Design and implement a transparent and rigorous process that uses comprehensive academic, financial and operational performance data to make merit-based renewal decisions, and revokes charters when necessary to protect student and public interests.

(4) The board shall develop and post on its public web site rubrics for determination of the extent to which each criterion for evaluation has been met.

(5) The board may utilize the services of external reviewers with expertise in educational, organizational or financial matters in evaluating applications.

(6) Prior to approving any application, the board shall require an in-person interview with district leadership for the purpose of reviewing and evaluating the application. The in-person interview will be used to supplement or clarify information provided by the district in the written application. The information received in the in-person interview shall be considered in formulating the overall ratings of the application under subsection (2) of this section.

(7) For an application to be approved, the board must find it to be well developed in each part of the application as set forth in WAC 180-19-030(3). A determination that an application does not meet standards of quality authorizing in any part shall constitute grounds for disapproval. If the state board disapproves an application, it shall state in writing the reasons for the disapproval, with specific reference to the criteria included in the authorizer application.

(8) The board shall post on its public web site the applications of all school districts approved as authorizers. A school district approved as an authorizer shall post its application on a public web site.

AMENDATORY SECTION (Amending WSR 13-12-055, filed 6/1/13, effective 7/2/13)

**WAC 180-19-070 Charter school—Request for proposals.**

**(Effective until January 16, 2016)**

No later than April 15th, each authorizer shall annually issue requests for proposals for charter schools meeting the requirements of RCW 28A.710.130. ((For the year 2013, a request for proposal must be issued by no later than September 22, 2013. Requests for proposals in all subsequent years must be issued no later than April 15th.))

**(Effective January 16, 2016)**

No later than March 1st, each authorizer shall annually issue requests for proposals for charter schools meeting the requirements of RCW 28A.710.130.

AMENDATORY SECTION (Amending WSR 13-12-055, filed 6/1/13, effective 7/2/13)

**WAC 180-19-080 Charter school applications—Submission, approval, or denial.**

**(Effective until January 16, 2016)**

(1) An applicant, as defined in RCW 28A.710.010, seeking approval must:

(a) Submit a nonbinding notice of intent to be approved as a proposed charter school not less than thirty days before the last date for submission of an application to an authorizer as provided in this section. An applicant may not ~~((file))~~ submit a charter school application in a calendar year unless it has filed timely notice of intent as provided herein; and

(b) Submit an application for a proposed charter school to an authorizer by no later than July 15th of the year in which the applicant seeks approval. ~~((Provided, however, that an applicant seeking approval to operate a charter school in 2014 must submit an application to an authorizer by no later than November 22, 2013.))~~

(2) An authorizer receiving an application for a proposed charter school must either approve or deny the proposal by no later than October 15th of the year in which the application is received. ~~((; Provided, however, that for applications received in 2013, the authorizer must approve or deny the proposal by no later than February 24, 2014.))~~

(3) The authorizer must provide the state board of education with a written report of the approval or denial of an applicant's proposal for a charter school within ten days of such action. ~~((; but no later than October 25th, whichever is sooner. Provided, however, that for proposals for charter schools received in 2013, the report must be received within ten days of the action, but no later than March 6, 2014, whichever is sooner.))~~ The notice must comply with the requirements set forth in RCW 28A.710.150(2). The report shall be sent to the board via electronic mail to sbe@k-12.wa.us.

**(Effective January 16, 2016)**

(1) An applicant, as defined in RCW 28A.710.010, seeking approval must:

(a) Submit a nonbinding notice of intent to be approved as a proposed charter school by May 1st of the year in which approval is sought. An applicant may not submit a charter school application in a calendar year unless it has filed timely notice of intent as provided herein; and

(b) Submit an application for a proposed charter school to an authorizer by no later than June 1st of the year in which the applicant seeks approval.

(2) An authorizer receiving an application for a proposed charter school must either approve or deny the proposal by no later than September 1st of the year in which the application is received.

(3) The authorizer must provide the state board of education with a written report of the approval or denial of an applicant's proposal for a charter school within ten days of such action. The notice must comply with the requirements set forth in RCW 28A.710.150(2). The report shall be sent to the board via electronic mail to [sbe@k-12.wa.us](mailto:sbe@k-12.wa.us).

AMENDATORY SECTION (Amending WSR 13-12-055, filed 6/1/13, effective 7/2/13)

**WAC 180-19-090 Board certification of charter schools—Lottery.** (1) Upon receipt of notice from an authorizer that a charter school has been approved, the chair of the state board of education shall certify whether the approval is in compliance with the limits in RCW 28A.710.150 on the maximum number of charter ~~(s in RCW 28A.710.150))~~ schools that may be established. Certification from the ~~((state))~~ board ~~((of education))~~ must be obtained before final authorization of a charter school. The certification of a charter school shall be posted on the board's web site.

