WSR 16-17-005
WITHDRAWL OF PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE
[Filed August 4, 2016, 11:15 a.m.]

The department of fish and wildlife requests the withdrawal of WAC 232-12-239 and 232-12-246 filed as WSR 16-04-126 on February 3, 2016. These rules were not part of the final rule making in WSR 16-15-045 and not permanently adopted by the department.

Scott Bird
Rules Coordinator

WSR 16-17-015
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed August 5, 2016, 10:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-13-073.

Title of Rule and Other Identifying Information: WAC 308-63-060 Vehicle wrecker—Special plates.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Building 2, Room 2105, Olympia, WA 98502, on October 4, 2016, at 9:30 a.m.

Date of Intended Adoption: October 5, 2016.

Submit Written Comments to: Sirena Walters, Transportation Services, P.O. Box 9039, Olympia, WA 98507-9039, e-mail swalters@dol.wa.gov, fax (360) 570-4954, by October 3, 2016.

Assistance for Persons with Disabilities: Contact transportation services by October 3, 2016, TTY (360) 664-0116 or (360) 664-6455.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule change will align WAC 308-63-060 and chapter 46.80 RCW.

Reasons Supporting Proposal: Chapter 46.80 RCW does not provide authority to the department to set fees for Vehicle wrecker—Special plates. The rule change will remove plate fees identified in WAC 308-63-060.

Statutory Authority for Adoption: RCW 46.80.140.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sirena Walters, Olympia, Washington, (360) 664-6466; and Enforcement: Derek Goudriaan, Olympia, Washington, (360) 664-6466.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule will impose no costs or only minor costs of less than $100 to businesses, RCW 19.85.030 (1)(a) and 19.85.020(2).

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is exempt from this requirement under RCW 34.05.328 (5)(a).

August 5, 2016
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-08-065, filed 3/27/09, effective 4/27/09)

WAC 308-63-060 Vehicle wrecker—Special plates. How do I use the special vehicle wrecker license plates? All vehicles used for towing or transporting vehicles or vehicle parts by a vehicle wrecker on the highways of this state in the conduct of the business must bear regular license plates and, in addition, special wrecker's plates. ((~~Wrecker's plates may be obtained at a fee of six dollars which includes one dollar for reflectorization under RCW 46.16.237 for the first set, and three dollars including reflectorization for each additional set.~~))

The wrecker may purchase sets of plates equal in number to the number of vehicles reported on the application as owned, rented, leased and operated by the applicant for towing or transporting of vehicles or vehicle parts in the conduct of the business. Should the wrecker purchase, lease, or rent additional vehicles for towing or transporting of vehicles or vehicle parts, the applicant must so inform the department and may obtain additional plates for such vehicles.

Each vehicle used for towing or transporting of vehicles or vehicle parts must display both wrecker plates of the same number. However, when any vehicle being towed does not have valid license plates, the set of wrecker plates may be split, with one being displayed on the front of the towing vehicle and the other on the rear of the vehicle being towed.

WSR 16-17-016
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed August 5, 2016, 1:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-13-072.

Title of Rule and Other Identifying Information: WAC 308-65-060 Hulk hauler—Special plates and 308-65-110 Scrap processor—Special plates.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Building 2, Room 2105, Olympia, WA 98502, on October 4, 2016, at 9:30 a.m.

Date of Intended Adoption: October 5, 2016.

Submit Written Comments to: Sirena Walters, Transportation Services, P.O. Box 9039, Olympia, WA 98507-9039, e-mail swalters@dol.wa.gov, fax (360) 570-4954, by October 3, 2016.

Assistance for Persons with Disabilities: Contact transportation services by October 3, 2016, TTY (360) 664-0116 or (360) 664-6455.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 46.79 RCW does not provide authority to the department to set fees for Hulk haulers—Special plates and Scrap processor—Spe-

cial plates. The amendment will remove plate fees identified in WAC 308-65-060 and 308-65-110.

Reasons Supporting Proposal: The amendment will align WAC 308-65-060 and 308-65-110 with chapter 46.79 RCW.

Statutory Authority for Adoption: RCW 46.79.080.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sirena Walters, Olympia, Washington, (360) 664-6466; and Enforcement: Derek Goudriaan, Olympia, Washington, (360) 664-6466.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule will impose no costs to businesses, RCW 19.85.030 (1)(a) and 19.85.020(2).

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is exempt from this requirement under RCW 34.05.328 (5)(a).

August 5, 2016
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-13-020, filed 6/12/00, effective 7/13/00)

WAC 308-65-060 Hulk hauler—Special plates. How must I display the hulk hauler license plates? All vehicles used by hulk haulers on the highways of this state shall bear regular license plates and in addition, special hulk hauler's plates. Each vehicle shall display both special plates assigned to it, provided that when any vehicle being towed does not have valid license plates, the hulk hauler plates may be split, with one being displayed on the front of the towing vehicle and the other on the rear of the vehicle being towed. The plates serve in lieu of a trip permit or current license plates for the vehicle(s) being transported.

((~~The plates may be obtained at a fee of six dollars for the first set, and three dollars for each additional set which charges include the reflectorization fee required by RCW 46.16.237.~~))

AMENDATORY SECTION (Amending WSR 00-13-020, filed 6/12/00, effective 7/13/00)

WAC 308-65-110 Scrap processor—Special plates. What special license plates are available? Vehicles owned or operated on the highways of this state by a scrap processor and used by the scrap processor in gathering vehicle hulks or salvage shall bear regular license plates and, in addition, hulk hauler plates. Such plates serve in lieu of a trip permit or current license for any vehicle being transported. Each vehicle shall display all plates issued to it.

((~~The plates may be obtained at a fee of six dollars for the first set, and three dollars for each additional set including the reflectorization fee required by RCW 46.16.237; they expire simultaneously with the scrap processor's license.~~))

WSR 16-17-019
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Pharmacy)
[Filed August 5, 2016, 2:19 p.m.]

Supplemental Notice to WSR 16-09-124.

Preproposal statement of inquiry was filed as WSR 15-24-107.

Title of Rule and Other Identifying Information: WAC 246-860-100 Sexual misconduct, the pharmacy quality assurance commission (commission) is proposing amendment to sexual misconduct standards to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by a pharmacist, or pharmacy intern, technician, or assistant.

Hearing Location(s): Red Lion Hotel, 1225 North Wenatchee Avenue, Wenatchee, WA 98801, on September 29, 2016, at 1:00 p.m.

Date of Intended Adoption: September 29, 2016.

Submit Written Comments to: Brett Lorentson, Department of Health, Pharmacy Quality Assurance Commission, P.O. Box 47852, Olympia, WA 98504-7852, e-mail https://fortress.wa.gov/doh/policyreview, fax (360) 236-2260, by September 16, 2016.

Assistance for Persons with Disabilities: Contact Brett Lorentson by September 16, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is a supplemental proposal to rules originally filed on April 19, 2016, as WSR 16-09-124. The revised proposal moves what was new subsection (1)(u) to a new subsection (2). The commission is proposing to update the sexual misconduct rule to establish clearer standards of conduct for pharmacy health care providers. The proposed rule clarifies what forcible or nonconsensual acts are within the definition of sexual misconduct. The proposed rule also updates and establishes clearer standards of conduct for pharmacy health care providers by adding to the existing rules sexual contact with any person, including people who are not clients or key parties that involves force, intimidation, lack of consent, or a conviction of a sex offense listed in RCW 9.94A.030.

Reasons Supporting Proposal: Experience with investigating and enforcing the current rule has raised the need to clarify what acts constitute sexual misconduct. By establishing clearer standards of conduct for providers, the proposal will help the consistent enforcement of sexual misconduct rules to comply with RCW 18.130.062 and Executive Order 06-03. This supplemental proposal is needed to clarify that the new language includes conduct outside of the provider-patient/third-party relationship and makes the commission's rule consistent with the secretary's sexual misconduct rule and rules of other boards and commissions.

Statutory Authority for Adoption: RCW 18.64.005, 18.130.062, and 18.130.050.

Statute Being Implemented: RCW 18.64.005, 18.130.-062, and 18.130.050.

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

Name of Proponent: Pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Brett Lorentson, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4611; Implementation and Enforcement: Doreen Beebe, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4834.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(d), a small business economic impact statement is not required for proposed rules that only clarify the language of a rule without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iv), rule making that only clarifies the language of a rule without changing its effect does not require [a] cost-benefit analysis.

August 5, 2016
Tim Lynch, PharmD, MS
Chair

AMENDATORY SECTION (Amending WSR 07-08-040, filed 3/28/07, effective 4/28/07)

WAC 246-860-100 Sexual misconduct. (1) A health care provider shall not engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus or any sexualized body part except as consistent with accepted community standards of practice within the health care practitioner's scope of practice;

(c) Rubbing against a patient or client or key party for sexual gratification;

(d) Kissing;

(e) Hugging, touching, fondling or caressing of a romantic or sexual nature;

(f) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;

(g) Not providing the patient or client a gown or draping except as may be necessary in emergencies;

(h) Dressing or undressing in the presence of the patient, client or key party;

(i) Removing patient's or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;

(j) Encouraging masturbation or other sex act in the presence of the health care provider;

(k) Masturbation or other sex act by the health care provider in the presence of the patient, client or key party;

(l) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;

(m) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(n) Soliciting a date with a patient, client or key party;

(o) Discussing the sexual history, preferences or fantasies of the health care provider;

(p) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(q) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(r) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

(s) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for legitimate health care purposes; and

(t) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.030.

(3) A health care provider shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the health care provider's sexual needs.

((~~(3)~~)) (4) A health care provider shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section with a former patient, client, or key party if:

(a) There is a significant likelihood that the patient, client or key party will seek or require additional services from the health care provider; or

(b) There is an imbalance of power, influence, opportunity and/or special knowledge of the professional relationship.

((~~(4)~~)) (5) When evaluating whether a health care provider engaged, or attempted to engage, in sexual misconduct, the ((~~board~~)) commission will consider factors((~~,~~)) including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another health care provider;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the health care provider and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the health care provider;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability; and

(i) Normal revisit cycle for the profession and service.

(((~~(5)~~))) (6) Patient, client or key party initiation or consent does not excuse or negate the health care provider's responsibility.

(((~~(6)~~))) (7) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to that profession; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the health care provider where there is no evidence of, or potential for, exploiting the patient or client.

WSR 16-17-043
PROPOSED RULES
LIQUOR AND CANNABIS BOARD

[Filed August 10, 2016, 10:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-13-092.

Title of Rule and Other Identifying Information: WAC 314-55-106 Marijuana warning symbol requirement.

Hearing Location(s): Washington State Liquor and Cannabis Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on November 2, 2016, at 10:00 a.m.

Date of Intended Adoption: On or after November 16, 2016.

Submit Written Comments to: Joanna Eide, Policy and Rules Coordinator, P.O. Box 43080, Olympia, WA 98504, e-mail rules@lcb.wa.gov, fax (360) 664-9689, by November 2, 2016.

Assistance for Persons with Disabilities: Contact Joanna Eide by October 19, 2016, (360) 664-1622.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to establish a new warning symbol to be placed on marijuana products intended to be eaten or swallowed. This proposal creates a new WAC section in chapter 314-55 WAC to establish the new warning symbol requirement for placement of the "not for kids" symbol on the principal display panel or front of the product package. The new rule establishes minimum size requirements and options for marijuana licensees who wish to use a sticker bearing the symbol in lieu of the digital image developed and made available in digital form to licensees without cost by the Washington Poison Center (WPC). This labeling requirement is in addition to other labeling requirements established in WAC 314-55-105.

Reasons Supporting Proposal: Concerns have been raised about the risk of accidental consumption of marijuana products by children and ways for adults that have over consumed marijuana products to contact WPC when experiencing adverse effects. WSLCB is considering adopting a warning symbol to deter accidental consumption of marijuana products by children and to provide emergency services contact information in cases of accidental exposure or over consumption.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

Statute Being Implemented: RCW 69.50.342 and 69.50.345.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1622; and Enforcement: Justin Nordhorn, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

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

Small Business Economic Impact Statement

WAC 314-55-106 Marijuana warning symbol requirement.

1. Description of Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule: WAC 314-55-106 Marijuana warning symbol requirement, is a proposed new WAC section that creates a warning symbol for use on marijuana products meant to be eaten or swallowed. This warning symbol will alert children and consumers that marijuana products meant to be eaten or swallowed are not for children. The symbol is intended to deter accidental consumption of marijuana products by children and to provide emergency services contact information in cases of accidental exposure or over consumption.

Marijuana licensees will be required to place the warning symbol on packaging of marijuana products meant to be eaten or swallowed. The "not for kids" symbol developed and made available in digital form to licensees without cost by WPC must be placed on the principal display panel or front of the product package. The warning symbol may be found on WPC's web site. The warning symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is not for kids, but must not be smaller than three-quarters of an inch in height by one-half of an inch in width. The warning symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package.

Licensees may use a sticker made available by WPC in lieu of digital image placement of the warning symbol on labels of marijuana-infused products meant to be eaten or swallowed sold at retail. If a licensee elects to use a warning symbol sticker instead of incorporating the digital image of the warning symbol on its label, the sticker:

(a) Must be obtained from WPC;

(b) Must be placed on or near the principal display panel or on the front of the package; and

(c) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

WSLCB used similar requirements found in C.F.R. (Code of Federal Regulations) regarding poison labeling requirements and the Washington department of health's rules on labeling compliant marijuana products in developing the requirements in this proposed new section. See 16 C.F.R. 1500, available here http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title16/16cfr1500_main_02.tpl, and proposed new chapter 246-70 WAC, available here http://www.doh.wa.gov/YouandYourFamily/Marijuana/MedicalMarijuana/RulesinProgress/MarijuanaProductCompliance.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: Licensees develop and print labels in a multitude of ways. Some licensees choose to create and print labels for products independently, while others may choose to hire professional designers and printers to develop or print labels or product packaging. Costs of professional designing and printing vary depending on the label or packaging design, size, and other aesthetic considerations the licensee chooses to make. The new warning symbol placement requirement will not require the use of professional services, but a licensee may choose to engage professional services if they wish.

Additionally, the digital image of the symbol is provided by WPC free of charge to licensees and is available for immediate download from WPC's web site. This means that no professional services are required should the licensee choose to download and place the digital image on products or labels independently.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs: All licensees are required to have a computer and internet access to acquire and maintain a marijuana license. For this reason, licensees already have the necessary equipment required to obtain the warning symbol from WPC's web site at no charge, so there are no costs of compliance that are necessary to obtain the new warning symbol.

Whether a licensee will incur costs due to the new warning symbol labeling requirement depends on the products the licensee produces and individual business decisions the licensee makes. Each licensee is different as far as the number of products they produce, types of packaging and labeling, and size of products, so costs associated with the new requirement may vary. Licensees will only have to comply with the new warning symbol requirement if the licensee produces or sells marijuana products intended to be eaten or swallowed. If the licensee chooses to acquire the digital image and incorporate the warning symbol on product labels or packaging independently (without the use of professional services), administrative costs should be minimal. If a licensee instead chooses to use professional design services to change labels and print them for the licensee, the costs will be higher. Again, these choices are voluntary on the part of the licensee and not necessary to comply with the new warning symbol requirements.

Licensees that create products in smaller packages may have the most costs associated with the new warning symbol requirement due to the minimum sizing provisions in the new rule. The minimum size requirement of no smaller than three-quarters of an inch in height by one-half of an inch in width are needed to ensure the symbol is of a size so as to be immediately recognizable and legible. However, the size of the symbol may pose some challenges for those licensees with small packaging/products, which may result in higher costs associated with compliance with the new requirement. This may result in some licensees having to reconceptualize packaging of products, increasing the costs of initial compliance. These costs will vary depending on packaging type and product size, as well as by business decisions made by licensees, and cannot be predicted on a general level. The delayed effective date for the new requirement explained below is aimed at reducing these impacts. Licensees are also welcome to suggest ways to address these issues through the rule-making process. WSLCB will consider alternative options for compliance for these smaller products if possible and as long as the desired effect of the symbol can be achieved.

WSLCB also plans on a delayed effective date so the new warning symbol requirement may be essentially "phased in," further minimizing any costs licensees may incur in complying with the new labeling requirement. WSLCB received input from several marijuana licensees that indicated that a phased-in approach with around a ninety day implementation would reduce any administrative costs for changing labels and phasing out product to comply with the new requirements. A phased-in approach will also allow licensees to move through product without the new warning labels and adjust new labeling to comply with the new warning symbol requirement.

If a licensee chooses not to incorporate the digital image of the warning symbol on packaging or labels of marijuana products intended to be eaten or swallowed, the licensee may obtain stickers bearing the warning symbols from WPC. There will be costs associated with the use of such stickers, but these costs are only applicable if the licensee actively chooses this route rather than incorporating the digital image of the warning symbol at no cost. WPC estimates that a roll of one thousand stickers would be approximately $12.00-$13.00 per roll, with an estimated shipping cost of roughly $5.00. It is possible that purchasing stickers at a higher volume (fifty or one hundred rolls, for example), could mean a high quantity discount. These figures are estimates at this time and final costs are yet to be determined as WPC selects a vendor to produce the stickers.

4. Will Compliance with the Rules Cause Businesses to Lose Sales or Revenue? This new requirement is unlikely to cause the loss of sales or revenue by marijuana businesses.

5. Costs of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

a. Cost per employee;

b. Cost per hour of labor; or

c. Cost per one hundred dollars of sales.

Most marijuana businesses are small businesses. However, these businesses vary in size, costs per employee, costs per hour of labor, and costs per one hundred dollars in sales for a multitude of reasons, including license type. Employee compensation and costs per hour of labor data is not collected by or available to WSLCB, though WSCLB does collect data on the value of marijuana at retail and wholesale. Depending on whether the licensee is a producer or processor or a retailer, the sales numbers are different due to the variance between wholesale and retail sales. The average price per gram as of April 30, 2016, was $8.73/gram at retail and $3.14/gram at wholesale. The total amount of sales by retailers from July 1, 2014, through June 30, 2015, (fiscal year 2015) including excise taxes was $44.9 million. The total amount of sales by retailers from July 1, 2015, to June 30, 2016, (fiscal year 2016) including excise taxes was $972.7 million. As of July 5, 2016, two hundred sixty-seven retail stores are reporting sales.

The additional costs associated with complying with the new warning symbol labeling requirement in the proposed rule should be minimal compared to sales revenue. The costs associated with complying with the new warning symbol requirement are further mitigated by WSLCB's efforts to ensure that a digital image of the warning symbol be available to licensees at no cost.

The costs of complying with the new warning symbol labeling requirement as provided in the proposed rule is indeterminate as it will vary depending on the circumstances (types of products, size of products, labels, etc.) and business decisions made by licensees, i.e. whether the licensee choses [chooses] to engage the services of a professional designer or printer rather than incorporating the new warning symbol on products independently. These factors will depend on the individual business decisions of licensees who produce or sell marijuana products intended to be eaten or swallowed.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: WSLCB sought to reduce costs on licensees through ensuring that the digital image of the warning symbol created by WPC would be able to be provided to licensees at no cost. Additionally, WSLCB plans to have a delayed effective date of ninety days after adoption of the new requirement (CR-103P), to allow licensees adequate time to cycle through product and adopt the new warning symbol on marijuana products meant to be eaten or swallowed.

Though the costs associated with complying with the new warning symbol labeling requirement should be minor, those costs are justified as the new warning symbol is intended to reduce public health and safety risks. The warning symbol will assist in deterring accidental consumption by minors by visually alerting children and consumers that the product is "not for kids." The warning symbol also provides a phone number to WPC so consumers who may experience adverse reactions from ingesting a product containing THC can obtain emergency assistance.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: Most marijuana businesses are small businesses. They are invited to provide feedback to the rules during the rule-making process. WSLCB also performed outreach with several licensed processors to gather information related to timelines for the new requirement and costs associated with compliance. WSLCB used the feedback received through these efforts to develop the timeline for the effective date of the new warning symbol labeling requirement to reduce costs to licensees and ensure adequate time for licensees to comply.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed marijuana licensees that create or sell marijuana products meant to be eaten or swallowed will be required to comply with these rules.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: Because the costs associated with adopting the new warning symbol will be minor, there will be no jobs lost or created as a result of compliance with the proposed rule.

A copy of the statement may be obtained by contacting Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, phone (360) 664-1622, fax (360) 664-9689, e-mail Joanna.Eide@lcb.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328.

August 10, 2016
Jane Rushford
Chair

NEW SECTION

WAC 314-55-106 Marijuana warning symbol requirement. The following requirements are in addition to the packaging and labeling requirements provided in WAC 314-55-105.

(1) Marijuana-infused products meant to be eaten or swallowed sold at retail must be labeled on the principal display panel or front of the product package with the "not for kids" warning symbol created and made available in digital form to licensees without cost by the Washington poison center. The warning symbol may be found on the Washington poison center's web site.

(a) The warning symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is not for kids, but must not be smaller than three-quarters of an inch in height by one-half of an inch in width; and

(b) The warning symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package.

(2) Licensees may use a sticker made available by the Washington poison center in lieu of digital image placement of the warning symbol on labels of marijuana-infused products meant to be eaten or swallowed sold at retail. If a licensee elects to use a warning symbol sticker instead of incorporating the digital image of the warning symbol on its label, the sticker:

(a) Must be obtained from the Washington poison center;

(b) Must be placed on or near the principal display panel or on the front of the package; and

(c) Must not cover or obscure in any way labeling or information required on marijuana products by WAC 314-55-105.

(3) For the purposes of this section, "principal display panel" means the portion(s) of the surface of the immediate container, or of any outer container or wrapping, which bear(s) the labeling designed to be most prominently displayed, shown, presented, or examined under conditions of retail sale. "Immediate container" means the external container holding the marijuana product.

WSR 16-17-053
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE
[Filed August 11, 2016, 3:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-10-099.

Title of Rule and Other Identifying Information: Create a new rule to clarify the requirements in using charter stamps for fishing guides and charter-boat operators and the penalties for not adhering to these requirements.

Hearing Location(s): Natural Resource[s] Building, 1111 Washington Street S.E., Olympia, WA 98501, on November 4-5, 2016, at 8:00 a.m. - 5:00 p.m.

Date of Intended Adoption: December 11, 2016.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by November 2, 2016.

Assistance for Persons with Disabilities: Contact Delores Noyes by November 3, 2016, TTY (360) 902-2155 or (360) 902-2349.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department needs to clarify for fishing guides and charter-boat operators their obligations in the use of charter stamps. Specifically, the department needs to provide a clear process for fishing guides and charter-boat operators to follow when they validate charter stamps for clients before fishing commences as well as the penalties for not properly doing so.

Reasons Supporting Proposal: In the past, some members in the fishing guide and charter-boat operator industry have reused charter stamps rather than issue new charter stamps to clients as required under RCW 77.32.430. This practice is illegal. As a result, the department needs to provide a clear process for the validation of charter stamps and to ensure that any violations of validating charter stamps are appropriately penalized.

Statutory Authority for Adoption: RCW 77.12.047 [77.04.012], 77.04.020, 77.05.055 [77.04.055], 77.12.047, 77.12.150, 77.12.240, and 77.12.800.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.150, 77.12.240, and 77.12.800.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Mike Cenci, 1111 Washington Street, Olympia, WA 98501, (360) 902-2329; and Implementation: Scott Bird, 1111 Washington Street, Olympia, WA 98501, (360) 902-2403.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule proposal only clarifies an existing legal obligation.

A cost-benefit analysis is not required under RCW 34.05.328. This rule proposal does not affect hydraulics.

August 8, 2016
Scott Bird
Rules Coordinator

NEW SECTION

WAC 220-69-23801 Charter stamps—Charter boat and guide operator issuance duties. It is unlawful for a charter boat or guide operator to fail to comply with the charter stamp validation requirements as provided for in this section.

(1) Before any fishing commences, the charter boat or guide operator shall write the validation date across every charter stamp issued to a client in ink. The validation date is the first day on which a client may fish for, harvest or possess fish, shellfish, or seaweed.

(2)(a) Each failure to validate a charter boat stamp is punishable as an infraction under RCW 77.15.160, so long as the charter boat or guide operator has not committed prior infractions under this subsection in the same calendar year involving a cumulative stamp value of more than one hundred fifty dollars.

(b) Each failure to validate a charter boat stamp is punishable as a gross misdemeanor under RCW 77.15.813 when the charter boat or guide operator has previously committed infractions under (a) of this subsection in the same calendar year involving a cumulative value of more than one hundred fifty dollars.

WSR 16-17-055
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE
[Filed August 12, 2016, 8:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-13-149.

Title of Rule and Other Identifying Information: Classification of shellfish under WAC 220-12-020.

Hearing Location(s): Natural Resource[s] Building, 1111 Washington Street S.E., Olympia, WA 98501, on November 4-5, 2016, at 8:00 a.m. - 5:00 p.m.

Date of Intended Adoption: December 11, 2016.

Submit Written Comments to: Scott Bird, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by November 2, 2016.

Assistance for Persons with Disabilities: Contact Delores Noyes by November 3, 2016, TTY (360) 902-2207 or (360) 902-2349.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule is to add three shellfish species to the list of classified shellfish in WAC 220-12-020 which include Paralithodes platypus, Paralithodes camtschaticus and Lithodes aequispinus.

By adding these three species of king crab to the current shellfish classification, brokers and original receivers who currently conduct business in Washington state will be required to obtain a wholesale fish dealers license and maintain and produce records for inspection by fish and wildlife police. Shippers and storage facilities will not be required to be licensed, but will be required to produce records associated with the origin of king crab. These records are already maintained through the regular course of doing business; however, access to these records cannot be compelled for inspection purposes unless a classified species is first identified. A number of the seafood brokers, shippers and cold storage facilities dealing in king crab are already licensed due to their involvement in trading or storing classified species.

Reasons Supporting Proposal: Currently, the illegal, unreported, and unregulated (IUU) fisheries are a global problem and negatively impact conservation, undermine legitimate fishery markets, and affect domestic interests. The Russian king crab fishery is at the top of the unsustainable fishery list, and directly competes with the Alaskan and Washington crab fisheries.

Failing to control the importation of illegally harvested crab from Russia has a rippling effect, driving down prices for west coast harvests. According to members of the Bering Sea Crab Association, the IUU issue has resulted in an estimated $600 million loss in crab related revenue and tax since 2000.

Of the $255 million of the United States' frozen crab imports from Russia in 2015, seventy-nine percent are imported through Washington state ports (Blaine, Seattle, Tacoma, and Bellingham). Over the last five years, as much as eighty-eight percent (2014) of all frozen (king and snow) crab from Russia entered through local ports. Unfortunately, Washington state is considered to be the original receiver and distribution point for illegal Russian origin crab destined for domestic markets. This rule change will help facilitate marketplace enforcement to ensure the interests of Washington commercial fishing businesses and families are protected.

Statutory Authority for Adoption: RCW 77.12.047 [77.04.012], 77.04.020, 77.05.055 [77.04.055], 77.12.047, 77.12.150, 77.12.240, and 77.12.800.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.12.150, 77.12.240, and 77.12.800.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Mike Cenci, 1111 Washington Street, Olympia, WA 98501, (360) 902-2329; and Implementation: Scott Bird, 1111 Washington Street, Olympia, WA 98501, (360) 902-2403.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule: The proposed rule adds three species of king crab to the current shellfish rule classification. Currently, brokers, original receivers, shippers and storage facilities maintain and produce records for inspection related to the origin of classified and regulated seafood. If a broker or original receiver buys, sells or receives these three species - blue king crab, red king crab or golden king crab, they will have to obtain a wholesale fish dealer's license and maintain and produce records for inspection as they do for other classified and regulated species. Likewise, both shippers and storage facilities will also be required to maintain and produce records for these three species.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: Compliance with the proposed rule will not require professional services.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: None. The proposed rule does not affect any costs of compliance; it simply requires certain businesses to ensure that they are properly licensed and maintain records of various species of king crab in their possession.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No. Compliance will have no effect on sales or revenue.

5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs: None. The proposed rule does not require any additional equipment, supplies, labor or administrative costs.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: Small businesses will not be negatively affected by this proposed rule but will in fact benefit from its adoption. The rule is designed to better account for the large volume of foreign-caught king crab that is imported into Washington state and undermines local businesses and the fishing community in general.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: Local businesses and the North Pacific Crab Association have already provided both oral and written support for the adoption of this rule. A public hearing will be held to review the rule as part of the regular rule-making process.

8. A List of Industries That Will Be Required to Comply with the Rule: Commercial fish brokers, original receivers, shippers, and storage facilities of king crab.

A copy of the statement may be obtained by contacting Scott Bird, WDFW, Enforcement Program, 600 Capitol Way North, Olympia, WA 98501, phone (360) 902-2403, fax (360) 902-2466, e-mail Scott.Bird@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. The rule proposal did not affect hydraulics.

August 8, 2016
Scott Bird
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-09-046, filed 4/13/12, effective 5/14/12)

WAC 220-12-020 Shellfish—Classification. The following species are classified as shellfish under RCW 77.12.047 and are subject to the provisions of this title:

Abalone	
Pinto abalone	*Haliotis kamtschatkana*
Mussel	
Blue mussel	*Mytilus trossulus*
California mussel	*Mytilus californianus*
Mediterranean mussel	*Mytilus galloprovincialis*
Scallops	
Pacific pink scallop	*Chlamys rubida*
Rock scallop	*Crassadoma gigantea*
Spiny scallop	*Chlamys hastata*
Weathervane scallop	*Patinopecten caurinus*
Clams	
All macoma clams	*Macoma spp.*
Butter clam	*Saxidomus giganteus*
Common cockle	*Clinocardium nuttallii*
Geoduck	*Panopea abrupta*
Horse or Gaper clam	*Tresus nuttallii*, *Tresus capax*
Mud or soft shell clam	*Mya arenaria*
Manila clam	*Venerupis philippinarum*
Piddock	*Zirfaea pilsbryi*
Razor clam	*Siliqua patula*
Rock or native little neck clam	*Leukoma staminea*
Varnish clam	*Nuttallia obscurata*
All other marine clams existing in Washington in a wild state	
Oysters	
All oysters	(Ostreidae)
Squid	
All squid	Sepiolida or Teuthida
Octopus	
Octopus	*Enteroctopus dolfleini*
Barnacles	
Goose barnacle	*Pollicipes polymerus*
Shrimp	
Coonstripe shrimp	*Pandalus danae*
Coonstripe shrimp	*Pandalus hypsinotus*
Ghost or sand shrimp	*Neotrypaea spp.*
Humpy shrimp	*Pandalus goniurus*
Mud shrimp	*Upogebia pugettensis*
Ocean pink shrimp	*Pandalus jordani*
Pink shrimp	*Pandalus eous*
Sidestripe shrimp	*Pandalopsis dispar*
Spot shrimp	*Pandalus platyceros*
Crab	
Dungeness or Pacific crab	*Cancer magister*
Red rock crab	*Cancer productus*
Tanner crab	*Chionoecetes tanneri*
King and box crab	*Lopholithodes spp.*
Blue king crab	*Paralithodes platypus*
Red king crab	*Paralithodes camtschaticus*
Golden king crab	*Lithodes aequispinus*
Crawfish	
Crawfish	*Pacifastacus sp.*
Sea cucumber	
Sea cucumber	*Parastichopus californicus*
Sea urchin	
Green urchin	*Strongylocentrotus droebachiensis*
Red urchin	*Strongylocentrotus franciscanus*
Purple urchin	*Strongylocentrotus purpuratus*

WSR 16-17-062
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed August 15, 2016, 12:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-037.

Title of Rule and Other Identifying Information: Chapter 182-558 WAC, Premium payment program.

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://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on September 27, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 28, 2016.

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, fax (360) 586-9727, by 5:00 p.m. on September 27, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by September 23, 2016, e-mail amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is proposing new rules that will provide parameters for program operations of the premium payment program.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: Melissa Bruce, P.O. Box 45500, Olympia, WA 98504-5500, (360) 725-1572.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

August 15, 2016
Wendy Barcus
Rules Coordinator

Chapter 182-558 WAC

PREMIUM PAYMENT PROGRAM

NEW SECTION

WAC 182-558-0010 Premium payment program (PPP). The medicaid agency may pay a premium assistance subsidy for comprehensive health insurance premiums and other cost-sharing when the agency determines it is cost-effective to maintain a client's available health care coverage.

NEW SECTION

WAC 182-558-0020 Definitions. The following definitions, and those found in chapter 182-500 WAC, apply to this chapter.

"Average cost per user" means the agency's average medicaid expenditure for a person of the same age and sex as the applicant, per fiscal year, including administrative costs.

"Comprehensive" means coverage comparable to the services offered under the agency's medicaid state plan that provides at least the following: Physician-related services, inpatient hospital services, outpatient hospital services, prescription drugs, immunizations, and laboratory and X-ray costs.

"Cost-effective" means the cost to the agency for a premium assistance subsidy for a client is less than:

(a) The average cost per user; or

(b) The medicaid expenditures to be incurred if the client does not receive the subsidy based on the client's documented medical condition.

"Employer-sponsored group health insurance" means a comprehensive group health plan provided through an employer or other entity, for which the employer or entity pays some portion of the cost. Group health plans must cover all applicants whose employment qualifies them for coverage and cannot increase the cost for an applicant with a preexisting condition.

"Flexible health spending arrangement" means the portion of an employee's wages set aside in an account to pay for qualified expenses such as medical or child care costs.

"Health savings account" means a medical savings account available to employees enrolled in a high-deductible health insurance plan.

"High-deductible health insurance plan" means coverage that meets the definition in Section 223 (c)(2) of the Internal Revenue Code.

"Qualified employer-sponsored group health insurance" means a comprehensive group health plan provided through an employer that is offered in a nondiscriminatory manner under 26 U.S.C. Sec. 105 (h)(3), and for which the employer subsidizes at least forty percent of the cost of the premium.

NEW SECTION

WAC 182-558-0030 Overview of eligibility. (1) To be eligible for the premium payment program (PPP):

(a) A member of the client's medical assistance unit, as described in chapter 182-506 WAC, must be receiving benefits under:

(i) Alternative benefits plan coverage;

(ii) Categorically needy coverage; or

(iii) Medically needy coverage.

(b) The client must provide the medicaid agency with proof of:

(i) Enrollment in a comprehensive individual or comprehensive employer-sponsored health insurance plan;

(ii) A Social Security Number or tax identification number for the policy holder; and

(iii) Premium expenditures.

(c) The client must not be eligible for medicare.

(2) A comprehensive health insurance plan includes:

(a) An individual health insurance plan;

(b) An employer-sponsored group health insurance plan; or

(c) A qualified employer-sponsored group health insurance plan.

(3) A comprehensive health insurance plan does not include:

(a) A health savings account or flexible health spending arrangement;

(b) A high-deductible plan;

(c) A high-risk plan, including a Washington state health insurance pool (WSHIP) plan; or

(d) A limited or supplemental plan, including a medicare supplemental plan.

(4) A comprehensive health insurance plan must be cost effective as defined in WAC 182-558-0020.

(5) If a client's comprehensive health insurance premium is more than the average cost per user, the client must provide the agency proof from the client's provider(s):

(a) Of an existing medical condition that requires or will be requiring extensive medical care; and

(b) That the cost of the medicaid expenditures would be greater if the agency does not pay a premium assistance subsidy.

(6) PPP enrollment begins no sooner than:

(a) The date on which a client is approved for medicaid;

(b) The date on which the medicaid agency receives and accepts the completed Application for HCA Premium Payment Program (HCA 13-705) form; and

(c) The date on which a client's apple health managed care enrollment ends.

(7) The agency's premium assistance subsidy may not exceed the minimum amount required to maintain comprehensive health insurance for the medicaid-eligible client.

(8) Proof of premium expenditures must be submitted to the agency no later than the end of the third month following the last month of coverage.

(9) The agency's cost-sharing benefit for copays, coinsurance, and deductibles is limited to services covered under the medicaid state plan.

(10) Proof of cost-sharing must be submitted to the agency no later than the end of the sixth month following the date of service.

(11) The agency may review a client's eligibility for the PPP at any time including, but not limited to:

(a) A reported increase in the client's premium;

(b) An annual open enrollment for the client's health insurance plan; or

(c) A change in medicaid eligibility, or the medical assistance unit.

NEW SECTION

WAC 182-558-0040 PPP for a client with an individual health insurance plan. (1) **General rule.** Under section 1905(a) of the Social Security Act, the agency pays a premium assistance subsidy up to an eligible person's individual health insurance premium obligation when the agency determines it is cost effective.

(2) **Eligible persons.** An eligible person is any client who:

(a) Has a comprehensive individual health insurance plan;

(b) Is receiving categorically needy or medically needy coverage; and

(c) Is not eligible for medicare.

NEW SECTION

WAC 182-558-0050 PPP for a client with an employer-sponsored group health insurance plan. (1) **General rule.** Under section 1906 of the Social Security Act, the agency pays a premium assistance subsidy up to an eligible person's employer-sponsored group health insurance plan premium obligation when the agency determines it is cost effective.

(2) **Eligible persons.** An eligible person is any client who:

(a) Has a comprehensive employer-sponsored group health insurance plan, which may be a Consolidated Omnibus Budget Reconciliation Act (COBRA) health insurance plan as described in 26 C.F.R. 54.4980;

(b) Is receiving categorically needy or medically needy coverage; and

(c) Is not eligible for medicare.

NEW SECTION

WAC 182-558-0060 PPP for a client with a qualified employer-sponsored group health insurance plan. (1) **General rule.** Under section 1906A of the Social Security Act, the agency pays an eligible person's premium assistance subsidy and other cost-sharing obligations for a qualified employer-sponsored group health insurance plan.

(2) **Eligible persons.** An eligible person is a client:

(a) Covered under a qualified employer-sponsored group health insurance plan;

(b) Receiving benefits under:

(i) Alternative benefits plan coverage;

(ii) Categorically needy coverage; or

(iii) Medically needy coverage.

(c) The parent of the client in (a) of this subsection, if:

(i) Enrollment in the health plan depends on a parent's enrollment; and

(ii) The client is a dependent of the parents; and

(d) Not eligible for medicare.

(3) **Cost-sharing benefit.** The PPP provides cost-sharing reimbursement limited to services for the medicaid-eligible client or their parents.

NEW SECTION

WAC 182-558-0070 Program monitoring. (1) The agency monitors payments under the premium payment program.

(2) The agency may recover any payment made in error under chapter 41.05A RCW, whether due to client error, administrative error, or misrepresentation.

NEW SECTION

WAC 182-558-0080 Administrative hearings. A client may request an administrative hearing under RCW 74.09.741 and chapter 182-526 WAC if the client does not

agree with an agency decision regarding eligibility for the premium payment program, the amount of a premium assistance subsidy, or an overpayment of a premium assistance subsidy.

WSR 16-17-063
PROPOSED RULES
WASHINGTON STATE PATROL
[Filed August 15, 2016, 4:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-12-056.

Title of Rule and Other Identifying Information: Report contents process control number ((PCN) requirement for dispositions).

Hearing Location(s): Washington State Patrol (WSP), General Administration Building, Room G-3, 210 11th Avenue S.W., Olympia, WA 98504-2600, on September 27, 2016, at 8:30 a.m.

Date of Intended Adoption: September 28, 2016.

Submit Written Comments to: Deborah Collinsworth, Criminal Records Division, 3000 Pacific Avenue S.E., Suite 204, Olympia, WA 98504-2633, e-mail Deborah.collinsworth@wsp.wa.gov, fax (360) 534-2070, by September 26, 2016.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by September 26, 2016, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will provide cleanup to WAC 446-16-070 to require a PCN to be entered when fingerprints are taken.

Reasons Supporting Proposal: In response to an audit recommendation for WSP to seek changes to the statute/rule to require that a PCN be entered for every disposition.

Statutory Authority for Adoption: RCW 43.43.745 and 10.97.090.

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

Name of Proponent: State auditor's office, governmental.

Name of Agency Personnel Responsible for Drafting: Deborah Collinsworth, 3000 Pacific Avenue S.E., Suite 204, Olympia, WA, (360) 534-2102; Implementation and Enforcement: Criminal Records Division, 3000 Pacific Avenue S.E., Suite 204, Olympia, WA, (360) 534-2102.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes do not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is not a significant rule change.