(2) If the board receives notification of charter approvals under this section on the same day, and the total number of approvals exceeds the limits in RCW 28A.710.150(1) on the maximum number of charter schools that may be established for operation in any single year, the board will select approved charters for certification through a lottery process as follows:

(a) The board shall notify the authorizer that the approved charter school has not been certified by the board for operation and must be selected for certification through a lottery.

(b) Within thirty days after determining that the limit for charter schools has been exceeded, the board shall conduct a lottery, as required by RCW 28A.710.150(3), at a publicly noticed meeting to select and certify approved charters for implementation. The board shall randomly draw the names of charter schools from the available pool of approved charter schools that have not been certified until the maximum allowable total number of charter schools has been selected.

~~((i) A charter school shall be certified by the board for operation commencing in the following school year so long as the total number of charter schools that may be established in any single year under RCW 28A.710.150 is not exceeded.~~

~~((ii))~~ (c) Once the total number of charter schools that may be established in any single year under RCW 28A.710.-150 is exceeded, the board shall certify a charter school for operation in a subsequent year in which a charter school may be established within the limits set forth in RCW 28A.710.-150(1), based upon the charter's selection in the lottery.

**WSR 14-16-110**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed August 6, 2014, 10:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-069.

Title of Rule and Other Identifying Information: The department is proposing changes to WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and Basic Food benefits?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on September 9, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than September 10, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., September 9, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by August 26, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail [kildaja@dshs.wa.gov](mailto:kildaja@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to extend the current fifty percent earned income disregard to unearned income for families receiving child-only grants for the children in their care. This change will create equity between employed and retired caregivers in the child-only means-testing process. An additional proposed change related to medical assistance is needed to reflect the split between cash and medical assistance.

Reasons Supporting Proposal: This rule making is required to implement HB 2585 passed by the 2014 legislature.

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

Statute Being Implemented: RCW 74.12.037.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tom Berry, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by disregarding more income in the child-only TANF means-testing process.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "This section does not apply to ... rules of the department of social and

health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

August 4, 2014  
 Katherine I. Vasquez  
 Rules Coordinator

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

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

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

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

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

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

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

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

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

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

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

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

If your countable child-only means-testing AU income is:	Your child-only means-tested payment standard is equal to the following percentage of the payment standards in WAC 388-478-0020:
200% FPL or less	100%

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

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

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

(4) For **cash assistance**:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**WSR 14-16-113**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed August 6, 2014, 10:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-10-031.

Title of Rule and Other Identifying Information: Amends WAC 181-78A-100 to define the auditing of a program standard by a member of a site review team.

Hearing Location(s): Educational Service District 112, 2500 N.E. 65th Avenue, Vancouver, WA 98661, on November 13, 2014, at 8:30.

Date of Intended Adoption: November 13, 2014.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by November 6, 2014.

Assistance for Persons with Disabilities: Contact David Brenna by November 6, 2014, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Defines the procedures for a site team member to audit specific standards on behalf of the site team, and requires that the audit member is not eligible to vote on other actions of the team.

Reasons Supporting Proposal: Permits a site team to examine specific requirements for approval in detail.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amend-

ment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

August 6, 2014  
David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 14-12-018, filed 5/23/14, effective 6/23/14)

**WAC 181-78A-100 Existing approved programs.** Chapter 181-78A WAC rules shall govern all policies related to programs upon adoption by the professional educator standards board, which shall provide assistance to programs in the revision of their existing programs.

(1) The professional educator standards board shall determine the schedule for such approval reviews and whether an on-site visit or other forms of documentation and validation shall be used for the purposes of granting approval under program approval standards. In determining the schedule for site visits, the board shall take into consideration the partnership agreement between the state and national accreditation organizations as such agreement relates to the accreditation cycle and allow CAEP accredited programs to follow the CAEP schedule for their review. Non-CAEP accredited programs shall have a review every five years. The professional educator standards board may require more frequent site visits at their discretion pursuant to WAC 181-78A-110(2). The professional educator standards board will not consider requests for site visit delays.

(2) Each institution shall submit its program for review when requested by the professional educator standards board to ensure that the program meets the state's program approval standards as follows:

(a) At least six months prior to a scheduled on-site visit, the institution shall submit an institutional report that provides evidence and narrative, as needed, that addresses how the program approval standards are met for each preparation program undergoing review. Evidence shall include such data and information from the annual data submissions required per WAC 181-78A-255(2) as have been designated by the professional educator standards board as evidence pertinent to the program approval process.

(b) The institutional report shall be reviewed by a team whose membership is composed of:

(i) One member of the professional educator standards board;

(ii) One peer institution representative;

(iii) One individual with assessment expertise;

(iv) Two K-12 practitioners with expertise related to the programs scheduled for review; and

(v) A site team chair who has completed state site chair training.