August 4, 2016
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-070 Report contents—General. The report of disposition must be made on forms provided by the section or shall be transferred electronically on forms approved by the section. The disposition report must include all arrest details as they appeared on the fingerprint card or arrest record previously forwarded to the section. The state identification number and process control number (PCN) ((~~should~~)) must be indicated on the disposition report if ((~~known~~)) fingerprints were taken.

WSR 16-17-064
PROPOSED RULES
WASHINGTON STATE PATROL
[Filed August 15, 2016, 4:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-14-027.

Title of Rule and Other Identifying Information: Administration of breath alcohol screening test.

Hearing Location(s): Washington State Patrol, General Administration Building, Room G-3, 210 11th Avenue S.W., Olympia, WA 98504-2600, on September 27, 2016, at 9:30 a.m.

Date of Intended Adoption: September 28, 2016.

Submit Written Comments to: Lieutenant Rob Sharpe, Washington State Patrol, Impaired Driving Section, 811 West [East] Roanoke Street, Seattle, WA 98102, e-mail Robert.sharpe@wsp.wa.gov, fax (206) 720-3023, by September 26, 2016.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by September 26, 2016, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Certain changes are needed to provide clarity and consistency in terms used throughout the chapter.

Reasons Supporting Proposal: Updates are to reflect current procedures and cleanup existing language.

Statutory Authority for Adoption: RCW 46.61.506.

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

Name of Agency Personnel Responsible for Drafting: Lieutenant Rob Sharpe, 811 East Roanoke Street, Seattle, WA 98102, (206) 720-3018; Implementation and Enforcement: Toxicology Lab, 2203 Airport Way South, Suite 360, Seattle, WA 98134, (206) 262-6100.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes do not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is not a significant rule change.

August 4, 2016
John R. Batiste
Chief

Chapter 448-15 WAC

ADMINISTRATION OF PRELIMINARY BREATH ((~~ALCOHOL SCREENING TEST~~)) TESTING

NEW SECTION

WAC 448-15-005 Definitions. (1) Certifying agent means persons certified by the state toxicologist, certified technician, or certified instructor as a preliminary breath test instrument (PBT) technician.

(2) Operator means a person certified as an evidential breath test instrument operator as described in chapter 448-16 WAC and trained and authorized to perform the tests for a PBT instrument as outlined in this chapter.

(3) PBT instrument means preliminary breath test instrument.

(4) PBT technician means a person trained and certified as competent and qualified to certify a PBT instrument according to the protocol approved by the state toxicologist.

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-010 Approval of devices. The following preliminary breath test (PBT) instruments are approved for use in the state of Washington as breath alcohol screening devices, subject to the requirements outlined in ((~~the following sections~~)) this chapter:

((~~Alcosensor~~)) (1) Alco-Sensor III (Intoximeters, St. Louis, MO).

((~~Alcosensor~~)) (2) Alco-Sensor FST (Intoximeters, St. Louis, MO).

(3) Any other instruments approved by the National Highway Traffic Safety Administration (NHTSA) will be considered for approval in Washington state on application to the state toxicologist, providing that a suitable program for maintenance, certification and operator training is also established and approved.

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-020 Use of test results. ((~~The devices~~)) (1) Valid results from the PBT instruments described in WAC 448-15-010 are approved for use ((~~in establishing probable cause~~)) to determine that a subject has consumed alcohol and establish probable cause to place a person under arrest for alcohol related offenses or probable cause to support issuance of a search warrant for blood to test for alcohol.

(2) This preliminary breath test is voluntary, and participation in it does not constitute compliance with the implied consent statute (RCW 46.20.308).

(3) For purposes of this section, valid results are considered those obtained ((~~from following the approved protocol, by a trained~~)) by an operator following the approved testing protocol described in WAC 448-15-030 while using an approved ((~~device~~)) PBT instrument which has been certified according to the rules described in WAC ((~~448-15-030~~)) 448-15-040.

(4) Valid results will show ((~~to a reasonable degree of scientific certainty,~~)) the test subject's breath alcohol concentration. ((~~Valid results are suitable to assist in establishing probable cause to place a person under arrest for alcohol related offenses.~~)) These results may not be used on their own for determining, beyond a reasonable doubt, that a person's breath alcohol concentration exceeds a proscribed level such as anticipated under the 'per se' statutes for intoxication.

((~~This preliminary breath test is voluntary, and participation in it does not constitute compliance with the implied consent statute (RCW 46.20.308).~~))

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-030 Test protocol. The operator must perform the test according to the policies and procedures approved by the state toxicologist((~~. The operator will perform~~)), using the following test protocol:

(1) The operator ((~~shall~~)) will advise the subject that this is a voluntary test, and that it is not an alternative to any evidential breath alcohol test.

(2) The operator ((~~shall~~)) will determine by observation or inquiry, that the subject has not consumed any alcohol in the fifteen minutes prior to administering the test. If the subject has consumed alcohol during that period, the officer should not administer the screening test for probable cause purposes until fifteen minutes have passed. If the subject responds that they have not consumed any alcohol in the last fifteen minutes, the officer may offer the subject the opportunity to provide a breath sample into the PBT instrument.

(3) Ensure a blank test result is obtained.

(4) Have the subject exhale into the mouthpiece with a full and continuous exhalation.

(5) Observe the results.

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-040 Certification. Any PBT instrument used ((~~as described in the preceding sections,~~)) must ((~~be~~)) have been certified ((~~at least every~~)) within the previous six months. In order to certify a PBT instrument as accurate, the certifying ((~~agency~~)) agent must follow a protocol approved by the state toxicologist. ((~~Certification of PBTs can be performed by persons certified by the state toxicologist as PBT technicians, or by factory authorized representatives, provided that the protocol for certification approved by the state toxicologist is followed.~~))

AMENDATORY SECTION (Amending WSR 08-05-029, filed 2/12/08, effective 3/14/08)

WAC 448-15-060 PBT technicians. ((~~Persons trained according to outlines approved by the state toxicologist, in the proper procedures for certifying PBT instruments shall be certified as PBT technicians. Their responsibilities will include performing periodic certification and maintaining records on such certification. Wallet-sized permits shall be issued to persons so qualified. The certification received on~~)) (1) PBT technicians will be issued a permit after:

(a) Successful completion of the training which must be renewed every three years((. Persons)); or

(b) Being certified as evidential breath test instrument technicians as described in chapter 448-16 WAC ((are also certified to perform all the duties of PBT technicians)).

(2) PBT technicians will perform periodic certification and maintain records on PBT instrument certification.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 448-15-050 PBT operators.

WSR 16-17-065
PROPOSED RULES
WASHINGTON STATE PATROL

[Filed August 15, 2016, 4:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-14-028.

Title of Rule and Other Identifying Information: Administration of breath test program.

Hearing Location(s): Washington State Patrol, General Administration Building, Room G-3, 210 11th Avenue S.W., Olympia, WA 98504-2600, on September 27, 2016, at 10:00 a.m.

Date of Intended Adoption: September 28, 2016.

Submit Written Comments to: Lieutenant Rob Sharpe, Washington State Patrol, Impaired Driving Section, 811 West [East] Roanoke Street, Seattle, WA 98102, e-mail Robert.sharpe@wsp.wa.gov, fax (206) 720-3023, by September 26, 2016.

Assistance for Persons with Disabilities: Contact Melissa Van Gorkom by September 26, 2016, (360) 596-4017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Certain changes are needed to provide clarity and consistency in terms used throughout the chapter and to ensure that the language aligns with recent changes to the statute.

Reasons Supporting Proposal: Updates are to reflect current procedures and cleanup existing language.

Statutory Authority for Adoption: RCW 46.61.506.

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

Name of Agency Personnel Responsible for Drafting: Lieutenant Rob Sharpe, 811 East Roanoke Street, Seattle, WA 98102, (206) 720-3018; Implementation and Enforcement: Toxicology Lab, 2203 Airport Way South, Suite 360, Seattle, WA 98134, (206) 262-6100.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes do not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is not a significant rule change.

August 4, 2016
John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 10-24-066, filed 11/30/10, effective 12/31/10)

WAC 448-16-020 Approval of breath test equipment. (1) Pursuant to RCW 46.61.506, the following instruments are approved for the quantitative measurement of alcohol in a person's breath:

(a) The DataMaster;

(b) The DataMaster CDM; and

(c) The ((~~Drager~~)) Draeger or Dräger Alcotest 9510.

(2) Pursuant to RCW 46.61.506, the following thermometers are approved:

(a) Mercury in glass thermometers with a scale graduated in tenths of a degree measuring a range between 33.5 and 34.5 degrees centigrade.

(b) Digital thermometer system contained within the Guth 2100 wet bath simulator.

AMENDATORY SECTION (Amending WSR 10-24-066, filed 11/30/10, effective 12/31/10)

WAC 448-16-040 Foreign substances, interference, and invalid samples. (1) A determination as to whether a subject has a foreign substance in his or her mouth will be made by either an examination of the mouth or a denial by the person that he or she has any foreign substances in their mouth. A test mouthpiece is not considered a foreign substance for purposes of RCW 46.61.506.

(2) If a subject is wearing jewelry or ornamentation pierced through their tongue, lips, cheek, or other soft tissues in the oral cavity, they will be required to remove this prior to conducting the breath test. If the subject declines to remove the jewelry or ornamentation, they will be deemed to have a physical limitation rendering them incapable of providing a valid breath sample ((~~and will be required to provide a blood sample under the implied consent statute, RCW 46.20.308~~)).

(3) If during a breath test, interference is detected, this will invalidate the test. The subject will be required to repeat the test. A subject whose breath registers the presence of interference on two or more successive breaths shall be deemed to have a physical limitation rendering them incapable of providing a valid breath sample ((~~and will be required to provide a blood sample under the implied consent statute, RCW 46.20.308~~)).

(4) In the event that the instrument records an "invalid sample" result at any point during the subject's test, that subject's test should be readministered, after again determining that the subject has no foreign substance in their mouth as outlined in WAC 448-16-040(1), and repeating the fifteen minute observation period.

AMENDATORY SECTION (Amending WSR 10-24-066, filed 11/30/10, effective 12/31/10)

WAC 448-16-080 Instructors. The state toxicologist or technician will certify persons found to be competent and qualified, as "instructors." Instructors are authorized to

administer breath tests for alcohol concentration using approved instruments and are further authorized to train and certify as operators, according to outlines approved by the state toxicologist, those persons the instructor finds qualified to administer the breath test utilizing approved instruments. Instructors who are also certified as PBT technicians may instruct other individuals as PBT technicians according to the approved outlines.

If an instructor fails or refuses to demonstrate to the state toxicologist, that they have the ability to adequately perform their responsibilities as an instructor, then the state toxicologist will suspend their permit.

AMENDATORY SECTION (Amending WSR 10-24-066, filed 11/30/10, effective 12/31/10)

WAC 448-16-120 Permits ((~~cards~~)). Pursuant to RCW 46.61.506, the state toxicologist will authorize the issuance to persons deemed qualified as "instructors," "operators," "solution changers" or "technicians," ((~~a wallet-sized card~~)) permit bearing his or her name and designation. Permits ((~~cards~~)) will bear the signature or facsimile signature of the state toxicologist. Such permits ((~~cards~~)) will expire three years after the date on the ((~~card~~)) permit, unless renewed for a like three-year period. Operators whose authorization expires may take recertification training within ninety days following expiration of their prior certification, but are not certified to perform any evidential breath tests during that period. Once ninety days have elapsed after the expiration of authorization, the operator must repeat the basic certification training.

WSR 16-17-084
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed August 17, 2016, 2:32 p.m.]

Supplemental Notice to WSR 15-24-114.

Preproposal statement of inquiry was filed as WSR 15-07-047.

Title of Rule and Other Identifying Information: Amending WAC 182-504-0130 Continued coverage pending an appeal and 182-518-0025 Washington apple health—Notice requirements—Changes in and terminations of coverage; and repealing WAC 182-504-0135 Reinstated coverage pending an appeal.

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://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on September 27, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 28, 2016.

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, fax (360) 586-9727, by 5:00 p.m. on September 27, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by September 23, 2016, e-mail amber.lougheed @hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to clarify when continued coverage ends, and that reinstated coverage is a remedy for the agency not meeting advance notice requirements in WAC 182-518-0025. The agency proposes repealing WAC 182-504-0135 and moving the relevant reinstated coverage information to WAC 182-518-0025.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: Rebecca Janeczko, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-0752.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

August 17, 2016
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-06-068, filed 2/28/14, effective 3/31/14)

WAC 182-504-0130 Washington apple health—Continued coverage pending an appeal. (((~~(1) If you disagree with a Washington apple health (WAH) decision that we (the agency or its designee) made, you have the right to appeal under RCW 74.09.741. The appeal rules are found in chapter 182-526 WAC.~~

~~(2) If you appeal a WAH decision on or before the tenth day after the date the person receives the written notice of the WAH decision or before the effective date of the WAH decision, your WAH coverage will continue until the appeals process ends, unless otherwise specified in this section. This is called continued coverage.~~

~~(3) We will treat the fifth day after the date on the notice as the date you received the notice; however, if you show that you received the notice more than five days after the date on the notice, we will use the actual date you received the notice for counting the ten-day appeal period for the purpose of providing continued coverage. If the tenth day falls on a week-~~

~~end or holiday, you have until the next business day to appeal and still be able to receive continued coverage.~~

~~(4) You receive continued coverage through the end of the month an administrative hearing decision is sent to you unless:~~

~~(a) An administrative law judge or our presiding officer serves an order ending continued coverage; or~~

~~(b) You:~~

~~(i) Tell us in writing that you do not want continued coverage; or~~

~~(ii) Withdraw your appeal in writing or at an administrative proceeding.~~

~~(5) You cannot get continued coverage when a change in your WAH coverage is the result of a mass change. A mass change is when rules change that impact coverage for a class of applicants and recipients or due to a legislative or statutory change. You may get continued coverage while appealing a change in your WAH coverage that is a result of a mass change if:~~

~~(a) There is a question about whether you are in the class of applicants or recipients being affected by the mass change; or~~

~~(b) The mass change is not the only reason for the change in your WAH coverage.~~

~~(6) If you are getting WAH medically needy coverage, then you are not eligible for continued coverage beyond the end of the original certification period described in WAC 182-504-0020.~~)) (1) Continued coverage is when a client continues to receive Washington apple health benefits while appealing a medicaid agency adverse action to terminate, suspend, reduce, or change the client's:

(a) Medicaid eligibility; or

(b) Authorization for a covered service.

(2) To qualify for continued coverage, a client must request a hearing on the adverse action no later than:

(a) The tenth day after the agency sent a notice of the action to the client; or

(b) The last day of the month before the action takes effect.

(3) If a client's last day to request a hearing and still qualify for continued coverage falls on a Saturday, Sunday, or a designated holiday under WAC 357-31-005, the client has until the end of the next business day to request the hearing.

(4) Continued coverage ends when:

(a) The client states in writing they no longer wish to receive continued coverage;

(b) The client withdraws the appeal;

(c) The client defaults and an order of dismissal is entered;

(d) An administrative law judge or a review judge issues an adverse ruling or written decision:

(i) Terminating the client's continued coverage; or

(ii) Ruling the client does not qualify for benefits.

(5) A client cannot receive continued coverage if the agency's adverse action was due solely to a change in statute, federal regulation, or administrative rule.

(6) A client receiving medically needy coverage cannot receive continued coverage past the end of the certification period described in WAC 182-504-0020.

(7) A client receiving coverage under an alien medical program cannot receive continued coverage past the end of the certification period described in chapter 182-507 WAC.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-504-0135	Washington apple health—Reinstated coverage pending an appeal.

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

WAC 182-518-0025 Washington apple health—Notice requirements—((~~Changes in and terminations of coverage~~)) Actions to terminate, suspend, reduce, or change eligibility or authorization for a covered service. (((~~(1) We send you written notice before your Washington apple health (WAH) coverage changes or ends. The notice includes:~~

~~(a) The change in coverage;~~

~~(b) The date your coverage will change or end;~~

~~(c) Specific facts and reason(s) for the decision;~~

~~(d) Specific rules the decision is based on; and~~

~~(e) Information found in WAC 182-518-0005(4).~~

~~(2) Before we send any notices to end your WAH coverage because your income is more than the modified adjusted gross income (MAGI) standard, we determine if you are eligible for other health care coverage (including non-MAGI-based coverage) based on information you have provided, as described in WAC 182-504-0125.~~

~~(3) We notify you at least ten days before we change or end your health care coverage. The ten days start on the day we send you the notice and end on the tenth day. We are not required to give ten days' notice if:~~

~~(a) You asked us to change or end your coverage;~~

~~(b) We are changing or ending your coverage due to a change in law;~~

~~(c) We are ending your coverage because everyone in your household either died or has been accepted to receive medicaid coverage somewhere else (another local jurisdiction, state, territory, or commonwealth);~~

~~(d) We are ending your coverage because mail we sent you was returned to us with no forwarding address and we do not have a more current address for you;~~

~~(e) You are incarcerated and it is expected to last more than thirty days; or~~

~~(f) We have facts indicating probable fraud by you, in which case we may notify you five days before we change or end your coverage.~~

~~(4) If we do not have to give ten days' advance notice, we send the notice right away after getting the information that caused the change, but no later than the date we took the action described in the notice.~~

~~(5) You may request an appeal if you disagree with our decision to change or end your health care coverage and get continued coverage as described in WAC 182-504-0130.~~)) (1) **General rule.**

(a) The medicaid agency sends written notice to a client at least ten days before taking adverse action to terminate, suspend, reduce, or change the client's:

(i) Medicaid eligibility; or

(ii) Authorization for a covered service.

(b) The ten-day notice period starts on the day the agency sent the notice.

(2) **Exceptions to ten-day notice period.**

(a) The agency sends written notice to the client at least five days before taking action to terminate, suspend, reduce, or change the client's medicaid eligibility or authorization for a covered service if:

(i) The agency has facts indicating fraud by the client or on the client's behalf; and

(ii) The facts have been verified, if possible, through secondary sources.

(b) The agency sends written notice to the client no later than the date the agency took action to terminate, suspend, reduce or change the client's medicaid eligibility or authorization for a covered service if:

(i) The client requested the action;

(ii) A change in statute, federal regulation or administrative rule is the sole cause of the action;

(iii) The client is incarcerated and is expected to remain incarcerated at least thirty days;

(iv) Mail sent to the client has been returned without a forwarding address, and the agency does not have a more current address for the client; or

(v) The agency is terminating the client's eligibility because the client:

(A) Died; or

(B) Began receiving medicaid from a jurisdiction other than Washington state.

(3) **Notice contents.** Written notice under this section states:

(a) The nature of the action;

(b) The effective date of the action;

(c) The reason for the action;

(d) The regulation on which the action is based;

(e) The client's appeal rights, if any; and

(f) The client's right to continued coverage, if any.

(4) **Reinstated coverage.** If the agency does not meet the advance notice requirements under this section, the agency reinstates the client's coverage back to the date of the action. The agency may still take action once it meets notice obligations under this section.

(5) **Hearing rights.** A client who does not agree with agency action under this section may request an administrative hearing under chapter 182-526 WAC, and may be entitled to continued coverage under WAC 182-504-0130.

WSR 16-17-093
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed August 18, 2016, 8:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-07-018.

Title of Rule and Other Identifying Information: The following sections within chapter 182-526 WAC, Administrative hearings: WAC 182-526-0005, 182-526-0010, 182-526-0020, 182-526-0025, 182-526-0035, 182-526-0040, 182-526-0045, 182-526-0070, 182-526-0080, 182-526-0085, 182-526-0090, 182-526-0095, 182-526-0102, 182-526-0105, 182-526-0110, 182-526-0112, 182-526-0115, 182-526-0135, 182-526-0150, 182-526-0155, 182-526-0157, 182-526-0170, 182-526-0175, 182-526-0185, 182-526-0195, 182-526-0200, 182-526-0215, 182-526-0221, 182-526-0230, 182-526-0235, 182-526-0240, 182-526-0245, 182-526-0250, 182-526-0255, 182-526-0270, 182-526-0280, 182-526-0282, 182-526-0284, 182-526-0285, 182-526-0290, 182-526-0300, 182-526-0315, 182-526-0320, 182-526-0340, 182-526-0350, 182-526-0355, 182-526-0360, 182-526-0370, 182-526-0375, 182-526-0380, 182-526-0387, 182-526-0390, 182-526-0415, 182-526-0450, 182-526-0495, 182-526-0500, 182-526-0520, 182-526-0525, 182-526-0540, 182-526-0545, 182-526-0550, 182-526-0555, 182-526-0560, 182-526-0575, 182-526-0580, 182-526-0595, 182-526-0600, 182-526-0605, 182-526-0640, and 182-526-0650.

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://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on September 27, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 28, 2016.

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, fax (360) 586-9727, by 5:00 p.m. on September 27, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by September 23, 2016, e-mail amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending the rules to make the hearing process more efficient and streamlined.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1408; Implementation and Enforcement: Evelyn Cantrell, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-9970.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

August 18, 2016
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0005 Purpose and scope. (1) This chapter:

(a) Describes the general hearing rules and procedures that apply to the resolution of disputes between an appellant and medical services programs established under chapter 74.09 RCW ((~~and subsidized basic health under chapter 70.47 RCW. This chapter~~)), including managed care in chapters 182-538, 182-538A, and 182-538B WAC, and crisis and noncrisis services in chapter 182-538C WAC.

(b) Supplements the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH).

(((~~(1) This chapter:~~

~~(a)~~)) (c) Establishes rules encouraging informal dispute resolution between the health care authority (HCA), its authorized agents, or an HCA-contracted managed care organization (MCO), and ((~~persons~~)) people or entities who disagree with its actions((~~; and~~)).

(((~~(b)~~)) (d) Regulates all hearings involving medical services programs established under chapter 74.09 RCW ((~~and subsidized basic health under chapter 70.47 RCW~~)) including managed care in chapters 182-538, 182-538A, and 182-538B WAC, and crisis and noncrisis services in chapter 182-538C WAC, unless specifically excluded by this chapter or program rules.

(2) Nothing in this chapter 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.

(3) If there is a conflict between this chapter and specific program rules, the specific program rules prevail. HCA's hearing rules and program rules prevail over the model hearing rules in chapter 10-08 WAC.

(4) The hearing rules in this chapter do not apply to the ((~~following programs:~~

~~(a)~~)) public employees benefits board program (see chapter 182-16 WAC)((~~; and~~

~~(b) The Washington health plan (see chapter 182-22 WAC)~~)).

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0010 Definitions. The following definitions and those found in RCW 34.05.010 apply to this chapter:

"Administrative law judge (ALJ)" - An impartial decision-maker who is an attorney and presides at an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency, as defined in RCW 34.05.010. ALJs are not department of social and health services or health care authority (HCA) employees or representatives.

"Agency" - See WAC 182-500-0010.

"Appellant" - A person or entity who requests a hearing about an action of HCA or its designee.

"Applicant" - Any person who has made a request, or on whose behalf a request has been made, to HCA, or HCA's authorized agent on HCA's behalf, for assistance through a medical service program established under chapter 74.09 RCW.

"Authorized agent" - A person or agency, as defined in RCW 34.05.010, acting on HCA's behalf ((~~pursuant to~~)) under an agreement authorized by RCW 41.05.021 to act as an HCA hearing representative. ((~~The~~)) An authorized ((~~agent(s)~~)) agent may ((~~include~~)) be an employee((~~s~~)) of the department of social and health services or its contractors but ((~~does~~)) may not ((~~include~~)) be an employee((~~s~~)) of an HCA-contracted managed care organization((~~s~~)).

"Board of appeals" or **"BOA"** - The HCA's board of appeals.

"Business days" - All days except Saturdays, Sundays, and ((~~legal holidays~~)) designated holidays under WAC 357-31-005.

"Calendar days" - All days including Saturdays, Sundays, and ((~~legal holidays~~)) designated holidays under WAC 357-31-005.

"Continuance" - A change in the date or time of a prehearing conference, hearing, or the deadline for other action.

"Date of the health care authority (HCA) action" - The date when the HCA's decision is effective.

"Deliver" - Giving a document to a person or entity in person or placing the document into the person or entity's possession as authorized by the rules in this chapter or chapter 34.05 RCW.

"Department" - The department of social and health services.

"Documents" - Papers, letters, writings, or other printed or written items.

"Filing" - The act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

"Final order" - An order that is the final HCA decision.

"HCA" - The health care authority.

"Health care authority (HCA) hearing representative" - An employee of HCA, an authorized agent of HCA, HCA contractor or a contractor of HCA's authorized agent, or an assistant attorney general authorized to represent HCA in an administrative hearing. The HCA hearing representative may or may not be an attorney. An employee of an HCA contracted managed care organization is not an HCA hearing representative.

"Hearing" - Unless context clearly requires a different meaning, a proceeding before an ALJ, HCA-employed presiding officer, or a review judge that gives a party an opportunity to be heard in disputes about medical services pro-

grams established under chapter 74.09 RCW ((~~and subsidized basic health under chapter 70.47 RCW~~)). For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Titles 182 and 388 WAC, chapter 10-08 WAC, or other law.

"Initial order" - A hearing decision entered (made) by an ALJ that may be reviewed by a review judge at any party's request.

"Intermediary interpreter" - An interpreter who:

(1) Is a certified deaf interpreter (CDI); and

(2) Is able to assist in providing an accurate interpretation between spoken and sign language or between types of sign language by acting as an intermediary between a person with hearing loss and a qualified interpreter.

"Judicial review" - ((~~A superior court's~~)) Review of a final order as provided under RCW 34.05.510 through 34.05.598.

"Limited-English-proficient (LEP)" - ((~~Includes~~)) A person who is limited-English-speaking ((~~persons or other persons~~)) or unable to communicate in spoken English because of hearing loss.

"Limited-English-speaking (LES) ((~~person~~))" - A person who, because of non-English-speaking cultural background or disability, cannot readily speak or understand the English language.

"Mail" - Placing a document in the United States Postal system, or commercial delivery service, properly addressed and with the proper postage.

"Managed care organization" or **"MCO"** - An organization having a certificate of authority or certificate of registration from the office of insurance commissioner that contracts with HCA under a comprehensive risk contract to provide prepaid ((~~healthcare~~)) health care services to eligible ((~~clients~~)) recipients under HCA's managed care programs.

"OAH" - The office of administrative hearings((~~, which is a separate state agency from HCA or the department of social and health services~~)).

"Order of default" - An order entered by an administrative law judge (ALJ) or review judge when the appellant fails to appear or participate in a prehearing conference or a hearing. Once the order of default becomes a final order, it terminates the appellant's request for a hearing and ends the hearing process.

"Order of dismissal" - An order from the administrative law judge (ALJ) or review judge ending the hearing process.

"Party":

(1) The health care authority (HCA);

(2) HCA-contracted managed care organization (MCO) (if applicable); and

(3) A person or entity:

(a) Named in the action;

(b) To whom the action is directed; or

(c) Is allowed to participate in a hearing to protect an interest as authorized by law or rule.

"Person with hearing loss" - A person who, because of a loss of hearing, cannot readily speak, understand, or communicate in spoken language.

"Prehearing conference" - A formal proceeding scheduled and conducted by an ALJ or other reviewing officer ((~~to address issues in preparation for a hearing~~)) on the record for the purposes identified in WAC 182-526-0195.

"Prehearing meeting" - An informal, voluntary meeting that may be held before any prehearing conference or hearing.

"Program" - An organizational unit and the services that it provides, including services provided by HCA staff, its authorized agents, and through contracts with providers and HCA-contracted managed care organizations.

"Qualified interpreter" - Includes qualified interpreters for a limited-English-speaking person or a person with hearing loss.

"Qualified interpreter for a limited-English-speaking person" - A person who is readily able to interpret ((~~or translate~~)) spoken ((~~and~~)) or sight-translate written English communications to and from a limited-English-speaking person effectively, accurately, and impartially. If an interpreter is court certified, the interpreter is considered qualified.

"Qualified interpreter for a person with hearing loss" - A ((~~visual~~)) sign language interpreter who is certified by the Registry of Interpreters for the Deaf (RID) ((~~or National Association of the Deaf (NAD)~~)) and is readily able to interpret or translate spoken communications to and from a person with hearing loss effectively, accurately, and impartially.

"Recipient" - Any person receiving assistance through a medical service program established under chapter 74.09 RCW.

"Reconsideration" - Asking a review judge to reconsider a final order entered because the party believes the review judge made a mistake.

"Record" - The official documentation of the hearing process. The record includes recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Review" - A review judge evaluating initial orders entered by an ALJ and making the final HCA decision as provided by RCW 34.05.464, or issuing final orders.

"Review judge" - A decision-maker with expertise in program rules ((~~that~~)) who serves as the reviewing officer under RCW 34.05.464. The review judge reviews initial orders and the hearing record exercising decision-making power as if hearing the case as a presiding officer. In some cases, review judges conduct hearings under RCW 34.05.425 as a presiding officer. After reviewing initial orders or conducting hearings, review judges enter final orders. Review judges are employed by HCA but may be physically located at the board of appeals (BOA). The review judge must not have been involved in the initial HCA action.

"Rule" - A ((~~state~~)) regulation adopted by a state agency. Rules are found in the Washington Administrative Code (WAC).

"Service" - The delivery of documents as explained in WAC 182-526-0040.

"Should" - That an action is recommended but not required.

"Sight-translation" - Oral interpretation of a written text.

"Stay" - An order temporarily halting the HCA decision or action.

"Witness" - For the purposes of this chapter, means any person who makes statements or gives testimony that becomes evidence in a hearing. One type of witness is an expert witness. An expert witness is qualified by knowledge, skill, experience, training, and education to give opinions or evidence in a specialized area.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0020 Good cause. (1) Good cause is a substantial reason or legal justification ((~~for failing to appear, act, or respond to an action. To show good cause, the administrative law judge must find that a party had a good reason for what they did or did not do, using the provisions of Superior Court Civil Rule 60 as a guideline~~)) allowing the administrative law judge (ALJ) to grant a party's request or to excuse their action or inaction, including granting a continuance or excusing a failure to appear at an administrative proceeding.

(2) ((~~Good cause may include, but is not limited to, the following examples:~~

~~(a) The party who requested the hearing ignored a notice because he or she was in the hospital or was otherwise prevented from responding; or~~

~~(b) The party who requested the hearing could not respond to the notice because it was written in a language that he or she did not understand.~~)) The requestor bears the burden to show why a request should be granted or an action excused.

AMENDATORY SECTION (Amending WSR 14-17-031, filed 8/13/14, effective 9/13/14)

WAC 182-526-0025 Use and location of the office of administrative hearings. (1) The health care authority (HCA) may ((~~utilize~~)) use administrative law judges employed by the office of administrative hearings (OAH) to conduct administrative hearings and issue initial orders in accordance with RCW 34.05.425 (1)(c).

(2) In some situations, HCA may use presiding officers employed by HCA to conduct administrative hearings and issue final orders in accordance with RCW 34.05.425 (1)(a) and (b). When HCA uses HCA-employed presiding officers to conduct administrative hearings, ((~~the HCA~~)) HCA's presiding officer ((~~shall have~~)) has all the duties and responsibilities set forth in this chapter relating to administrative law judges and the office of administrative hearings. The notice of hearing will identify whether the case is to be heard by OAH or an HCA-employed presiding officer.

(((~~(2)(a) The office of administrative hearings (OAH)~~))) (3)(a) OAH headquarters location is:

Office of Administrative Hearings
2420 Bristol Court S.W.
P.O. Box 42488
Olympia, WA 98504-2488
360-664-8717
fax: 360-664-8721

(b) The headquarters office is open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except legal holidays.

(((~~(3)~~))) (4) OAH field offices are at the following locations:

Olympia
Office of Administrative Hearings
2420 Bristol Court S.W.
P.O. Box 42489
Olympia, WA 98504-2489
360-407-2700
1-800-583-8271
fax: 360-586-6563

Seattle
Office of Administrative Hearings
One Union Square
600 University Street, Suite 1500
Mailstop: TS-07
Seattle, WA 98101-1129
206-389-3400
1-800-845-8830
fax: 206-587-5135

((~~**Vancouver**~~
~~Office of Administrative Hearings~~
~~5300 MacArthur Blvd., Suite 100~~
~~Vancouver, WA 98661~~
~~360-690-7189~~
~~1-800-243-3451~~
~~fax: 360-696-6255~~))

Tacoma
Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
253-476-6888
fax: 253-593-2200

Spokane
Office of Administrative Hearings
16201 E. Indiana Avenue, Suite 5600
Spokane Valley, WA 99216
509-456-3975
1-800-366-0955
fax: 509-456-3997

Yakima
Office of Administrative Hearings
32 N. 3rd Street, Suite 320
Yakima, WA 98901-2730
509-249-6090
1-800-843-3491
fax: 509-454-7281

(((~~(4)~~))) (5) Contact the Olympia field office, under subsection (2) of this section, if unable to identify the correct field office.

(((~~(5)~~))) (6) Further hearing information can be obtained at the OAH web site: www.oah.wa.gov.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0035 Calculating when a hearing deadline ends. (1) When counting days to calculate when a hearing deadline ends under program rules or statutes:

(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 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~~)) a designated holiday under WAC 357-31-005, the deadline is the next business day.

(c) For periods of seven days or less, count only business days. For example, if the party has seven days to respond to a review request that was mailed on Friday, May 10th, the response period ends on Tuesday, May 21st.

(d) For periods over seven days, count every calendar day, including Saturdays, Sundays, and ((~~legal~~)) designated holidays under WAC 357-31-005.

(2) The deadline is 5:00 p.m. on the last day.

(3) If the party who requested the hearing misses a deadline, that party may lose ((~~its~~)) the right to a hearing or appeal of a decision.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0040 ((~~Sending~~)) Service of documents ((~~to~~)) on another party((~~, the office of administrative hearings, or to the board of appeals~~)). (1) When the rules in this chapter or in other program rules or statutes require a party to ((~~send~~)) serve copies of documents ((~~to~~)) on other parties, the party must ((~~serve~~)) send copies of the documents to ((~~the health care authority (HCA) hearing representative and to~~)) all other parties or their representatives.

(2) When sending documents to the office of administrative hearings (OAH) or the board of appeals (BOA), the party must file the documents at one of the locations listed in WAC 182-526-0025(2) for OAH or in WAC 182-526-0030 for BOA.

(3) When sending documents to the assigned OAH field office, the parties should use the address of the assigned OAH listed on the notice of hearing. If a field office has not been assigned, all written communication about the hearing must be sent to the OAH Olympia field office, which sends the communication to the correct office.

((~~(4)~~)) Documents may be sent only as ((~~identified~~)) described in ((~~WAC 182-526-0045~~)) this section to accomplish service ((~~and only as identified in WAC 182-526-0070 to accomplish filing~~)).

(4) Unless otherwise stated in law, a party may serve someone by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail;

(c) Fax;

(d) Commercial delivery service; or

(e) Legal messenger service.

(5) A party must serve all other parties or their representatives whenever the party files a pleading, brief, or other document with the office of administrative hearings (OAH) or the board of appeals (BOA), or when required by law.

(6) Service is complete when:

(a) Personal service is made;

(b) Mail is properly stamped, addressed, and deposited in the United States mail;

(c) A fax that produces proof of transmission;

(d) A parcel is delivered to a commercial delivery service with charges prepaid; or

(e) A parcel is delivered to a legal messenger service with charges prepaid.

(7) A party may prove service by providing any of the following:

(a) A sworn statement;

(b) The certified mail receipt signed by the person who received the envelope;

(c) An affidavit or certificate or mailing;

(d) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package; or

(e) Proof of fax transmission.

(8) A party may serve documents by e-mail only if the other parties have agreed to accept electronically served documents. A party must obtain confirmation of receipt of the service from the other parties in order to prove that the documents were successfully served. A party serving documents by electronic means must retain proof of service for the hearing.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0070 Filing documents. (1) Filing is the act of delivering documents to the office of administrative hearings (OAH) or the board of appeals (BOA).

(2) The date of filing is the date documents are received by OAH or the BOA.

(3) Filing is complete when the documents are received by OAH or ((~~the~~)) BOA during office hours. ((~~For~~)) If the documents are received after normal office hours, the filing is effective the next business day.

(4) A party may file documents by delivering them ((~~to the office of administrative hearings~~)) to OAH or ((~~the~~)) BOA by:

(a) Personal service (e.g., hand delivery);

(b) First class, registered, or certified mail;

(c) Fax transmission;

(d) Commercial delivery service; or

(e) Legal messenger service.

(5) A party may deliver documents for filing by e-mail only if ((~~the ALJ or review judge has~~)) OAH or BOA staff agreed to accept electronically filed documents. ((~~Parties~~)) A party must ((~~request and receive~~)) obtain confirmation of receipt of the filing from the ALJ or review judge in order to prove that the documents were successfully filed. A party filing documents by electronic means must retain proof of service for the hearing.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0080 Resolving a dispute with the health care authority. (1) ((~~There is a limited time to request a hearing. The party must request a hearing within the deadline established in statute or rule to preserve the hearing right.~~

~~(2) If the party who requested the hearing disagrees with a decision or action of the health care authority, or one of its authorized agents, the party has several options for resolving the dispute, which may include the following:~~)) If a person or entity disagrees with a decision or action of the health care authority (HCA) or one of its authorized agents, the person or entity may request a hearing.

(2) A notice of an action or decision by HCA or its authorized agent sent to a person's or entity's correct address is presumed to be received by the person or entity on the fourth business day after it was sent by first class mail. This presumption does not apply to certified or registered mail.

(3) A hearing must be requested in the manner and within the deadlines established in statute or rule.

(4) After a person or entity requests a hearing the dispute may be resolved through:

(a) Any ((~~special~~)) prehearing alternative or administrative process offered by the program, HCA's authorized agent, or the HCA hearing representative;

(b) A prehearing meeting;

(c) A prehearing conference; ((~~and~~)) or

(d) A hearing.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0085 Determining if a hearing right exists. (1) A person or entity has a right to a hearing only if a law or program rule gives that right. ((~~If the person or entity is not sure whether a hearing right exists, they should request a hearing to protect their rights.~~))

(2) Some programs may require a person or entity to go through an informal administrative process before requesting or having a hearing. The notice of the agency's action ((~~should~~)) includes information about this requirement if it applies.

(3) Program rules and statutes may limit the time a person or entity has to request a hearing. The deadline for filing the request for hearing varies by the program involved. ((~~All~~)) Hearing requests should be submitted right away to protect the right to a hearing, even if the parties are also trying to resolve the dispute informally. The notice of the agency's action contains information about this requirement.

(4) ((~~If a hearing is requested, one is scheduled.~~

~~(5)~~)) If the health care authority (HCA) hearing representative or the administrative law judge (ALJ) questions the person's or entity's right to a hearing, the ALJ or review judge (RJ) must address whether the hearing right exists.

(((~~6~~))) (5) If on appeal of the initial order the HCA hearing representative or the review judge questions the right to a hearing, the review judge decides whether the hearing right exists.

(((~~7~~))) (6) If the ALJ or ((~~review judge~~)) RJ decides ((~~a~~)) that the person or entity does not have a right to a hearing, the ALJ enters an order dismissing the hearing ((~~is dismissed~~)).

(((~~8~~))) (7) If the ALJ or ((~~review judge~~)) RJ decides that a person or entity ((~~does have~~)) has a right to a hearing, the hearing proceeds.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0095 ((~~How to request~~)) Requesting a hearing. (((~~(1) If a person or entity has questions about how, when, and where to request a hearing, they should:~~

~~(a) Contact the specific program involved, the office of administrative hearings (OAH), or the board of appeals (BOA);~~

~~(b) Review the notice sent by the health care authority (HCA) of the action or decision; or~~

~~(c) Review the applicable statute or program rule.~~

~~(2) A person or entity may request a hearing in writing or orally, unless a written request is specifically required by applicable statutes or program rules.~~

~~(3) An oral request for hearing is allowed unless a program rule or statute requires a written request for hearing. An oral request for hearing can be made to an HCA employee, HCA's authorized agent, or to an OAH employee in person, by telephone, or by voice mail.~~

~~(4) A written request for hearing should be sent to the location on the notice. Program rules or statutes may require a specific method and location for sending a written request for hearing.~~)) (1) A hearing request may be made orally or in writing, unless a statute or rule requires otherwise. If an oral request is allowed by statute or rule, an oral request for hearing can be made to a health care authority (HCA) employee, HCA's authorized agent, or to the office of administrative hearings (OAH) employee in person, by telephone, or by voice mail.