(c) Substitutions, drawn from (b)(i) through (iv) of this subsection, may be assigned when individuals are not avail-

able. Additions to the team shall be drawn from (b)(i) through (iv) of this subsection when necessary. The professional educator standards board liaison for that institution may be present, but shall not serve in an evaluative role. All members, including substitutes, shall be trained.

(d) Team membership may be reduced for regular continuing visits in which fewer than five standards are being reviewed, initial visits, and focus visits. At a minimum, the team must consist of two members of which one must be a member of the professional educator standards board.

(e) Members of a focus visit team shall, at a minimum, be comprised of one member who served on the on-site team and one member of the professional educator standards board.

(f) Members of the site team may be assigned to conduct an audit of a standard. The standard(s) to be audited during a site review will be determined by the professional educator standards board. The audit must be held during the same semester as the site team review. A site team member conducting an audit will not participate in site team meetings, and will not have a vote in site team decision beyond the standard being audited. The process for an audit shall be published by the professional educator standards board.

(g) The review of the off-site team shall identify additional evidence and clarifications that may be needed to provide adequate support for the institutional report.

~~((g))~~ (h) The report of the off-site team shall be submitted to the institution, which shall provide an addendum to the institutional report no later than five weeks preceding the on-site review.

~~((h))~~ (i) The on-site visit shall be conducted in compliance with the protocol and process adopted and published by the professional educator standards board. The team shall be comprised of members of the off-site review team whenever possible.

~~((i))~~ (j) The final site visit report and other appropriate documentation will be submitted to the professional educator standards board.

~~((j))~~ (k) Institutions may submit a reply to the report within two weeks following receipt of the report. The reply ~~((may address issues for consideration, including a request for appeal per this subsection (g).))~~ is limited to evidence that the review disregarded state standards, failed to follow state procedures for review, or failed to consider evidence that was available at the time of the review.

~~((k))~~ (l) In considering the report, the professional educator standards board may grant approval according to WAC 181-78A-110 and 181-78A-100(1).

~~((l))~~ (m) Institutions may request a hearing in instances where it disagrees with the professional educator standards board's decision. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW. The institution seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035.

(3) Institutions seeking Council for the Accreditation of Educator Preparation, Council for Accreditation of Counseling and Related Education Programs, and National Association of School Psychologist accreditation may request from the professional educator standards board approval for con-

current site visits which would utilize the same documentation with the exception of material submitted by the institution to the state for the professional education advisory boards and the accountability standards.

## WSR 14-16-115

### PROPOSED RULES

#### LIQUOR CONTROL BOARD

[Filed August 6, 2014, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-043.

Title of Rule and Other Identifying Information: WAC 314-28-005 Definitions, 314-28-030 What does a distillery allow?, 314-28-050 What does a craft distillery license allow?, and 314-28-055 What are the requirements for contract production by craft distilleries?

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on September 10, 2014, at 10:00 a.m.

Date of Intended Adoption: September 17, 2014.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by September 10, 2014.

Assistance for Persons with Disabilities: Contact Karen McCall by September 10, 2014, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New rules are needed to clarify new legislation that passed in the 2014 legislative session.

Reasons Supporting Proposal: Applicants and licensees need to know the requirements and activities allowed under the distillery and craft distillery license.

Statutory Authority for Adoption: RCW 66.24.145, 66.08.030.

Statute Being Implemented: RCW 66.24.140, 66.24.145.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

A cost-benefit analysis is not required under RCW 34.05.328.

August 6, 2014

Sharon Foster  
Chairman

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Samples must be in compliance with RCW 66.28.-040;

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

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

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

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

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

including licenses issued under RCW 66.24.520, referred to as "contractee," and for export from the state. This distilled spirit is referred to as the "product."

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

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

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

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

(4) Maintaining qualification as a craft distillery. Each craft distillery, whether in the capacity of a contractor or contractee, is allowed to produce (~~sixty~~) one hundred fifty thousand gallons or less of total product per year. Total product, in this instance, includes:

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

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

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

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

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

(5) Reporting and recordkeeping.

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

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

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

**WSR 14-16-116**  
**PROPOSED RULES**  
**LIQUOR CONTROL BOARD**

[Filed August 6, 2014, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-046.

Title of Rule and Other Identifying Information: WAC 314-02-114 What is a senior center license?

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on September 10, 2014, at 10:00 a.m.

Date of Intended Adoption: September 17, 2014.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by September 10, 2014.

Assistance for Persons with Disabilities: Contact Karen McCall by September 10, 2014, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New rules are needed to clarify new legislation that passed in the 2014 legislative session.

Reasons Supporting Proposal: Applicants applying for the senior center license need to know the requirements for the license and what activities are allowed under the license.

Statutory Authority for Adoption: RCW 66.24.680.

Statute Being Implemented: RCW 66.24.680.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

A cost-benefit analysis is not required under RCW 34.05.328.