(2) Program rules or statutes may require a specific method and location for sending a written request for hearing. A written request for hearing should be sent to the location specified in the notice.

(3) A hearing request should contain:

(a) The requestor's name;

(b) The requestor's address;

(c) The requestor's telephone number;

(d) The applicant's, recipient's, or provider's identification number;

(e) A description of each agency action being contested;

(f) A brief explanation of why the person or entity disagrees with HCA's action; and

(g) Any accommodation to help the requestor fully participate in the hearing, including a foreign or sign language interpreter or any other accommodation for an individual with a disability.

AMENDATORY SECTION (Amending WSR 13-22-094, filed 11/6/13, effective 12/7/13)

WAC 182-526-0102 Coordinated appeals process with the Washington health benefits exchange. (1) The health care authority (HCA) coordinates with the Washington

state health benefits exchange (HBE) to ensure a seamless appeal process for determinations related to eligibility for Washington apple health (((~~WAH~~))) when the modified adjusted gross income (MAGI) methodology is used as described in WAC 182-509-0305.

(2) An applicant, recipient, or an authorized representative of an applicant or recipient may request ((~~a WAH~~)) an apple health hearing:

(a) By telephone;

(b) By mail (which should be sent to Health Care Authority, P.O. Box 45504, Olympia, WA 98504-5504);

(c) In person;

(d) By facsimile transmission;

(e) By e-mail; or

(f) By any other commonly available electronic means.

(3) When an applicant or recipient appeals an HBE determination of eligibility for health insurance premium tax credits (HIPTC) or cost-sharing reductions with HBE and also requests a hearing with ((~~the health care authority~~)) HCA related to ((~~WAH~~)) apple health eligibility, the ALJ will not require the applicant or recipient to submit information to the ALJ that the applicant or recipient previously submitted to HBE.

(4) If an applicant or recipient submits to HBE a request for a hearing related to ((~~WAH~~)) apple health eligibility, the ALJ will accept the date HBE received the request for the hearing as the date filed for the purposes of timeliness standards and will treat it as a valid hearing request.

(5) If the applicant or recipient appeals only the determination related to ((~~WAH~~)) apple health eligibility, subsection (3) of this section does not apply.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0110 Process after a hearing is requested. (1) After a hearing is requested, the office of administrative hearings (OAH) must send a copy of the hearing request to the health care authority (HCA) or HCA's authorized agent who made the decision on HCA's behalf, unless OAH received the hearing request from HCA or HCA's authorized agent. ((~~The OAH should send it to HCA or HCA's authorized agent within four business days of the OAH receiving the request.~~))

(2) OAH sends the hearing request to HCA or HCA's authorized agent within four business days of OAH receiving the request.

(3) OAH must serve all ((~~the~~)) parties with a notice ((~~containing~~)) of hearing, which advises the parties of the hearing date, time, and ((~~place~~)) location. This document is called the notice of hearing. ((~~The parties may also receive~~)) In appropriate cases, OAH also serves a written notice of a prehearing conference ((~~either before or after receiving the notice of the hearing~~)).

(((~~3~~))) (4) Before the hearing or prehearing conference is held:

(a) The HCA hearing representative may contact ((~~the other parties and~~)) any other party to try to resolve the dispute or gather information; and

(b) The party who requested the hearing ((~~is encouraged to~~)) may contact the HCA hearing representative ((~~and~~)) to try to resolve the dispute or gather information.

(((~~(4) If the party who requested the hearing does not appear for the prehearing conference or the hearing, an administrative law judge may enter an order of default and an order dismissing the hearing according to WAC 182-526-0285.~~)))

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0115 Withdrawing ((~~the~~)) a request for hearing. (1) The ((~~party who requested the hearing~~)) appellant may withdraw the hearing request for any reason and at any time by contacting the health care authority hearing representative or the office of administrative hearings (OAH). The request for withdrawal must be made ((~~in writing or~~)) orally on the record with the administrative law judge ((~~and the other parties~~)) or in writing.

(2) After the request for withdrawal is received, the hearing is canceled and ((~~OAH~~)) the administrative law judge (ALJ) enters ((~~and serves~~)) an order dismissing the hearing. If a hearing request is withdrawn, the ((~~party~~)) appellant may not be able to request another hearing on the same action.

(3) If ((~~a party~~)) an appellant withdraws the hearing request, the order of dismissal may only be set aside according to WAC 182-526-0290.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0135 Interpreters. (1) The office of administrative hearings (OAH) must provide a qualified interpreter at no charge to assist any person ((~~at no charge~~)) who:

(a) Has ((~~limited English proficiency~~)) limited-English proficiency; and

(b) Is a party or witness in a hearing.

(2) OAH may hire or contract with ((~~persons to interpret~~)) individuals or organizations to provide interpretation services at hearings.

(3) The following ((~~persons~~)) may not ((~~be used~~)) act as interpreters at a hearing:

(a) A relative of any party;

(b) ((~~Health care authority (HCA) employees; or~~

~~(c) HCA authorized agents.~~)) A representative of the appellant;

(c) A health care authority (HCA) employee;

(d) Any person who may be called as a witness or who has a conflict of interest in the underlying matter; or

(e) An HCA authorized agent.

(4) The administrative law judge (ALJ) must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service. To do so, the ALJ considers the interpreter's:

(a) Ability to meet the needs of the person with hearing loss or limited-English-speaking person;

(b) Education, certification, and experience;

(c) Understanding of the basic vocabulary and procedures involved in the hearing; and

(d) Ability to be impartial.

(5) The parties or their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If at any time before or during the hearing the interpreter does not provide accurate and effective communication, ((~~the ALJ~~)) OAH must provide another interpreter.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0150 Hearing decisions involving limited-English-proficient parties. (1) When an interpreter is used at a hearing, the administrative law judge must explain that the decision is written in English and that the office of administrative hearings (OAH) will, upon request, provide an interpreter for a sight translation of the decision at no cost to that party.

(2) OAH must ((~~provide the party needing sight translation services~~)) attach information ((~~about~~)) explaining how to obtain ((~~those services. Information about how to access sight translation must be attached~~)) sight translation to the decision or order.

(3) OAH or the board of appeals must send a copy of a decision or order to an interpreter for use in sight translation.

(4) There is no requirement that the interpreter who provides a sight translation of the decision be the same person who provided interpreter services at the hearing.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0155 Appellant's representation in the hearing. (((~~(1) The party that requested the hearing may be his or her own representative or have anyone represent them except employees of the health care authority (HCA), HCA's authorized agents, and employees of the department of social and health services (DSHS).~~

~~(2) The party's representative may be a friend, relative, community advocate, attorney, or paralegal.~~

~~(3) The party should inform the HCA hearing representative and the office of administrative hearings of his or her representative's name, address, and telephone number.~~

~~(4) Although health care authority (HCA) employees, HCA authorized agents, and other DSHS employees cannot represent other parties to the hearing, they may:~~

~~(a) Act as a witness;~~

~~(b) Provide referrals to community legal resources;~~

~~(c) Assist the party to obtain nonconfidential information; or~~

~~(d) Inform the party about or provide copies of relevant laws or rules.~~)) (1) An appellant may act as his or her own representative or may choose to have someone represent him or her including a friend, relative, community advocate, attorney or paralegal.

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

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

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

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

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

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

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

(i) An employee of HCA;

(ii) HCA's authorized agent;

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

(iv) An employee of OAH; or

(v) Anyone under eighteen years of age.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0175 Prehearing meetings. (1) A prehearing meeting is an informal meeting with a health care authority (HCA) hearing representative that may be held before any prehearing conference or hearing.

(2) The HCA hearing representative may contact the party who requested the hearing before the ((~~scheduled~~)) hearing date to arrange a prehearing meeting. Any party may also contact the HCA hearing representative to request a prehearing meeting.

(3) A prehearing meeting is voluntary, but strongly encouraged. A party is not required to request ((~~one,~~)) a prehearing meeting and is not required to participate in one. ((~~If a party does not~~)) A party's refusal to participate((~~, it~~)) in a prehearing meeting does not affect the party's right to a hearing.

(4) The prehearing meeting may include((~~s the party who requested the hearing and/or its representative, the HCA hearing representative, and any other party.~~)) all or some of the parties, but does not include an administrative law judge (ALJ) ((~~does not attend a prehearing meeting~~)).

(5) The prehearing meeting gives the parties an opportunity to:

(a) Clarify issues;

(b) Exchange documents and witness statements;

(c) Resolve issues through agreement or withdrawal; and

(d) Ask questions about the hearing process and the laws and rules that apply.

(6) During a prehearing meeting:

(a) The HCA hearing representative may:

(i) Explain the role of the HCA hearing representative in the hearing process;

(ii) Explain how a hearing is conducted and the relevant laws and rules that apply;

(iii) Explain the right to representation during the hearing;

(iv) Respond to questions about the hearing process;

(v) Identify accommodation and safety issues;

(vi) Distribute copies of the documents to be presented during the hearing;

(vii) Provide, upon request, copies of relevant laws and rules;

(viii) Identify additional documents or evidence a party may want or be required to present during the hearing;

(ix) Provide information about how to obtain relevant documents;

(x) Clarify the issues; and

(xi) Attempt to settle the dispute, if possible.

(b) Parties should explain their position and provide documents that relate to the case. Parties may consult legal resources.

(c) Parties may enter into written agreements or stipulations, including agreements that settle the dispute.

(7) A prehearing meeting may be held or information exchanged:

(a) In person;

(b) By telephone conference call;

(c) Through correspondence; or

(d) Any combination of the above that is agreeable to the parties.

((~~(8) If a prehearing conference is required by HCA or its program rules, a prehearing meeting may not be an available option.~~))

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0185 Settlement agreements. (1) If the parties resolve the dispute during the prehearing meeting and put it in writing or present the agreement to an administrative law judge (ALJ), the agreement may be legally enforceable.

(2) If the parties want the ALJ to consider any agreements or stipulations made at the prehearing meeting, the parties must ((~~be presented to an~~)) present them to the ALJ either before or during the hearing((~~, if the parties want the ALJ to consider the agreement~~)).

(3) If all ((~~of~~)) the issues are not resolved in the prehearing meeting, the parties may request a prehearing conference before an ALJ or go to the scheduled hearing. The ALJ may also order a prehearing conference.

(4) ((~~The party that requested the hearing may withdraw the hearing request at any time if the HCA hearing representative agrees to some action that resolves the dispute, or for any other reason. If the party withdraws their hearing request, the hearing is not held and the ALJ enters and serves a written order of dismissal.~~)) If all the issues are resolved and the settlement agreement is in writing and signed by both parties, or presented orally by both parties to the ALJ, the ALJ enters the settlement agreement into the record and the agreement constitutes a withdrawal of the appellant's hearing request.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0195 Prehearing conferences. (1) Unlike a prehearing meeting, a prehearing conference is a formal proceeding conducted on the record by an administrative law judge (ALJ) to address issues and prepare for a hearing.

(a) The ALJ must make an audio record of the prehearing conference ((~~using audio recording equipment (such as a digital recorder or tape recorder)~~)).

(b) An ALJ may conduct the prehearing conference in person, by telephone ((~~conference call~~)), or in any other manner acceptable to the parties.

(2) All parties must attend and participate in the prehearing conference. If the party who requested the hearing does not attend and participate in the prehearing conference, the ((~~administrative law judge~~)) ALJ may enter an order of default and an order dismissing the hearing.

(3) The ((~~administrative law judge (~~))ALJ((~~)~~)) may require a prehearing conference. Any party may request a prehearing conference.

(4) The ALJ must grant the first request for a prehearing conference if it is filed with the office of administrative hearings (OAH) at least seven business days before the scheduled hearing date.

(5) When the ALJ grants a party's request for a prehearing conference, ((~~OAH~~)) the ALJ must continue the previously scheduled hearing when necessary to comply with ((~~subsection (10) of~~)) notice requirements in this section.

(6) ((~~The ALJ may grant additional requests for prehearing conferences.~~

~~(7)~~)) The office of administrative hearings (OAH) must schedule prehearing conferences for all cases which concern:

(a) The department's division of residential care services under Title XIX of the federal Social Security Act((~~; and~~)).

(b) Provider and vendor overpayment hearings.

((~~(8)~~)) (c) Estate recovery and predeath liens.

(7) During a prehearing conference the parties and the ((~~administrative law judge~~)) ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time, and place of the hearing;

(c) Identify any accommodation ((~~and~~)) or safety issues;

(d) Agree to postpone the hearing;

(e) Allow the parties to make changes in their own documents, including the notice or the hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline to exchange names and phone numbers of witnesses and documents before the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

(j) Consider granting a stay if authorized by law or program rule; or

(k) Rule on any procedural issues and substantive motions raised by any party.

((~~(9)~~)) (8) After the prehearing conference ((~~ends~~)), the ((~~administrative law judge (~~))ALJ((~~)~~)) must enter a written order describing:

(a) The actions taken at the prehearing conference;

(b) Any changes to the documents;

(c) A statement of the issue or issues identified for the hearing;

(d) Any agreements reached; and

((~~(d)~~)) (e) Any ruling of the ALJ.

(((~~(10) The ALJ~~))) (9) OAH must serve the prehearing order ((~~to~~)) on the parties at least fourteen calendar days before the scheduled hearing.

(((~~(11)~~))) (10) A party may object to the prehearing order by notifying ((~~the ALJ~~)) OAH in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

(((~~(12)~~))) (11) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(((~~(13)~~))) (12) The ALJ may take further appropriate actions to address other concerns raised by the parties.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0200 Enrollee appeals of a managed care organization action. (1) The hearing process described in this chapter applies to enrollee appeals of a health care authority (HCA)-contracted managed care organization (MCO) action. Where a conflict exists, the requirements in this section prevail.

(2) An MCO enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to requesting a hearing with HCA. See WAC 182-538-110.

(3) If an MCO enrollee does not agree with the MCO's resolution of the enrollee's appeal, the enrollee may ((~~file a~~)) request ((~~for~~)) a hearing within ninety calendar days of the date of receipt of the MCO's notice of resolution of the MCO's appeal process.

(a) An enrollee may request continuation of services pending the outcome of a hearing related to the termination, suspension, or reduction of a previously authorized service.

(b) To receive continuation of services pending the outcome of the hearing, the enrollee must ((~~file the hearing~~)) request a hearing and request to continue services within ten days of the date of the MCO's notice of the resolution of the appeal. See WAC 182-538-110 for additional requirements related to continuation of services.

(4) The entire appeal and hearing process, including the MCO appeal process, must be completed within ninety calendar days of the date the MCO enrollee filed the appeal with the MCO, not including the number of days the enrollee took to subsequently file for a hearing.

(5) Expedited hearing process((~~:~~)).

(a) The office of administrative hearings (OAH) must establish and maintain an expedited hearing process when the enrollee or the enrollee's representative requests an expedited hearing and OAH determines that the time taken for a standard resolution of the claim could seriously jeopardize the enrollee's life or health and ability to attain, maintain, or regain maximum function.

(b) When approving an expedited hearing, OAH must issue a hearing decision as expeditiously as the enrollee's health condition requires, but not later than three business days after receiving the case file and information from the MCO regarding the action and MCO appeal.

(c) When denying an expedited hearing, OAH must give prompt oral notice to the enrollee followed by written notice within two calendar days of the request and change the hearing to the standard time frame.

(6) Parties to the hearing include HCA, the MCO, the enrollee((~~,~~)) and the enrollee's representative or the representative of a deceased enrollee's estate.

(7) Any party that disagrees with the initial order may request a review by an HCA review judge in accordance with WAC 182-526-0560 through 182-526-0600.

(((~~(8) If an enrollee disagrees with the initial order, the enrollee may request review in accordance with subsection (7) of this section, or an independent review (IR) by an independent review organization (IRO) in accordance with RCW 48.43.535. The enrollee must request the IR within twenty-one calendar days of the date of mailing the initial order. A timely submitted request for an IR stays any review requested pursuant to subsection (7) of this section.~~

~~(9) Any party that disagrees with the IR decision may request a review by an HCA review judge in accordance with WAC 182-526-0560 through 182-526-0600 within twenty-one calendar days of the date of mailing of the IR decision.~~

~~(10) When an initial order or an IR decision is appealed to an HCA review judge, the review judge issues the final order.~~))

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0215 Authority of the administrative law judge when conducting a hearing. (1) The administrative law judge (ALJ) must hear and decide the issues ((~~de novo (anew)~~)) based on ((~~what is~~)) the evidence presented ((~~during the hearing~~)) and admitted into the record during the hearing.

(2) As needed, the ALJ may:

(a) Determine the order for presenting evidence;

(b) Issue subpoenas or orders directing witnesses to appear or bring documents;

(c) Rule on objections, motions, and procedural matters;

(d) Rule on an offer of proof made to admit evidence;

(e) Admit relevant evidence;

(f) Impartially question witnesses to develop the record;

(g) Call additional witnesses and request exhibits to complete the record;

(h) Give the parties an opportunity to cross-examine witnesses or present more evidence against the witnesses or exhibits;

(i) Keep order during the hearing;

(j) Allow or require oral or written argument and set the deadlines for the parties to submit argument or evidence;

(k) Permit others to attend, photograph, or electronically record hearings, but may place conditions to preserve confidentiality or prevent disruption;

(l) Allow a party to waive rights given by chapters 34.05 RCW or 182-526 WAC, unless another law prevents it;

(m) Decide whether a party has a right to a hearing;

(n) Issue protective orders;

(o) Consider granting a stay if authorized by law or HCA rule; and

(p) Take any other action necessary and authorized under these or other rules.

(3) The ALJ administers oaths or affirmations and takes testimony.

(4) The ALJ enters an initial order((~~s~~)) after the hearing. Initial orders ((~~may~~)) become final orders ((~~pursuant to~~)) under WAC 182-526-0525.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0221 ((~~Using the~~)) HCA index of significant decisions. (1) A final order may be relied on, used, or cited as precedent by a party if the final order has been indexed in the index of significant decisions maintained by the health care authority (HCA).

(2) The index of significant decisions is available to the public at ((~~http://www.hca.wa.gov/appeals~~)) http://www.hca.wa.gov/abouthca/significant-decisions. For information on how to obtain a copy of the index, contact the ((~~health care authority (~~))HCA((~~)~~)) hearing representative.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0230 Assigning an administrative law judge to a hearing. (1) The office of administrative hearings (OAH) assigns an administrative law judge (ALJ) at least five business days before the hearing, except when the hearing is expedited.

(2) A party may ask which ALJ is assigned to the hearing by calling or writing to the OAH field office listed on the notice of hearing.

(3) If requested by a party, ((~~the~~)) OAH must send the name of the assigned ALJ to the party by e-mail or in writing at least five business days before the party's scheduled hearing date.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0240 Filing a motion of prejudice. (1) A party requesting a different administrative law judge (ALJ) may do so by filing a written motion of prejudice consistent with RCW 34.12.050. A party must file the motion with the office of administrative hearings (OAH) before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony. ((~~A motion of prejudice~~)) The motion must include an affidavit or sworn statement ((~~that a party does not believe~~)) under penalty of perjury supporting the party's claim that the ALJ ((~~can~~)) cannot hear the case fairly.

(2) Rulings that are not considered discretionary rulings for purposes of this section include, but are not limited to ((~~those~~)) rulings that:

(a) ((~~Granting or denying~~)) Grant or deny a request for a continuance; ((~~and~~)) or

(b) ((~~Granting or denying~~)) Grant or deny a request for a prehearing conference.

(3) A party must send the ((~~written~~)) motion of prejudice to the chief ALJ at ((~~the~~)) OAH headquarters ((~~identified in WAC 182-526-0025(1)~~)) and must send a copy to the OAH field office where the ALJ is assigned. The address of OAH headquarters is provided in WAC 182-526-0025(1).

(4) A party may make an oral motion of prejudice at the beginning of the hearing or prehearing conference before the ALJ rules on a discretionary issue in the case, admits evidence, or takes testimony if:

(a) ((~~The~~)) OAH did not assign an ALJ at least five business days before the date of the hearing or prehearing conference; or

(b) ((~~The~~)) OAH changed the assigned ALJ within five business days of the date of the hearing or prehearing conference.

(5) The first request by each party for a different ALJ is automatically granted. The chief ALJ or a designee grants or denies any later requests.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0245 Disqualifying an administrative law judge or review judge. (1) An administrative law judge (ALJ) or review judge may be disqualified for bias, prejudice, or conflict of interest, or if one of the parties or a party's representative has ((~~an~~)) ex parte contact with the ALJ or review judge.

(2) Ex parte contact means ((~~a~~)) any written or oral communication with the ALJ or review judge about something related to the hearing when the other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location, or asking for directions to the hearing location.

(3) To ((~~ask to disqualify~~)) request disqualification of an ALJ or review judge, a party must file a written petition for disqualification((~~. A petition for disqualification is a written explanation to request assignment of a different ALJ or review judge~~)) consistent with RCW 34.05.425 explaining why the ALJ or review judge should be disqualified. A party must promptly ((~~make~~)) file the petition upon discovery of possible bias, conflict of interest, or ((~~an~~)) ex parte contact.

(4) A party must deliver the petition to the ALJ or review judge assigned to the case. That ALJ or review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0250 Time requirements for notices issued by the office of administrative hearings. (1) The office of administrative hearings (OAH) must serve a notice of hearing ((~~to~~)) on all parties and their representatives at least fourteen calendar days before the hearing date.

(2) If ((~~the~~)) OAH schedules a prehearing conference, ((~~the~~)) OAH must serve a notice of prehearing conference to the parties and their representatives at least seven business days before the date of the prehearing conference except:

(a) ((~~The OAH and/or~~)) OAH or an administrative law judge (ALJ) may change a scheduled hearing into a prehearing conference and provide less than seven business days' notice of the prehearing conference; and

(b) ((~~The~~)) OAH may give less than seven business days' notice if the only purpose of the prehearing conference is to consider whether ((~~there is good cause~~)) to grant a continuance under WAC 182-526-0280 or 182-526-0282, as applicable.

(3) ((~~The~~)) OAH must reschedule the hearing if necessary to comply with the notice requirements in this section, unless the parties agree to waive notice requirements.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0255 Notice of hearing or notice of prehearing conference. (1)(a) A notice of hearing or a notice of prehearing conference is a written notice issued by the office of administrative hearings (OAH) that must include the:

(i) Names of all parties ((~~who receive~~)) to whom the notice is sent and, if known, the names and addresses of their representatives;

(ii) Name, mailing address, and telephone number of the administrative law judge (ALJ), if known;

(iii) Date, time, place, and nature of the hearing or prehearing conference;

(iv) Legal authority and jurisdiction for the hearing; and

(v) Date of the hearing request((~~; and~~

~~(vi) Statement~~)).

(b) A notice of hearing or prehearing conference must include a statement that the appellant's failure to attend and participate in ((~~a~~)) the prehearing conference or ((~~a~~)) hearing((~~,~~)) may result in the loss of the right to a hearing((~~. Then the ALJ may send:~~

~~(A)~~)).

(c) If the appellant fails to appear, the ALJ may enter an order of default((~~; and/or~~

~~(B) An order dismissing the hearing.~~

~~(b) If the party who requested a hearing~~)).

(2) Limited-English proficiency. The notice must include a statement that, if the appellant needs a qualified interpreter because they or any of their witnesses are ((~~persons~~)) people with ((~~limited-English-proficiency~~)) limited-English proficiency, OAH will provide an interpreter at no cost to that party.

(((~~(c) If~~)) (3) The notice must state whether the hearing or prehearing conference is to be held by telephone or in person, and how to request a change in the way it is held.

(((~~(2) In addition to the information provided in subsection (1) of this section, OAH~~)) (4) The notice of hearing or prehearing conference informs the ((~~party who requested the hearing~~)) appellant:

(a) How to indicate any special needs for the ((~~party~~)) the appellant or their witnesses, including the need for an interpreter in a primary language or for sensory impairments((~~.~~));

(b) How to contact OAH if a party has a safety concern; and

(c) That the appellant may request a qualified interpreter if the appellant or any of the appellant's witnesses are people with limited-English proficiency, and that OAH provides such interpreters at no cost to the appellant.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0270 Mailing address changes. (1) The ((~~party who requested the hearing~~)) appellant must tell the health care authority (HCA) hearing representative and the office of administrative hearings (OAH) as soon as possible, when ((~~its~~)) the party's mailing address changes.

(2) If ((~~that~~)) a party does not notify the HCA hearing representative and OAH of a change ((~~in its~~)) of mailing address ((~~and the~~)), OAH continues to send notices and other important papers to the last known mailing address. If this happens, the administrative law judge (((~~ALJ~~))) may find that the party received the documents or waived the right to receive those documents.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0280 ((~~Requesting a continuance.~~)) Continuing a hearing when an appellant is an applicant or recipient. (1) This section applies to continuance requests made by applicants or recipients. Any party under this section may request a continuance either orally or in writing.

(2) Before contacting the ((~~administrative law judge (ALJ)~~)) office of administrative hearings (OAH) to request a continuance, the party seeking ((~~a~~)) the continuance must make a good faith effort to contact the other parties((~~, if possible,~~)) to find out if they ((~~will~~)) agree to a continuance. The party making the request for a continuance must let OAH know whether the other parties agreed to the continuance.

(3) ((~~The party making the request for a continuance must let the ALJ know whether the other parties agreed to the continuance.~~)) If ((~~the~~)) all parties agree to ((~~a~~)) the continuance, the ALJ must grant ((~~it~~)) the request unless the ALJ holds a prehearing conference and finds that good cause for a continuance does not exist under WAC 182-526-0020.

(4) If the parties do not agree to ((~~a~~)) the continuance, the ALJ must schedule a prehearing conference ((~~in accordance with the requirements of WAC 182-526-0250 to decide whether there is~~)) and determine if good cause ((~~to grant the~~)) for a continuance((~~.~~)) exists under WAC 182-526-0020 and under the following factors:

(5) ((~~If the ALJ grants a continuance, the OAH must serve a new hearing notice at least fourteen calendar days before the new hearing date unless the parties agree to a shorter time period.~~

~~(6) If the ALJ denies the continuance request after a prehearing conference is held pursuant to subsections (3) or (4) of this section, the ALJ may proceed with the hearing on the date the hearing is scheduled and must issue a written order setting forth the basis for denying the continuance request.~~)) (a) Why the party is requesting a continuance;

(b) Why the other party or parties are objecting to the request;

(c) Whether a continuance in the case has previously been granted at the request of the same party who is now requesting the continuance and, if so, whether it was for the same reason;

(d) The extent to which the requesting or objecting parties could have prevented the need for delay;

(e) The number and duration of previous continuances in the case and who requested them;

(f) The legal or factual complexity of the case;

(g) The relative harm to the parties if the continuance is granted or denied, including the risk of harm to the appellant if he or she is not receiving continued benefits;

(h) The impact of a continuance on the parties' ability to adequately prepare and present their cases;

(i) Any need to provide accommodation, translation, or interpreter services; and

(j) The impact of a continuance on the ability of OAH to issue a timely initial decision.

(6) When a continuance request is made more than sixty days from the date OAH received the hearing request:

(a) The ALJ must not only consider whether there is good cause to continue the hearing but also must find a compelling reason for the continuance.

(b) Compelling reasons include:

(i) Medical evidence is required;

(ii) Extraordinary circumstances exist, such as the sudden unforeseen onset of an illness or adverse event that was beyond the party's ability to prevent;

(iii) The hearing format changes or the ALJ finds a compelling reason to change the way a witness appears at the hearing according to WAC 182-526-0360;

(iv) The appellant needs more time to prepare or present evidence or argument because the agency issued an amended notice under WAC 182-526-0260;

(v) The need for more time was caused by another party's action or inaction, considering the relative capacity and resources of the parties; or

(vi) The need to provide accommodation, translation, or interpreter services.

(7) The ALJ must notify all parties whether a continuance was granted or denied orally on the record, or must do so in writing within five business days of the prehearing conference.

(8) If the ALJ grants a continuance, OAH must serve a new notice of hearing on the parties at least fourteen calendar days before the new hearing date.

NEW SECTION

WAC 182-526-0282 Continuance requests in provider hearing, estate recovery hearing, or nursing home rate hearing under WAC 388-96-904. (1) This section applies to continuance requests made in provider hearings, estate recovery hearings, or nursing home rate hearings. A request for continuance under this section may be made either orally or in writing.

(2) Before contacting the office of administrative hearings (OAH) to request a continuance, the party seeking the continuance must make a good faith effort to contact the other parties to find out if they agree to a continuance.

(3) The party making the request for a continuance must let OAH know whether the other parties agreed to the continuance. If all parties agree to a continuance, the administrative law judge (ALJ) must grant the request unless the ALJ requires a showing of good cause for a continuance.

(4) If the parties do not agree to a continuance, the ALJ must schedule and hold a prehearing conference to decide whether there is good cause to grant the continuance.

(5) This section does not apply to providers who may be representing an applicant or recipient in a hearing.

NEW SECTION

WAC 182-526-0284 Orders of default. (1) An order of default may be entered when the appellant fails to attend or participate in a scheduled prehearing conference or hearing. The order of default will include an inquiry as to whether the appellant wants to petition to reinstate the hearing.

(2) The appellant may file a petition to vacate an order of default under WAC 182-526-0290.

(3) An order of default becomes a final order dismissing the appellant's request for a hearing if the appellant does not file a petition to vacate within twenty-one calendar days of the order being served (mailed) on the parties.

(4) The health care authority or managed care organization action stands after an order of default becomes a final order.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0285 Orders of dismissal. (1) An order of dismissal ((~~is an order from the administrative law judge (ALJ) ending the hearing process. The order is entered because the party who requested the hearing withdrew the request, or the ALJ entered an order of default because the party who requested the hearing failed to attend or refused to participate in the hearing (which includes all prehearing conferences).~~

~~(2) The order of dismissal becomes a final order if no party files a request to vacate the order within twenty-one days after the date the ALJ serves the order of dismissal. A party may request a vacate of the order of dismissal according to WAC 182-526-0290.~~

~~(3) If the hearing is dismissed because the party who requested the hearing was defaulted because that party did not attend or refused to participate in the hearing, the health care authority or managed care organization action stands unless the hearing is reinstated after a vacate of the order of dismissal under WAC 182-526-0290.~~

~~(4) If the hearing is dismissed due to a written agreement between all the parties, the parties must follow the agreement~~)) may be entered when the appellant withdraws the request for hearing under WAC 182-526-0115.

(2) An appellant may file a petition (request) to vacate an order of dismissal under WAC 182-526-0290.

(3) An order of dismissal becomes a final order if the appellant does not file a petition to vacate the order within twenty-one calendar days of the order being served (mailed) on the parties.

(4) The health care authority or managed care organization action stands after an order of dismissal becomes a final order.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0290 Reinstating a hearing after an order of default or an order of dismissal. (1) If ((~~the administrative law judge (ALJ) enters and serves~~)) an order ((~~dismissing the hearing~~)) of default was entered under WAC 182-526-0284, or an order of dismissal was entered under WAC 182-526-0285, the ((~~party that originally requested the hearing~~)) appellant may file a petition (request) to vacate (set aside) the order ((~~of dismissal. Upon receipt of a request to vacate an order of dismissal, OAH will schedule and serve notice of a prehearing conference. At the prehearing conference, the party asking that the order of dismissal be vacated must show good cause according to WAC 182-526-0020 for an order of dismissal to be vacated and the hearing to be reinstated.~~

~~(2) The request~~)).

(a) The petition to vacate ((~~an order of dismissal~~)) must be filed with the office of administrative hearings (OAH) or the board of appeals (BOA)((~~. The party requesting that an order of dismissal be vacated should specify in the request why the order of dismissal should be vacated. BOA forwards any request received to OAH to schedule a prehearing conference on the request to vacate.~~

~~(3)~~)) for nursing home rates cases.

(b) BOA forwards any petition to vacate to OAH except for nursing home rates cases.

(c) The appellant must specify in the petition to vacate the reason why the order should be vacated.

(2) The ((~~request~~)) petition to vacate ((~~an order of dismissal~~)) must be filed ((~~with the office of administrative hearings (OAH) or the board of appeals (BOA)~~)) within twenty-one calendar days ((~~after the date the order of dismissal was entered and served~~)) of service (mailing) of the order to the parties. If ((~~no request is received within that~~)) the petition to vacate is not filed by the deadline, the ((~~dismissal~~)) order of default or order of dismissal becomes a final order.

(((~~(a) The party seeking to vacate the order of dismissal may file a late request to vacate the order of dismissal for up to one year after the ALJ entered and served the order to the parties but must show good cause for the late request to be accepted and for the dismissal to be vacated.~~

~~(b) If the party files a request to vacate the order of dismissal more than one year after the order was served, the administrative law judge or review judge may vacate the order of dismissal if the health care authority hearing representative and all parties agree to waive (excuse) the deadline.~~

~~(4) OAH serves all parties a notice of the prehearing conference on the request to vacate the order of dismissal in accordance with WAC 182-526-0250. At the prehearing conference, the ALJ will receive evidence and argument from the parties on whether the order of dismissal should be vacated for good cause.~~

~~(5) If the ALJ finds good cause for the order of dismissal to be vacated, the ALJ must enter and serve a written order to the parties setting forth the findings and reinstate the hearing. This means the party who originally requested the hearing has another opportunity for a hearing on the initial request for hearing.~~

~~(6) If the order of dismissal is vacated, the ALJ will conduct a hearing at which the parties may present argument and evidence about the original request for hearing. The hearing may occur immediately following the prehearing conference on the request to vacate if agreed to by the parties and the ALJ or at a later hearing date scheduled by OAH in accordance with WAC 182-526-0250.~~)) (3) If OAH receives a petition to vacate, OAH schedules a prehearing conference and serves all parties with notice of a prehearing conference under WAC 182-526-0250.

(4) If the appellant fails to appear at the scheduled prehearing conference to address the petition to vacate:

(a) The order becomes the final order; and

(b) The ALJ or review judge must dismiss the matter with prejudice.

(5)(a) If the appellant appears for the scheduled prehearing conference:

(b) The ALJ or review judge will receive evidence and argument from the parties regarding whether:

(i) The petition to vacate was timely filed; and

(ii) The appellant has established good cause to excuse any default and to reinstate the matter for hearing.

(6) The ALJ or review judge must issue a final order dismissing the appeal and terminating the hearing process if:

(a) The petition to vacate was not filed timely; or

(b) The appellant fails to establish good cause to excuse any default or to reinstate the matter for hearing.

(7) If the ALJ or review judge rules that the order of default or order of dismissal is vacated, the matter may proceed to hearing and the parties may present argument and evidence about the issues identified in the original request for hearing. The hearing may occur:

(a) Immediately following the prehearing conference if agreed to by the parties and the ALJ; or

(b) At a hearing date scheduled by OAH under WAC 182-526-0250.

NEW SECTION

WAC 182-526-0300 Order of dismissal based on subject matter. An order of dismissal issued based on lack of subject matter jurisdiction must be entered as an initial order subject to the requirements of WAC 182-526-0520.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0320 Subpoenas. (1) An administrative law judge((~~s~~)) (ALJ((~~s~~))), the health care authority hearing representative, and an attorney((~~s~~)) for ((~~the parties~~)) a party may ((~~prepare~~)) issue subpoenas. If ((~~an attorney does not represent~~)) a party is not represented by an attorney, that party may ask the ALJ to ((~~prepare~~)) issue a subpoena on ((~~its~~)) the party's behalf. The ALJ may schedule a prehearing conference to decide whether to issue a subpoena.

(2) An ALJ may deny a party's request for a subpoena. For example, an ALJ may deny a request for a subpoena when the ALJ determines that a witness has no actual knowledge regarding the facts or that the documents are not relevant.

(3) There is no cost ((~~to prepare~~)) when OAH issues a subpoena on behalf of a party, but ((~~a~~)) the party may have to pay for:

(a) Serving ((~~a~~)) the subpoena;

(b) Complying with ((~~a~~)) the subpoena; and

(c) Witness fees according to RCW 34.05.446(7).

(4) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(5) Service of a subpoena is complete when the server:

(a) Gives the witness a copy of the subpoena; or

(b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

(6) To prove that a subpoena was served on a witness, the person serving the subpoena must sign a written, dated statement including:

(a) Who was served with the subpoena;

(b) When the subpoena was served;

(c) The address where the subpoena was served; and

(d) The name, age, and address of the person who served the subpoena.

(7) A party may request that an ((~~administrative law judge (~~))ALJ((~~)~~)) quash (set aside) or change the requirements of a subpoena ((~~request~~)) at any time before the deadline given in the subpoena.

(8) An ALJ may set aside or change a subpoena if it is unreasonable.

(9) Witnesses with safety or accommodation concerns should contact the office of administrative hearings (OAH) upon receipt of a subpoena.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0340 Hearing location. (1) The office of administrative hearings (OAH) may ((~~be held~~)) schedule an in-person hearing or ((~~as~~)) a telephonic hearing.

(2) A telephonic hearing is a hearing where all parties and the administrative law judge (ALJ) appear by telephone conference call from different locations.

(3) An in-person hearing is where the party ((~~that had~~)) who requested the hearing appears face-to-face with the ((~~administrative law judge (ALJ) and~~)) ALJ. The other parties may choose to appear either in person or by telephone.

(4) Whether a hearing is held in-person or telephonically, ((~~the parties have~~)) each party has the right to see all documents, hear all testimony, and question all witnesses.

(5) If a hearing is originally scheduled as an in-person hearing, the party that requested the hearing may ask that the ALJ change it to a telephonic hearing. Once a telephonic hearing begins, the ALJ may stop, reschedule, and change the hearing to an in-person hearing if any party makes such a request.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0350 Recording the hearing. The administrative law judge must make an audio record of the entire hearing ((~~using audio recording equipment (such as a digital recorder or a tape recorder)~~)).

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0355 ((~~Persons~~)) People who may attend the hearing. (1) All parties and their representatives may attend ((~~the~~)) a hearing under this chapter.

(2) Witnesses may be excluded from the hearing if the administrative law judge (ALJ) finds good cause to do so.

(3) The ALJ may also exclude other ((~~persons~~)) people from all or part of the hearing.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0360 Changing how a hearing is held or how a witness appears at a hearing. (1) For cases in which the party ((~~that~~)) who requested a hearing is an applicant or recipient of a medical services program established under chapter 74.09 RCW, the hearing ((~~shall be conducted~~)) must be held according to RCW 74.09.741 (5)(c).

(2) An applicant or recipient may agree to have one or more prehearing conferences conducted telephonically without waiving the right to have any subsequent prehearing conference or other hearings held in-person.

(((~~(2) Parties~~)) (3) Any party to the hearing ((~~have~~)) has the right to request that:

(a) ((~~A~~)) The hearing ((~~format~~)) be changed from an in-person hearing to a telephonic hearing or from a telephonic hearing to an in-person hearing; or

(b) A witness ((~~may~~)) be allowed to appear ((~~in person or~~)) telephonically even for an in-person hearing. ((~~The office of administrative hearings (OAH) must advise the party of the right to request a change in how a witness appears.~~

~~(3)~~)) (4) A party must show a compelling reason to change the way a witness appears (in-person or by telephone). ((~~Some examples of compelling reasons are:~~

~~(a) A party does not speak or understand English well.~~

~~(b) A party wants to present a significant number of documents during the hearing.~~

~~(c) A party does not believe that one of the witnesses or another party is credible, and wants the administrative law judge (ALJ) to have the opportunity to see the testimony.~~

~~(d) A party has a disability or communication barrier that affects its ability to present its case.~~

~~(e) A party believes that the personal safety of someone involved in the hearing process is at risk.~~

~~(4)~~)) (5) A compelling reason to change the way a witness appears at a hearing can be overcome by a more compelling reason not to change how a witness appears for a hearing.

(((~~(5)~~)) (6) If a party wants to change ((~~the~~)) how a hearing is held or change how their witnesses or other parties appear, the party must contact the office of administrative hearings (OAH) to request the change.

(((~~(6)~~)) (7) The ((~~administrative law judge (~~))ALJ((~~)~~)) may schedule a prehearing conference to determine if the request should be granted.

(((~~(7)~~)) (8) If the ALJ grants the request, the ALJ ((~~reschedules the hearing or changes~~)) may orally advise the parties of the change in how the witness or party appears.

(((~~(8)~~))) (9) If the ALJ denies the request, the ALJ must issue a written order that includes findings of fact supporting why the request was denied.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0370 Submitting documents for a telephonic hearing. (1) When a hearing is conducted by telephone, an administrative law judge (ALJ) may order the parties to file and serve ((~~the hearing~~)) any documents or proposed exhibits at least five days before the hearing((~~, so all parties have an opportunity to view them during the hearing~~)).