August 6, 2014  
Sharon Foster  
Chairman

NEW SECTION

**WAC 314-02-114 What is a senior center license? (1)**

A senior center license can only be issued to a nonprofit organization whose primary service is providing recreational and social activities for seniors on the licensed premises.

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

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

(a) Be a nonprofit organization under RCW 24.03.005;

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

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

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

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

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

(i) Appetizers;

(ii) Sandwiches;

(iii) Salads and soups;

(iv) Pizza;

(v) Hamburgers; and

(vi) Fry orders.

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

- (a) Events hosted by the senior center; and
- (b) Private events where the facility is rented by a private party for an event such as a wedding reception, family reunion, etc.

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

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

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

Sharon Foster  
Chairman

**WSR 14-16-117**  
**PROPOSED RULES**  
**LIQUOR CONTROL BOARD**

[Filed August 6, 2014, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-045.

Title of Rule and Other Identifying Information: WAC 314-38-070 Class 16 day spa permit.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on September 10, 2014, at 10:00 a.m.

Date of Intended Adoption: September 17, 2014.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by September 10, 2014.

Assistance for Persons with Disabilities: Contact Karen McCall by September 10, 2014, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New rules are needed to clarify new legislation that passed in the 2014 legislative session.

Reasons Supporting Proposal: Applicants applying for the day spa permit need to know the requirements for the license and what activities are allowed under the permit.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.20.400.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

A cost-benefit analysis is not required under RCW 34.05.328.

August 6, 2014

NEW SECTION

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

- (a) Hair care (haircut, hair color, perms, etc.);
- (b) Skin care (facials, makeup application);
- (c) Nail care (manicure, pedicure); and
- (d) Body care (massage, wraps, waxing).

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

- (a) Customers must be at least twenty-one years of age;
- (b) Spa services must last more than one hour;
- (c) A customer may consume no more than one six ounce glass of wine or one twelve ounce glass of beer per day;
- (d) Employees involved in the service of wine or beer must complete a board-approved limited alcohol server training program;
- (e) Permit holders may not advertise the service of complimentary wine or beer;
- (f) Wine and beer must be purchased from a Washington state licensed retailer;
- (g) The permit must be posted in a conspicuous area at the point of sale; and
- (h) At least three of the service area categories must be in separate areas of the spa.

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

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

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

**WSR 14-16-118**  
**PROPOSED RULES**  
**LIQUOR CONTROL BOARD**

[Filed August 6, 2014, 10:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-044.

Title of Rule and Other Identifying Information: A new section in chapter 314 [314-02] WAC: WAC 314-02-112 What is a caterer's license? The new rule explains the requirements for the caterer's license and the activities allowed under the license.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on September 10, 2014, at 10:00 a.m.

Date of Intended Adoption: September 17, 2014.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by September 10, 2014.

Assistance for Persons with Disabilities: Contact Karen McCall by September 10, 2014, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New rules are needed to clarify new legislation that passed in the 2014 legislative session, ESHB 2680.

Reasons Supporting Proposal: Applicants applying for the caterer's license need to know the requirements for the license and what activities are allowed under the license.

Statutory Authority for Adoption: RCW 66.24.690.

Statute Being Implemented: RCW 66.24.690.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

A cost-benefit analysis is not required under RCW 34.05.328.

August 6, 2014  
Sharon Foster  
Chairman

## NEW SECTION

**WAC 314-02-112 What is a caterer's license?** (1) A caterer's license allows the licensee to sell spirits, beer, and wine by the individual serving for consumption on the premises at a catered event location.

(2) The catered event location must be owned, leased, or operated by:

(a) The holder of the caterer's license; or

(b) The sponsor of the event for which the catering services are being provided.

(3) If the catered event is open and advertised to the public, the event must be sponsored by a nonprofit society or organization as defined in RCW 66.24.375.

(a) A registered nonprofit holding a public or civic event may invite a caterer to provide alcohol service at a location within the parameters of the event.

(b) If attendance at the catered event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement in subsection (2) of this section does not apply.

(4) The licensee must provide snack food at a minimum at any catered event.

(5) The licensee is required to send a list of scheduled catered events to their regional enforcement office on the first of each month. The licensee must provide the following information:

(a) Date of the catered events;

(b) Time of the catered events; and

(c) Place and location of catered events.

Any changes to the information provided to the board must be reported to the regional enforcement office seventy-two hours prior to the catered event.

(6) A caterer's license holder is not allowed to cater events at a liquor licensed premises.

(7) The holder of the caterer's license may store liquor on other premises operated by the licensee if the licensee owns or has a leasehold interest at the other premises. Documentation must be provided to the board showing the licensee owns or has a leasehold interest in the property.

(8) All employees that sell or serve alcohol must hold MAST permits.

(9) The annual fee for the caterer's license is as follows:

(a) The annual fee for beer is two hundred dollars;

(b) The annual fee for wine is two hundred dollars; and

(c) The annual fee for a combined spirits, beer, and wine is one thousand dollars.