(2) The health care authority hearing representative may be able to help a party copy and file their documents with the office of administrative hearings (OAH) and send them to any other party.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0375 Summary of the hearing process. At ((~~the~~)) a hearing under this chapter:

(1) The administrative law judge (ALJ):

(a) Explains the hearing rights of the parties;

(b) Marks and admits or rejects exhibits;

(c) Ensures that a record is made;

(d) Explains that a decision is mailed after the hearing;

(e) Notifies the parties of appeal rights;

(f) May keep the record open for a time after the hearing if needed to receive more evidence or argument; and

(g) May take actions as authorized ((~~according to WAC 182-526-0215~~)) under this chapter.

(2) The parties may:

(a) Make opening statements to explain the issues;

(b) Offer evidence to prove their positions, including oral or written statements of witnesses;

(c) Question the witnesses presented by the other parties; and

(d) Give closing arguments about what the evidence shows and what laws apply.

(3) At the end of the hearing, the record will ((~~be~~)) is closed unless the ALJ allows more time to file additional evidence. See WAC 182-526-0390.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0380 Group hearing requests ((~~and withdrawals~~)). (1) A group hearing may be held when two or more parties request a hearing about similar issues.

(2) Hearings may be combined at the request of the parties or the administrative law judge (ALJ).

(3) All parties participating in a group hearing may have their own representative present.

(4) A party may withdraw from a group hearing by asking the ((~~administrative law judge (~~))ALJ((~~)~~)) for a separate hearing.

(5) If a party asks to withdraw from a group hearing before the ALJ makes a discretionary ruling or the hearing begins, the ALJ must give the party a separate hearing.

(6) If a party later shows good cause, the ALJ may give the party a separate hearing at any time during the hearing process.

(7) The ALJ must grant a party's request to withdraw from a group hearing when participation in the group hearing could require the release of confidential or protected health care information and the party does not consent to the release of such information.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0387 Requesting that a hearing be consolidated or severed when multiple agencies are parties to the proceeding. (1) The following requirements apply only to hearings in which an applicant or recipient of medical services programs set forth in chapter 74.09 RCW, seeks review of decisions made by more than one agency, as defined in RCW 34.05.010. For example: A medical services program recipient appeals a termination of medical assistance by the health care authority and in the same request for hearing the recipient appeals a termination of cash assistance issued by the department of social and health services.

(2) When the applicant or recipient of a medical services program files a single request for hearing ((~~seeking review of~~)) objecting to decisions made by more than one agency, ((~~this review shall be conducted initially in~~)) as defined in RCW 34.05.010, the office of administrative hearings (OAH) schedules one hearing. The administrative law judge (ALJ) may sever the proceeding into multiple hearings on the motion of any of the parties, when:

(a) All parties consent to the severance; or

(b) Any party requests severance without another party's consent, and the ALJ finds there is good cause for severing the hearing and that the proposed severance is not likely to prejudice the rights of the applicant or recipient in accordance with RCW 74.09.741(5).

(3) If there are multiple hearings involving common issues or parties where there is one appellant and both the health care authority and the department are parties, upon motion of any party or upon the ALJ's motion, the ALJ may consolidate the hearings if the ALJ finds that the consolidation is not likely to prejudice the rights of the applicant or recipient who is a party to any of the consolidated hearings in accordance with RCW 74.09.741(5).

(4) If the ALJ grants the motion to sever the hearing into multiple hearings or consolidate multiple hearings into a single hearing, the ALJ ((~~will~~)) enters ((~~and serve~~)) an order and OAH sends a new notice of hearing to the appropriate parties in accordance with WAC 182-526-0250, unless service of notice is waived by the parties.

(5) Petitions for judicial review must be served on all agencies involved in the hearing.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0390 Evidence. (1) Evidence includes documents, objects, and testimony of witnesses that parties ((~~give~~)) offer during the hearing to help prove their positions.

(2) Evidence may be all or parts of original documents ((~~or~~)) and may be copies of the originals.

(3) Parties may offer statements signed by a witness under oath or affirmation as evidence, if the witness cannot appear.

(4) Testimony subject to cross examination by the other parties may be given more importance by the administrative law judge (ALJ).

(5) The parties may bring evidence to any prehearing meeting, prehearing conference, or hearing, or may file evidence before these events with the office of administrative hearings (OAH).

(6) The ALJ may set a deadline before the hearing for the parties to file proposed exhibits and the names of witnesses. If ((~~the parties miss~~)) a party misses the deadline, the ALJ may refuse to admit the evidence unless ((~~the parties show~~)):

(a) ((~~They have~~)) The ALJ finds that the offering party has good cause.

(b) The other parties agree that party has good cause for missing the deadline; or

(((~~(b) That~~)) (c) The other parties agree the ALJ may consider the evidence.

(7) ((~~If the ALJ gives the parties more time to submit evidence, the parties may file it after the hearing. The ALJ may allow more time for the other parties to respond and object to the evidence.~~

~~(8)~~)) Parties may bring any documents and witnesses to the hearing to support their position. However, the ((~~following provisions apply:~~

~~(a) The~~)) other parties may object to ((~~the~~)) any evidence that is offered and ((~~question the~~)) may cross-examine witnesses((~~;~~

~~(b)~~)).

(8) The ALJ determines whether the evidence is admitted and what importance to give it((~~;~~

~~(c)~~)).

(a) If the ALJ does not admit the evidence, the parties may make an offer of proof to show why the ALJ should admit it((~~;~~

~~(d)~~)).

(b) To make an offer of proof, a party presents evidence and argument on the record to show why the ALJ should consider the evidence((~~; and~~

~~(e)~~)).

(c) The offer of proof preserves the argument for appeal.

(9) The ALJ may only consider admitted evidence and matters officially noticed in the proceeding (judicial notice) to decide the case.

(10) Admission of evidence is based upon the reasonable person standard. This standard means evidence that a reasonable person would rely on in making a decision.

(11) The ALJ may admit and consider hearsay evidence in accordance with RCW 34.05.452.

(12) The ALJ may reject evidence ((~~if it:~~

~~(a) Is not relevant; or~~

~~(b) Repeats evidence already admitted~~)) using the Washington rules of evidence as guidelines.

(13) The ALJ must reject evidence if required by law.

(14) The ALJ decides:

(a) What evidence is more credible if evidence conflicts; and

(b) The importance given to the evidence.

(15) The ALJ uses the Washington rules of evidence as guidelines when those rules do not conflict with the rules of this chapter or the Washington Administrative Procedure Act, chapter 34.05 RCW.

(16) The ALJ may permit a party or parties to submit additional evidence after the date of the hearing. The ALJ also may allow an appropriate amount of time for the other parties to respond and object to any evidence submitted after the hearing.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0415 Exhibits. (1) Proposed exhibits.

(a) Proposed exhibits are documents or other objects that a party wants the administrative law judge (ALJ) to consider when reaching a decision.

(b) After the document or object is accepted by the ALJ, it is admitted and becomes an exhibit.

(2) Marking and numbering proposed exhibits and providing copies.

(a) All parties should mark and number their proposed exhibits before the hearing.

(b) All parties should send (((~~exchange~~))) their proposed exhibits to the office of administrative hearings (OAH) and to all other parties in advance of the hearing.

(c) Parties should bring to the hearing enough copies of their proposed exhibits for all parties if those exhibits ((~~where not exchanged~~)) were not provided prior to the hearing.

(d) If the party who requested the hearing cannot afford to provide copies of its exhibits for all parties, the requesting party must make its proposed exhibits available for copying. The ALJ may require proof that the requesting party is unable to afford copies.

(3) Admitting proposed exhibits into the record.

(a) The ((~~administrative law judge (~~))ALJ((~~)~~)) decides whether to admit a proposed exhibit into the record and also determines the importance of the evidence.

(b) The ALJ admits proposed exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.

(c) ((~~The ALJ may also exclude proposed exhibits from the record.~~

~~(d)~~)) The ALJ must make rulings on the record to admit or exclude exhibits.

(4) Disagreeing with an exhibit proposed by another party.

(a) A party may object to the authenticity or admissibility of any exhibit, or offer argument about how much importance the ALJ should give the exhibit.

(b) Even if a party agrees that a proposed exhibit is a true and authentic copy of a document, the agreement does not mean that a party agrees with:

(i) Everything in the exhibit or agrees that it should apply to the hearing;

(ii) What the exhibit says; or

(iii) How the ((~~administrative law judge~~)) ALJ should use the exhibit to make a decision.

(c) The ALJ may also exclude proposed exhibits from the record.

(5) The following rules apply to filing proposed exhibits with OAH and ((~~sending~~)) serving them ((~~to~~)) on the other parties for a ((~~telephone conference~~)) telephonic hearing:

(a) Parties should file their proposed exhibits with OAH and ((~~send~~)) serve them ((~~to~~)) on the other parties at least five days before the telephonic hearing. In some cases, the ALJ may require that the parties file and ((~~send~~)) serve them earlier.

(b) The health care authority hearing representative may help the ((~~party that had requested the hearing~~)) appellant file copies of ((~~its~~)) proposed exhibits with OAH and ((~~send to~~)) serve the other parties if ((~~that party~~)) the appellant cannot afford to do so. The ALJ may require the ((~~party~~)) appellant to provide proof that they are unable to afford to do so.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0450 Witness. (1) ((~~A witness~~)) The following persons may be witnesses in a hearing:

(a) The ((~~party that requested the hearing~~)) appellant or the health care authority (HCA) hearing representative; or

(b) Anyone the parties or the administrative law judge (ALJ) asks to be a witness.

(2) The ALJ decides who may testify as a witness.

(3) An expert witness may not be a former HCA employee, a former HCA authorized agent, or a former employee of the department in the proceeding against HCA or the department if that employee was actively involved in the HCA action while working for HCA or the department, unless the HCA hearing representative agrees.

(4) All witnesses:

(a) Must affirm or take an oath to testify truthfully during the hearing.

(b) May testify in person or by telephone.

(c) May request interpreters from the office of administrative hearings (OAH) at no cost to the party offering the witness.

(d) May be subpoenaed and ordered to appear according to WAC ((~~182-526-0315~~)) 182-526-0320.

(5) Cross-examining a witness.

(a) ((~~The parties have~~)) Each party has the right to cross-examine (question) each witness.

(b) If a party has a representative, only the representative, and not the party, may question the witness.

(c) The ((~~administrative law judge~~)) ALJ may also question witnesses.

(6) Witnesses may refuse to answer questions. However, if a witness refuses to answer a question, the ((~~administrative law judge~~)) ALJ may reject all of the related testimony of that witness.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0495 Equitable estoppel. (1) Equitable estoppel is a legal doctrine that may be used only as ((~~a~~)) an affirmative defense to prevent the health care authority (HCA) from ((~~taking some action against a person or entity, such as~~)) collecting an overpayment. Equitable estoppel may not be used to require HCA to continue to provide something or to require HCA to take action contrary to a statute.

(2) There are five elements of equitable estoppel. ((~~The standard of proof is clear and convincing evidence.~~)) A party asserting the doctrine of equitable estoppel must prove all of the following five elements by clear and convincing evidence:

(a) HCA made a statement or took an action or failed to take an action, which is inconsistent with a later claim or position by HCA.

(b) The party reasonably relied on HCA's original statement, action or failure to act.

(c) The party will be injured to its detriment if HCA is allowed to contradict the original statement, action or failure to act.

(d) Equitable estoppel is needed to prevent a manifest injustice. Factors to be considered in determining whether a manifest injustice would occur include, but are not limited to, whether:

(i) The party cannot afford to repay the money to HCA;

(ii) The party gave HCA timely and accurate information when required;

(iii) The party did not know that HCA made a mistake;

(iv) The party is free from fault; and

(v) The overpayment was caused solely by an HCA mistake.

(e) The exercise of government functions is not impaired.

(3) If the administrative law judge (ALJ) concludes that the party has proven all of the elements of equitable estoppel ((~~in subsection (2) of this section with~~)) by clear and convincing evidence, HCA is ((~~stopped~~)) estopped or prevented from taking action or enforcing a claim of overpayment against that party.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0500 Hearing record. (1) Before the record is closed, the administrative law judge (ALJ) may:

(a) Set another hearing date;

(b) If needed, enter orders ((~~to address~~)) addressing limited issues ((~~if needed before writing and sending~~)) before issuing a hearing decision ((~~to resolve~~)) resolving all issues in the proceeding; or

(c) Give the parties more time to file exhibits or written argument.

(2) The record is closed:

(a) At the end of the hearing if the ((~~administrative law judge~~)) ALJ does not allow more time to file evidence or argument; or

(b) After the deadline for filing evidence or argument is over.

(3) After the record is closed:

(a) No more evidence may be admitted without good cause;

(b) The ((~~administrative law judge (~~))ALJ((~~)~~)) must enter an initial order and the office of administrative hearings (OAH) must serve copies ((~~to~~)) on all of the parties; and

(c) ((~~The office of administrative hearings~~)) OAH must send the official record of the proceedings to the board of appeals. The record must be complete when it is sent, and include all parts required by WAC 182-526-0512.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0520 Information which must be included in the ALJ's initial order. In an initial order, the administrative law judge (ALJ) must ((~~include the following information in the initial order~~)):

(1) Identify the ((~~initial order~~)) matter as a health care authority ((~~case~~)) appeal;

(2) List the name and docket number of the case and the names of all parties and representatives;

(3) ((~~Find~~)) Make findings concerning the facts used to resolve the dispute ((~~based on the hearing record~~));

(4) Explain ((~~why~~)) how the ALJ determined that evidence is credible or not credible when the facts or conduct of a witness is ((~~in question~~)) questioned;

(5) State the law that applies to the dispute;

(6) Apply the law to the facts of the case in the conclusions of law;

(7) Discuss the reasons for the decision based on the facts and the law;

(8) State the result and remedy ordered;

(9) Explain how to request ((~~changes in~~)) corrections to the initial order or petition for review by the board of appeals (BOA) and provide the deadlines for ((~~requesting them~~)) such requests;

(10) State the date the initial order becomes final according to WAC 182-526-0525; and

(11) Include any other information required by law or program rules.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0525 When initial orders become final. An initial order becomes a final order at 5:00 p.m. on the twenty-first calendar day after the office of administrative hearings (OAH) serves the initial order, unless:

(1) Any party files a request for review of the initial order within twenty-one calendar days of the serving (mailing) of the initial order in accordance with WAC 182-526-0580(1);

(2) Any party files a request for extension of the deadline for filing a request for review which is granted by the review judge ((~~pursuant to~~)) under WAC 182-526-0580(2);

(3) Any party files a late request for review which is accepted by a review judge in accordance with WAC 182-526-0580(3); or

(4) A managed care enrollee requests review by an independent review (IR) organization in accordance with RCW 48.43.535 prior to the initial order becoming final or a final order being entered by a review judge. See WAC 182-526-0200 for information about enrollee appeals.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0540 ((~~How~~)) Correction of clerical errors ((~~are corrected~~)) in ((~~the~~)) an initial order((~~s~~)). (1) A clerical error is a mistake that does not change the intent of the initial order.

(2) The administrative law judge (ALJ) may correct((~~s~~)) clerical errors in the initial order by entering ((~~and serving~~)) a ((~~second decision referred to as a~~)) corrected initial order. The ALJ may correct clerical errors in response to a request by one of the parties.

(3) Some examples of clerical error are:

(a) Missing or incorrect words or numbers;

(b) Dates inconsistent with the decision or evidence in the record such as using May 3, ((~~1989~~)) 2004, instead of May 3, ((~~1998~~)) 2014; or

(c) Math errors when adding the total of an overpayment.

(4) If the ALJ does not agree that the initial order contains one or more clerical errors, the ALJ enters a written order denying the request for a corrected order.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0545 How a party requests a corrected initial order. (1) A party may ask ((~~for~~)) request that the administrative law judge (ALJ) issue a corrected ((~~administrative law judge's (ALJ)~~)) initial order by calling or writing to the office of administrative hearings field office that held the hearing.

(2) When asking for a corrected initial order, ((~~please~~)) the party must identify the clerical error that ((~~was found~~)) is claimed.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0550 Deadline for a party to request a corrected initial order. (1) ((~~The parties must ask~~)) A party requesting a corrected initial order from the administrative law judge (ALJ) ((~~for a corrected initial order~~)) must make the request on or before the tenth calendar day after the order was served.

(2) The time period provided in subsection (1) of this section and the time it takes the ALJ to deny the request or make a decision regarding the request for a corrected initial order, do not count against any deadline for a review judge to enter a final order.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0555 Process after a party requests a corrected initial order. (1) When a party requests a corrected initial order, the administrative law judge (ALJ) must either:

(a) Serve all parties a corrected order within ten calendar days; or

(b) Deny the request in writing within three business days of receiving it.

(2) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes a final order at 5:00 p.m., twenty-one calendar days after the ((~~original~~)) corrected initial order was served.

(3) If the ALJ denies a request for a corrected initial order and the party still ((~~wants~~)) believes that the initial order should be changed, the party must request review by a review judge.

(4) Requesting an ALJ to correct the initial order ((~~does not automatically~~)) only extends the deadline to request review of the initial order by a review judge if a corrected initial order is subsequently issued.

(5) When a party needs more time to request review of an initial order, the party must contact the office of administrative hearings (OAH) and ask for more time to request review as permitted by WAC 182-526-0580(2).

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0560 Review of an initial order by a review judge. (1) A party who disagrees with the initial order entered by an administrative law judge (ALJ) may request review by a review judge ((~~is available to a party who disagrees with the administrative law judge's (ALJ) initial order~~)) at the board of appeals (BOA).

(2) ((~~If a party wants the initial order substantively changed, the party must request that a review judge review the initial order.~~

~~(3) If a request is made for~~)) When a review judge ((~~to~~)) reviews an initial order, ((~~it~~)) the review judge does not ((~~mean there is~~)) hold another hearing ((~~conducted by a review judge~~)). See WAC 182-526-0595.

(((~~(4)~~))) (3) Review judges may not review an ((~~ALJ's~~)) initial order after the order becomes a final order, except as permitted by WAC 182-526-0580.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0575 How to request review of an initial order. (1) A party must make the request for review of an initial order in writing and file ((~~it~~)) the request with the board of appeals (BOA) at the address given in WAC 182-526-0030 and within the deadlines set forth in WAC 182-526-0580. ((~~The party should identify the:~~

~~(a)~~))

(2) The request for review should identify the parts of the initial order with which the party disagrees((~~; and~~

~~(b)~~)) and should identify the evidence in the hearing record supporting the party's position.

(((~~(2) A~~))) (3) The party seeking review should also send a copy of the review request to the other parties.

(((~~(3)~~))) (4) After receiving a ((~~party's~~)) request for review of an initial order, ((~~the~~)) BOA serves a copy ((~~to~~)) on the other parties, their representatives, and the office of administrative hearings. The other parties and their representatives may respond as described in WAC 182-526-0590.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0580 Deadline for requesting review of an initial order by a review judge. (1) The board of appeals (BOA) must receive the written review request of an initial order on or before 5:00 p.m. on the twenty-first calendar day after the initial order was served, unless an extension of the deadline is granted by the review judge. A party may file the review request by facsimile transmission (fax). A copy of the review request should also be mailed to the BOA.

(2) A review judge may extend the deadline to request review if a party:

(a) Asks for more time before the deadline expires; and

(b) Gives a good reason for more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) ((~~The~~)) BOA receives the review request on or before the thirtieth calendar day after the deadline; and

(b) A party shows good cause for missing the deadline.

(4) The time periods provided by this section for requesting review of an initial order, including any extensions, does not count against a deadline, if any, for a review judge to enter the final order.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0595 Process after review response deadline. (1) After the response deadline, the record on review is closed unless the review judge finds there is a good reason to keep it open.

(2) A review judge is assigned to review the initial order after the record on review is closed. To find out which judge is assigned, call the board of appeals.

(3) After the record is closed, the assigned review judge:

(a) Reviews the record, including the initial order; and

(b) Enters a final order that affirms, modifies, dismisses or reverses the initial order; or

(c) Returns the case to the office of administrative hearings for further action.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0600 Authority of the review judge. (1) In some cases, review judges review initial orders and enter final orders. The review judge has the same decision-making authority as the administrative law judge (ALJ). The review judge considers the entire record and decides the case de novo (anew). In reviewing findings of fact, the review judge must give due regard to the ALJ's opportunity to observe witnesses.