## WSR 14-16-119 PROPOSED RULES LIQUOR CONTROL BOARD

[Filed August 6, 2014, 10:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-047.

Title of Rule and Other Identifying Information: WAC 314-02-015 What is a spirits, beer, and wine restaurant license?, 314-02-041 What is a hotel license?, 314-02-045 What is a beer and/or wine restaurant license?, 314-02-070 What is a tavern license?, 314-02-105 What is a beer and/or wine specialty store?, 314-20-017 Brewery and microbrewery retail liquor licenses—Selling kegs and containers, 314-24-160 Domestic wineries—Retail sales of wine on winery premises—Wine served without charge on premises—Spirits, beer and wine restaurant operation, and 314-24-161 Domestic winery—Additional locations for retail sales only.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on September 10, 2014, at 10:00 a.m.

Date of Intended Adoption: September 17, 2014.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by September 10, 2014.

Assistance for Persons with Disabilities: Contact Karen McCall by September 10, 2014, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to current rules are needed to clarify new legislation that passed in the 2014 legislative session. In addition, revisions to current

rules regarding additional location wineries are needed to allow multiple licenses under the same entity at a single location.

Reasons Supporting Proposal: Applicants and licensees need to know the requirements to sell wine or cider "growlers" under the licenses that allow such activity. Wineries that want to have multiple licenses at their additional locations need to be aware of the requirements for those licenses.

Statutory Authority for Adoption: RCW 66.08.030, 66.24.371, 66.24.590.

Statute Being Implemented: RCW 66.24.170, 66.24.240, 66.24.244, 66.24.354, 66.24.371, 66.24.590 [66.24.590], 66;28;360 [66.28.360].

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

A cost-benefit analysis is not required under RCW 34.05.328.

August 6, 2014  
Sharon Foster  
Chairman

**AMENDATORY SECTION** (Amending WSR 13-06-024, filed 2/27/13, effective 3/30/13)

**WAC 314-02-015 What is a spirits, beer, and wine restaurant license?** (1) Per RCW 66.24.400, this license allows a restaurant to:

- (a) Serve spirits by the individual glass for on-premises consumption;
- (b) Serve beer by the bottle or can or by tap for on-premises consumption;
- (c) Serve wine for on-premises consumption;
- (d) Allow patrons to remove recorked wine from the licensed premises;
- (e) Sell wine by the bottle for off-premises consumption with the appropriate endorsement; and
- (f) Sell kegs of malt liquor with the appropriate endorsement. This endorsement also allows the sale of beer or cider as defined in RCW 66.24.210(6) to a purchaser in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the retailer at the time of sale.

(2) To obtain and maintain a spirits, beer, and wine restaurant license, the restaurant must be open to the public at least five hours a day during the hours of 8:00 a.m. and 11:00 p.m., three days a week.

(3) All applicants for a spirits, beer, and wine license must establish, to the satisfaction of the board, that the prem-

ises will operate as a bona fide restaurant. The term "bona fide restaurant" is defined in RCW 66.24.410(2).

**AMENDATORY SECTION** (Amending WSR 11-23-045, filed 11/9/11, effective 12/10/11)

**WAC 314-02-041 What is a hotel license?** (1) Per RCW 66.24.590, this license allows a hotel to:

- (a) Serve spirits by the individual serving for consumption on the licensed premises;
  - (b) Serve beer, including strong beer, and wine for consumption on the licensed premises;
  - (c) Sell at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms;
  - (d) Provide, without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for consumption on the licensed premises at a specified regular date, time, and place. Self-service by guests is prohibited;
  - (e) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occupants of private residential units which are part of the buildings or complex of buildings, that include the hotel;
  - (f) Sell beer, including strong beer, and wine, in the manufacturer's sealed container at retail sales locations within the hotel premises;
  - (g) Place in guest rooms at check-in, complimentary beer, including strong beer, or wine in a manufacturer's sealed container; and
  - (h) Sell beer and cider as defined in RCW 66.24.210(6) to a purchaser in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap in the restaurant area by the licensee at the time of sale.
- (2) The annual fee for a hotel license is two thousand dollars.

**AMENDATORY SECTION** (Amending WSR 13-06-024, filed 2/27/13, effective 3/30/13)

**WAC 314-02-045 What is a beer and/or wine restaurant license?** (1) Per RCW 66.24.320 and 66.24.354, this license allows a restaurant to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$200
(b) Serve wine for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked wine from the premises).	\$200
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$120

Privilege	Annual fee
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in <del>((subsection))</del> (c) <u>of this subsection.</u>
(e) <u>Sell cider as defined in RCW 66.24.210(6) for off-premises consumption to a purchaser in a sanitary container brought to the premises by the purchaser or provided by the licensee and filled at the tap in the restaurant at the time of purchase. The licensee must comply with federal regulations.</u>	<u>In conjunction with off-premises privilege outlined in (c) of this subsection.</u>
(f) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-115 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in <del>((subsection))</del> (c) <u>of this subsection.</u>

(2) All applicants for a beer and/or wine restaurant license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant, as defined in RCW 66.04.010(30).

(a) Minimum food service is required, as defined in WAC 314-02-010.

(b) To obtain and maintain a beer and/or wine restaurant license, the restaurant must be open to the public at least five hours a day, three days a week.

(3) If a beer and/or wine restaurant's dedicated dining area comprises less than fifteen percent of the total customer service area, the premises must maintain a tavern license (see WAC 314-02-070 regarding the tavern license).

AMENDATORY SECTION (Amending WSR 11-23-045, filed 11/9/11, effective 12/10/11)

**WAC 314-02-070 What is a tavern license?** (1) Per RCW 66.24.330 and 66.24.354, this license allows a tavern to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$200
(b) Serve wine for on-premises consumption.	\$200
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$120

Privilege	Annual fee
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in <del>((subsection))</del> (c) <u>of this subsection.</u>
(e) <u>Sell cider as defined in RCW 66.24.210(6) for off-premises consumption to a purchaser in a sanitary container brought to the premises by the purchaser or provided by the licensee and filled at the tap in the tavern at the time of purchase. The licensee must comply with federal regulations.</u>	<u>In conjunction with off-premises privilege outlined in (c) of this subsection.</u>
(f) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-110 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in <del>((subsection))</del> (c) <u>of this subsection.</u>

(2) A tavern licensee may not allow persons under twenty-one years of age on the premises at any time (see RCW 66.44.316 for information regarding employees and professional musicians under twenty-one years of age).

AMENDATORY SECTION (Amending WSR 13-08-002, filed 3/20/13, effective 4/20/13)

**WAC 314-02-105 What is a beer and/or wine specialty store license?** (1) Per RCW 66.24.371, a beer and/or wine specialty store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred dollars.

(3) Qualifications for license - To obtain and maintain a beer and/or wine specialty store license, the premises must be stocked with an inventory of beer and/or wine in excess of three thousand dollars wholesale value. This inventory must be:

(a) Stocked within the confines of the licensed premises; and

(b) Maintained on the premises at all times the premises is licensed, with the exception of beginning and closing inventory for seasonal operations or when the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) Qualifications to sample - A beer and/or wine specialty store licensee may allow customers to sample beer and wine for the purpose of sales promotion, if the primary business is the sale of beer and/or wine at retail, and the licensee meets the requirements outlined in either (a) or (b) of this subsection:

(a) A licensee's gross retail sales of alcohol exceeds fifty percent of all annual gross sales for the entire business; or

(b) The licensed premises is a beer and/or wine specialty store that conducts bona fide cooking classes for the purpose of pairing beer and/or wine with food, under the following conditions:

(i) The licensee must establish to the satisfaction of the board that the classes are bona fide cooking courses. The licensee must charge participants a fee for the course(s).

(ii) The sampling must be limited to a clearly defined area of the premises.

(iii) The licensee must receive prior approval from the board's licensing and regulation division before conducting sampling with cooking classes.

(iv) Once approved for sampling, the licensee must provide the board's enforcement and education division a list of all scheduled cooking classes during which beer and/or wine samples will be served. The licensee must notify the board's enforcement and education division at least forty-eight hours in advance if classes are added.

(5) Licensees who qualify for sampling under subsection (4) of this section may sample under the following conditions:

(a) Employees conducting sampling must hold a class 12 alcohol server permit;

(b) No more than a total of ten ounces of alcohol may be provided to a customer during any one visit to the premises;

(c) Each sample must be two ounces or less.

(6) A beer and/or wine specialty store licensee may sell beer in kegs or other containers holding at least four gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(7) A beer and/or wine specialty store licensee may receive an endorsement to permit the sale of beer and cider as defined in RCW 66.24.210(6) to a purchaser in a sanitary container brought to the premises by the purchaser, or provided by the licensee or manufacturer, and filled at the tap by the licensee at the time of sale under the following conditions:

(a) The beer and/or wine specialty store sales of alcohol must exceed fifty percent of their total sales; (~~(or)~~)

(b) The board may waive the fifty percent beer and/or wine sale criteria if the beer and/or wine specialty store maintains a wholesale alcohol inventory that exceeds fifteen thousand dollars.

AMENDATORY SECTION (Amending WSR 09-02-009, filed 12/29/08, effective 1/29/09)

**WAC 314-20-017 Brewery and microbrewery retail liquor licenses—Selling kegs and containers.** A brewery or microbrewery licensed under RCW 66.24.240 or 66.24.244 may hold up to two retail liquor licenses to operate a spirits, beer, and wine restaurant, a tavern, a beer and/or wine restaurant, or any combination thereof.

(1) Definitions.

(a) For the purposes of this section, a "container" is a sealable receptacle, such as a carton, jug, growler or keg, and has no minimum holding requirement. A "keg" is a container holding four gallons or more.

(b) "Malt liquor" is a specific type of "beer" (as explained in RCW 66.04.010).

(c) "Beer" includes malt liquor and flavored malt beverages (as explained in RCW 66.04.010).

(2) Applicable to retail licenses for spirits, beer, and wine restaurants, beer and/or wine restaurants, and taverns.

(a) A retail license is separate from a brewery or microbrewery license.

(b) All containers of beer must be sold from the retail premises.

(c) A retail location may be located on or off the brewery or microbrewery premises.

(3) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell containers of beer of its own production and cider as defined in RCW 66.24.210(6) without a kegs-to-go endorsement provided that it sells this beer and cider for off-premises consumption only. A brewery or microbrewery may supply the container or use a container brought to the premises by a customer, and filled at the tap at the time of sale.

(4) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell kegs of malt liquor of another brewery's or microbrewery's production provided that it:

(a) Sells this malt liquor for off-premises consumption only;

(b) Has a kegs-to-go endorsement; and

(c) Supplies the kegs.

(5) A tavern or beer and/or wine restaurant that is operated by a brewery or microbrewery and has an off-premises beer and wine retailer's privilege may:

(a) Sell kegs of malt liquor for either on-premises or off-premises consumption. The malt liquor may be of the licensee's own production or the production of another brewery or microbrewery; (~~and~~)

(b) Sell containers of beer for either on-premises or off-premises consumption provided that the customer supplies the container. The beer may be of the licensee's own production or the production of another brewery or microbrewery; and

(c) Sell containers of cider as defined in RCW 66.24.210(6) for off-premises consumption in a sanitary container brought to the premises by the customer or provided by the licensee and filled at the tap at the time of sale, provided the licensee has a license to sell wine. The licensee must comply with federal regulations.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

**WAC 314-24-160 Domestic wineries—Retail sales of wine on winery premises—Wine served without charge on premises—Spirit, beer and wine restaurant operation.**

(1) A domestic winery holding a proper retail license, pursuant to chapter 66.24 RCW, may sell wine of its own production at retail on the winery premises.

(2) In selling wine of its own production at retail on its premises as provided in subsection (1) of this regulation, a domestic winery shall conduct such operation in conformity with the statutes and regulations which apply to holders of such wine retailers' licenses. The winery shall maintain

records of its retail operation separate from other winery operation records.

(3) Upon written authorization of the board, pursuant to RCW 66.04.011, wine of a domestic winery's own production and/or liquor products other than wine of a licensee's own production may be consumed in designated parks and picnic areas adjacent to and held by the same ownership as the domestic winery.

(4) A domestic winery or a lessee of a licensed domestic winery operating a spirit, beer and wine restaurant, licensed pursuant to RCW 66.28.295, shall conduct such operation in conformity with the statutes and regulations which apply to holders of such spirit, beer and wine restaurant licenses.

(5) A domestic winery may serve its own wine and wine not of its own production without charge on the winery premises as authorized by RCW 66.28.295.

(6) No retail license or fee is required for the holder of a domestic winery license to serve wine without charge on the winery premises as set forth in subsection (5) of this regulation. Before exercising this privilege, however, such winery shall obtain approval of the proposed service area and facilities. Such winery shall maintain a separate record of all wine so served.

(7) A domestic winery may sell for off-premises consumption wine of its own production in kegs or sanitary containers brought to the premises by the purchaser or furnished by the licensee. Containers must be filled at the tap at the time of sale.

(8) A winery is required to obtain the appropriate retail license to sell beer, wine, or spirits on the winery premises that is not of its own production.

AMENDATORY SECTION (Amending WSR 09-02-010, filed 12/29/08, effective 1/29/09)

**WAC 314-24-161 Domestic winery—Additional locations for retail sales only.** A licensee holding a domestic winery license under RCW 66.24.170 may apply for two additional location licenses.

(1) Wine-related retail activities allowed at an additional location include:

(a) Serving of samples provided with or without charge to customers (must be wine of the winery's own production). Samples are subject to taxes under WAC 314-19-015 (4)(b);

(b) Selling wine of the winery's own production for either on-premises or off-premises consumption; ~~((and))~~

(c) Selling for off-premises consumption wine of its own production in kegs or sanitary containers brought to the premises by the purchaser or furnished by the licensee. Containers must be filled at the tap at the time of sale; and

(d) Renting space for public and private events, such as catered events (subject to all of the provisions of this section, to Title 66 RCW covering the "tied house" restrictions, and to RCW 66.24.320 and 66.24.420).

(2) A licensee may request approval for an outside designated area. For the purpose of this section, an "outside designated area" means a specific area located on an outside track of land where alcohol consumption is allowed.

(a) An outside designated area must have prior written approval from the board's licensing division.

(b) The outside designated area shall be marked as such, and shall be enclosed in accordance with WAC 314-02-130(1).

(c) The outside designated area shall be on the licensed premises.

(3) Anyone involved in the selling or serving of wine, including the pouring of samples, at an additional location for on-premises consumption must obtain a Class 12 or Class 13 alcohol server permit.

(4) A winery holding a beer and wine restaurant license under RCW 66.24.170 may carry the same privileges to the additional locations under the following conditions:

(a) The licensee must apply for a new beer and wine restaurant license with fees for the additional location:

(i) If a location is shared with multiple wineries not of the same entity, violations will be addressed per the requirements of RCW 66.24.170(4).

(ii) Where the location is shared with multiple wineries, the applicant will include in their application a list of other license holders at that location as well as a sketch illustrating the location of each licensee.

(b) The licensee must abide by all laws and rules of the retail license; and

(c) No free samples are allowed on the retail portion of the premises.

**WSR 14-16-122**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**ENTERPRISE SERVICES**  
[Filed August 6, 2014, 11:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-03-115.

Title of Rule and Other Identifying Information: Chapter 200-380 WAC, Print management.

Hearing Location(s): Presentation Room, 1500 Jefferson, Olympia, WA 98501, on September 15, 2014, at 2:30 PDT.

Date of Intended Adoption: September 25, 2014.

Submit Written Comments to: Online <https://www.surveymonkey.com/s/DESRulemaking>, e-mail [rules@des.wa.gov](mailto:rules@des.wa.gov), comments will be accepted through September 4, 2014, 5:00 p.m. PDT.

Assistance for Persons with Disabilities: Contact Jack Zeigler, phone (360) 407-9209, e-mail [amy.julsrud@des.wa.gov](mailto:amy.julsrud@des.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Pursuant to RCW 43.19.742, the department of enterprise services (DES) is proposing these rules to assist agencies in managing their printing operations. There are no changes to existing rules.

Reasons Supporting Proposal: These rules are needed to implement managed print strategies to track, manage, and reduce agency-based printing.

Statutory Authority for Adoption: RCW 43.19.742.

Statute Being Implemented: RCW 43.19.742.

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

Name of Proponent: DES, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Zeigler, 1500 Jefferson Avenue, Olympia, WA 98504, (360) 407-9209; Implementation: Neva Peckham, 1500 Jefferson Avenue, Olympia, WA 98504, (360) 407-9411; and Enforcement: Farrell Presnell, 1500 Jefferson Avenue, Olympia, WA 98504, (360) 407-8820.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rules have no or minimal cost to small business.

A cost-benefit analysis is not required under RCW 34.05.328. DES is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, DES does not voluntarily make section 201 applicable to this rule adoption nor to date, has joint administrative rules review committee made section 201 applicable to this rule adoption.

August 6, 2014

Jack Zeigler

Policy and Rules Manager

## Chapter 200-380 WAC

### PRINT MANAGEMENT

#### NEW SECTION

**WAC 200-380-010 Purpose and authority.** RCW 43.19.742 directs the department to establish rules and guidelines for all agencies to use to improve efficiencies and minimize the costs of agency-based printing, in managing their printing operations, including both agency-based printing and those jobs that require services of a print shop, as based on the successes of implementation of existing print management programs in state agencies.

#### NEW SECTION

**WAC 200-380-020 Definitions.** For the purposes of this chapter, the definitions in this section apply unless the context clearly requires otherwise. Additional definitions are in RCW 39.26.010.

(1) "Agency-based printing" means an agency's internal printing, including printing done by that agency's in-house print shop, but does not include printing that requires a private sector print shop or another state agency's print shop.

(2) "Department" means the department of enterprise services.

(3) "Managed print services (MPS)" means a service-based method of delivering overall management and optimization of any print equipment needs of an agency. MPS may include providing a print assessment, managing equipment and supplies (excluding paper), usage monitoring, analysis, reporting, and maintenance and service.

(4) "Print management" means the overarching general term that applies to the management of all agency printing operations, including agency self-service and supplier generated printed material, services, and/or equipment. Examples include, but are not limited to, MPS and print services.

#### NEW SECTION

#### **WAC 200-380-030 Requirements of each agency.** (1)

In managing their printing operations, all agencies shall implement cost and resource savings strategies to improve efficiencies and minimize the cost of printing jobs, including optimization and reduction of both agency-based printing, and those jobs that require services of a private sector print shop or another state agency's print shop.

(2) Agencies shall implement such strategies based on the successes of implementation of existing print management programs in state agencies.

(3) Agencies must implement managed print strategies to track, manage, and reduce agency-based printing, to include implementation of managed print services where applicable, pursuant to RCW 43.19.733 and the department's *Print Management Guidelines*.