(2) Review judges may ((~~return (remand)~~)) remand (return) cases to the office of administrative hearings for further action.

(3) In cases where there is a consolidated hearing ((~~pursuant to~~)) under WAC 182-526-0387, any party may request

review of the initial order in accordance with the requirements contained in this chapter.

(4) Review judges may not review an ALJ order after the order becomes final, except as provided in WAC 182-526-0580.

(5) ((~~Review judges may preside at a hearing and enter the final order in cases conducted under WAC 182-526-0218.~~)) A review judge conducts the hearing and enters the final order in cases where a contractor for the delivery of nursing facility services requests an administrative hearing under WAC 388-96-904(5).

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0605 Reconsideration of a final order entered by a review judge. (1) If a party does not agree with the final order ((~~and believes the review judge made a mistake~~)) and wants it reconsidered, the party may request the review judge to reconsider the decision.

(2) The party must make the request in writing and clearly state why the party wants the final order reconsidered. The party must file the written reconsideration request with ((~~the~~)) BOA and it must be received by the deadline under WAC 182-526-0620.

(3) The party should send a copy of the request to all other parties or their representatives.

(4) After receiving a reconsideration request, BOA serves a copy to the other parties and representatives and gives them time to respond.

(5) The final order or the reconsideration decision is the final HCA decision. If a party disagrees with that decision, the party must petition for judicial review to change it.

(6) If a party asks for reconsideration of the final order, the reconsideration process must be completed before a party requests judicial review. However, the party does not need to request reconsideration of a final order before requesting judicial review.

(7) The party may ask the court to stay or stop the HCA action after filing the petition for judicial review.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0640 Judicial review of a final order. (1) Judicial review is the process of appealing a final order to a court.

(2) The party that ((~~had~~)) requested the hearing may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. HCA may not request judicial review.

(3) The party seeking judicial review must consult RCW 34.05.510 to 34.05.598 for further details of the judicial review process.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0650 Service of petition for judicial review. (1) The party requesting judicial review must:

(a) File a petition for judicial review with the court;

(b) File and serve the petition for judicial review of a final order within thirty days after the date it was mailed to the parties; and

(c) Serve copies of ((~~its~~)) the petition on the health care authority (HCA), the office of the attorney general, and all other parties.

(2) To serve HCA, the petitioning party must deliver a copy of the petition for judicial review to the director of HCA and send a copy to the board of appeals (BOA). The party may hand deliver the petition or send it by mail that gives proof of receipt.

The physical location of the director is:

Director
Health Care Authority
626 8th Avenue S.E.
Olympia, WA 98501

The mailing address of the director is:

Director
Health Care Authority
P.O. Box 45502
Olympia, WA 98504-5502

The physical and mailing addresses for BOA are in WAC 182-526-0030.

(3) To serve the office of the attorney general and other parties, the petitioning party may send a copy of the petition for judicial review by regular mail. The party may send a petition to the address for the attorney of record to serve a party. The party may serve the office of the attorney general by hand delivery to:

Office of the Attorney General
7141 Cleanwater Drive S.W.
Tumwater, WA 98501

The mailing address of the attorney general is:
Office of the Attorney General
P.O. Box 40124
Olympia, WA 98504-0124

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-526-0045	Serving documents.
WAC 182-526-0090	Authority to request a hearing.
WAC 182-526-0105	Required information for requesting a hearing.
WAC 182-526-0112	Rescheduling a hearing.
WAC 182-526-0157	Requirements to appear and represent a party in the administrative hearing process.
WAC 182-526-0170	Representation of the health care authority in the hearing process.
WAC 182-526-0235	Requesting a different judge.

WAC 182-526-0315 Requiring witnesses to testify or provide documents.

WSR 16-17-097
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed August 18, 2016, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-023.

Title of Rule and Other Identifying Information: WAC 182-532-720 TAKE CHARGE program—Eligibility.

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://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on September 27, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 28, 2016.

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, fax (360) 586-9727, by 5:00 p.m. on September 27, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by September 23, 2016, e-mail amber.lougheed@hca.wa.gov, (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending this rule so coverage is consistent for new and renewing enrollees in TAKE CHARGE. Coverage is for the duration of the waiver.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1348; Implementation and Enforcement: Anaya Balter, P.O. Box 45502, Olympia, WA 98504-5502, (360) 725-1652.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

August 18, 2016
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-02-056, filed 1/5/15, effective 2/5/15)

WAC 182-532-720 TAKE CHARGE program—Eligibility. (1) The TAKE CHARGE program is for men and women. To be eligible for the TAKE CHARGE program, an applicant must:

(a) Be a United States citizen, U.S. National, or "qualified alien" as described in WAC 182-503-0530, and give proof of citizenship or qualified alien status and identity upon request from the medicaid agency;

(b) Provide a valid Social Security number (SSN);

(c) Be a resident of the state of Washington as described in WAC 182-503-0520;

(d) Have an income at or below two hundred sixty percent of the federal poverty level as described in WAC 182-505-0100;

(e) Need family planning services;

(f) Have applied for categorically needy coverage, unless the applicant:

(i) Is a domestic violence victim who is covered under the alleged perpetrator's health insurance;

(ii) Is under eighteen years of age and is seeking confidential services; or

(iii) Has an income between one hundred fifty percent and two hundred sixty percent (inclusive) of the federal poverty level.

(g) Apply voluntarily for family planning services with a TAKE CHARGE provider; and

(h) Not be covered currently through another Washington apple health program for family planning. If categorically needy coverage is approved for a TAKE CHARGE recipient, the individual will be enrolled in the categorically needy program.

(2) An applicant who is pregnant or sterilized is not eligible for TAKE CHARGE.

(3) An applicant who has concurrent coverage under a creditable health insurance policy as defined in WAC 182-12-109 is not eligible for TAKE CHARGE unless the applicant is seeking confidential services and is either under nineteen years old or is a domestic violence victim who is covered under the perpetrator's insurance.

(4) A client is authorized for TAKE CHARGE coverage for one year from the date the medicaid agency determines eligibility, or for the duration of the waiver, whichever is shorter. Upon reapplication for TAKE CHARGE by the client, the medicaid agency may renew the coverage for an additional period of up to one year, or for the duration of the waiver, whichever is shorter.

WSR 16-17-115
PROPOSED RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)
[Order 2016-01—Filed August 22, 2016, 3:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-10-097.

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://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on September 27, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 28, 2016.

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, fax (360) 586-9727, by September 27, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by September 23, 2016, phone (360) 725-1309, e-mail amber.lougheed@hca.wa.gov, TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amends existing rules in Title 182 WAC specific to the PEBB program with the following effect:

1. Implement PEBB policy resolutions to amend the definition of tobacco products and amend domestic partner eligibility requirements.

2. Makes technical amendments to:

- Amend WAC 182-08-180 to specifically state that failure to pay premiums will result in termination of PEBB benefits.
- Amend WAC 182-08-197 to state that elections not submitted in a timely manner will result in default elections; add clarity to describe when optional life and long-term disability insurance begins for an employee who regains eligibility, and changing the number of days for an employee to submit a life insurance form from sixty to thirty-one days.
- Amend WAC 182-08-199 (3)(a)(xi) to state "or enrolls in or terminates enrollment in a Medicare Part D plan."
- Amend WAC 182-08-220 (1)(c) to replace the word "employees" with the word "enrollees."
- Amend rules in chapters 182-08 and 182-12 WAC to more clearly distinguish school districts and educational service districts from all the other employer groups that may contract with the PEBB program. Clarify that applications submitted by employer groups must clearly identify all bargaining units within their organization and which bargaining units are applying for PEBB benefits. Clarify when enrollment will begin following approval of an application.
- Clarify within WAC 182-08-237 that a local government or tribal government must make the decision to include or not include existing retirees at the time the entity submits an application for the bargaining unit to participate in PEBB benefits.
- Amend WAC 182-08-240 to clarify what data is used to evaluate employer group applications.
- Amend WAC 182-12-131(3) to ensure that the references to WAC 182-12-114 are clear.
- Amend WAC 182-12-133(2) to say employees may continue medical, dental, or both for the remaining months allowed under COBRA.
- Amend WAC 182-12-148 to state that premiums must be paid or coverage will be terminated.
- Amend chapters 182-08, 182-12, 182-16 WAC to clarify the meaning of employer-paid coverage versus employer-based coverage.
- Amend references to RCW 41.05.011, to include medical only employer groups in which an employee has waived PEBB program medical coverage.
- Amend chapters 182-08 and 182-12 WAC to address underpayment of premiums.
- Amend WAC 182-12-260(3) to say "Children are eligible through the last day of the month in which their twenty-sixth birthday occurred."
- Amend WAC 182-16-010 to state that the definitions within WAC 182-16-020 apply throughout this chapter.
- Amend WAC 182-16-020 to add new definitions for "Appellant," "Filling," and "Service" and to amend definitions for "PEBB program," "Denial or denial notice," "Documents," and "Hearing."
- Amend all sections within chapter 182-16 WAC to account for the new and amended definitions contained within WAC 182-16-020.
- Clarify within WAC 182-16-050(2) that a written request must be received within thirty calendar days after the date of the written decision letter from the PEBB appeals committee.
- Amend WAC 182-16-052 so that an appellant may act on their own behalf or have someone else represent them.
- Clarify within WAC 182-16-061(3) that a petition request can also be denied.
- Add new sections to chapter 182-16 WAC regarding how to serve documents and the use of subpoenas within the appeals process.
- Clarify within WAC 182-16-071 that a presiding officer's office must serve notice twenty-one calendar days before a hearing, not fourteen calendar days.
- Clarify within WAC 182-16-081 (4)(d) that a schedule will be established for: The exchange and filling of briefs, providing a proposed witnesses list, and providing exhibit lists prior to the hearing.
- Amend WAC 182-16-105(1) to include a timeline when a reconsideration request may be made to the presiding officer.
- Global change across chapters 182-08, 182-12, 182-16 WAC to incorporate the correct use of "PEBB insurance coverage" vs. "insurance coverage."
- Global change across chapters 182-08, 182-12, 182-16 WAC to incorporate the correct use of "employer" as used in RCW 41.05.011.
- Amend WAC 182-12-205 to require a request to terminate coverage to be made in writing and to allow coverage to be terminate[d] the last day of the previous month if a written request to voluntary [voluntarily] terminate coverage is received on the first day of the month.

- Global change across chapters 182-08, 182-12, 182-16 WAC to include "and regulations" along with every reference to Internal Revenue Code (IRC).
- Amend WAC 182-12-114 so that employee's eligibility for benefits is in alignment with RCW 41.05.065.
- Amending the special open enrollment provision for a "change in employment status" to add clarity.

Reasons Supporting Proposal: Compliance with federal regulation, state law.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: SB 6475.

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: David Iseminger, Cherry Street Plaza, 626 8th Avenue S.E., Olympia, WA, (360) 725-1108.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee (JARRC) 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 JARRC or applied voluntarily.

August 22, 2016
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

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 PEBB medical, or employees may enroll in or change their election under the dependent care assistance program (DCAP), the medical flexible spending arrangement (FSA), or the premium payment plan.

"Authority" or "HCA" means the health care authority.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Continuation coverage" means the temporary continuation of PEBB health plan coverage available to enrollees after a qualifying event occurs as administered under Title XXII of the Public Health Service (PHS) Act, 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB health plan by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, ((~~e-mails~~)) electronic mail, electronic files, or other printed or written items.

"Employee" includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state ((~~seeks and receives the approval of~~)) submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the

exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); and (f) employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under this chapter or by the authority under this chapter.

"Employer" means the state of Washington as defined in RCW 41.05.011.

"Employer-based group health plan" means group medical and group dental related to a current employment relationship. It does not include medical or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical ((~~insurance~~))" means group medical ((~~insurance coverage~~)) related to a current employment relationship. It does not include medical ((~~insurance~~)) coverage available to retired employees, individual market medical ((~~insurance~~)) coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the authority by a state agency, employer group, or charter school for its eligible employees as described in WAC 182-12-114 and 182-12-131, and the employee's eligible dependents as described in WAC 182-12-260.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, educational service districts, and employee organizations representing state civil service employees, obtaining employee benefits through a contractual agreement with the authority as described in WAC 182-08-245.

"Employer group rate surcharge" means the rate surcharge described in RCW 41.05.050(2).

"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency, employer group, or charter school for employees eligible under WAC 182-12-114 and 182-12-131. It also means basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by school districts or an educational service district.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission; as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Health plan" means a plan offering medical or dental, or both developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Insignificant shortfall" means a premium balance owed that is less than or equal to the lesser of $50 or ten percent of the premium required by the health plan as described in Treasury Regulation 54.4980B-8.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

((~~"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.~~))

"Large claim" means a claim for more than $25,000 in allowed costs for services in a quarter.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" 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.

"Ongoing large claim" means a claim where the patient is expected to need ongoing case management into the next quarter for which the expected allowed cost is greater than $25,000 in the quarter.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or state registered domestic partner choosing not to enroll in his or her employer-based group medical ((~~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.

"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 PEBB medical, 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~~)) related to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary, or eligible 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, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids ((~~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 employer-based group medical ((~~insurance~~)), TRICARE, or medicare as allowed under WAC 182-12-128, or is on approved educational leave and obtains ((~~other~~)) another employer-based group health ((~~insurance~~)) plan as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-08-120 Employer contribution. The employer contribution must be used to provide public employees benefits board (PEBB) insurance coverage for the basic life insurance benefit, the basic long-term disability insurance benefit, medical((,)) and dental, and to establish a reserve for any remaining balance. There is no employer contribution available for any other insurance coverage for employees employed by state agencies.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

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~~)) premiums must be paid, and are due from the employing agency, subscriber, or ((~~beneficiary~~)) a subscriber's legal representative to the health care authority (HCA). ((~~If a subscriber's account is past due and~~)) A subscriber's monthly premium or premium

surcharge that remains unpaid for thirty days will be considered delinquent. A subscriber is allowed a grace period of thirty days from the date the monthly premium or premium surcharge becomes delinquent to pay the unpaid premium balance or surcharge. If a subscriber's monthly premium or premium surcharge remains unpaid for sixty days, the subscriber's PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and any premium surcharge was paid. If it is determined by the authority that ((~~full~~)) payment of the unpaid balance in a lump sum would be considered a hardship, the authority may develop a reasonable repayment plan with the subscriber or ((~~beneficiary~~)) the subscriber's legal representative upon request.

(c) A monthly premium due from a subscriber who is not eligible for the employer contribution will be considered unpaid if one of the following occurs:

(i) No payment of premium or premium surcharge is received by the authority and the monthly premium remains unpaid for thirty days; or

(ii) A premium payment or premium surcharge received by the authority is underpaid by an amount greater than an insignificant shortfall and the monthly premium remains underpaid for thirty days past the date the monthly premium was due.

(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)~~)) (5).

(b) If a PEBB subscriber, dependent, or beneficiary submits a written appeal as described in WAC 182-16-025, showing proof of extraordinary circumstances beyond his or her control such that it was effectively impossible to submit the necessary information to accomplish an enrollment change within sixty days after the event that created a change of premium occurred, the PEBB ((~~deputy~~)) division director, designee, or the PEBB appeals committee may approve a refund which does not exceed twelve months of premium.

(c) If a federal government entity determines that an enrollee is retroactively enrolled in coverage (for example medicare) the subscriber or beneficiary may be eligible for a refund of all premiums paid during the time he or she was enrolled under the federal program if approved by the PEBB ((~~deputy~~)) division 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 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-08-185 What are the requirements regarding premium surcharges? (1) A subscriber's account will incur a premium surcharge when any enrollee, thirteen years and older, engages in tobacco use.

(a) A subscriber must attest to whether any enrollee, thirteen years and older, enrolled in his or her public employees benefits board (PEBB) medical engages in tobacco use. The subscriber must attest as described in (a)(i) through (vii) of this subsection:

(i) An employee who is newly eligible or regains eligibility for the employer contribution toward PEBB benefits must complete the required form to enroll in PEBB medical as described in WAC 182-08-197 (1) or (3). The employee must include his or her attestation on that form. The employee must submit the attestation to his or her employing agency. If the employee's attestation results in a premium surcharge, it will take effect the same date as PEBB medical begins.

(ii) If there is a change in the tobacco use status of any enrollee, thirteen years and older on the subscriber's PEBB medical, the subscriber must update his or her attestation on the required form. An employee must submit the updated attestation to his or her employing agency. Any other subscriber must submit his or her updated attestation to the PEBB program.

• A change that results in a premium surcharge will begin the first day of the month following the status change. If that day is the first of the month, the change to the surcharge begins on that day.

• A change that results in removing the premium surcharge will begin the first day of the month following receipt of the attestation. If that day is the first of the month, the change to the surcharge begins on that day.

(iii) If a subscriber submits the required form to enroll a dependent, thirteen years and older, in PEBB medical as described in WAC 182-12-262, the subscriber must update his or her attestation on the required form. An employee must submit the updated attestation to his or her employing agency. Any other subscriber must submit his or her updated attestation to the PEBB program. A change that results in a premium surcharge will take effect the same date as PEBB medical begins.

(iv) An enrollee, thirteen years and older, who elects to continue medical coverage as described in WAC 182-12-146, must provide an attestation on the required form if he or she has not previously attested as described in (a) of this subsection. The enrollee must submit his or her updated attestation to the PEBB program. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

(v) An employee or retiree who enrolls in PEBB medical as described in WAC 182-12-171 (1)(a), 182-12-200 (3)(a) and (b), or 182-12-205 (6)(a), (b), (c), (d), and (e), must provide an attestation on the required form if he or she has not previously attested as described in (a) of this subsection. The employee or retiree must submit his or her updated attestation to the PEBB program. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

(vi) A surviving spouse, state registered domestic partner, or dependent child, thirteen years and older, who enrolls in PEBB medical as described in WAC 182-12-250(5) or

182-12-265, must provide an attestation on the required form to the PEBB program if he or she has not previously attested as described in (a) of this subsection. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

(vii) An employee who previously waived PEBB medical must complete the required form to enroll in PEBB medical as described in WAC 182-12-128(3). The employee must include his or her attestation on that form. An employee must submit the attestation to his or her employing agency. An attestation that results in a premium surcharge will take effect the same date as PEBB medical begins.

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 PEBB medical 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 as long as the employee enrollment remains in waived status.

(b) A subscriber's account will incur a premium surcharge when a subscriber fails to attest to the tobacco use status of all enrollees as described in subsection (1)(a) of this section.

(c) The PEBB program will provide a reasonable alternative for enrollees who use tobacco products. A subscriber can avoid the tobacco use premium surcharge if the subscriber attests on the required form that all enrollees who use tobacco products enrolled in or accessed the applicable reasonable alternative offered below:

(i) An enrollee who is eighteen years and older and uses tobacco products has access to a free tobacco cessation program through his or her PEBB medical.

(ii) An enrollee who is thirteen through seventeen years old and uses tobacco products may access the information and resources aimed at teens on the Washington state department of health's web site at http://teen.smokefree.gov.

(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 will incur a premium surcharge if an enrolled spouse or state registered domestic partner elected not to enroll in employer-based group medical ((~~insurance~~)) that has premiums less than ninety-five percent of the Uniform Medical Plan (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 enrolled a spouse or state registered domestic partner under his or her PEBB medical may only attest during the following times:

(i) When a subscriber becomes eligible to enroll a spouse or state registered domestic partner in PEBB medical as described in WAC 182-12-262 (1)(a). A subscriber must complete the required form to enroll his or her spouse or state registered domestic partner. The subscriber must include his or her attestation on that form. The employee must submit the attestation to his or her employing agency. Any other subscriber must submit an attestation to the PEBB program. If the subscriber's attestation results in a premium surcharge it will take effect the same date as PEBB medical begins;

(ii) When a special open enrollment (SOE) event occurs as described in WAC 182-12-262 (1)(c). A subscriber must submit the required form to enroll a spouse or state registered domestic partner in PEBB medical. The subscriber must include his or her updated attestation on that form. An employee must submit an updated attestation to his or her employing agency. Any other subscriber must submit an updated attestation to the PEBB program. If the subscriber's attestation results in a premium surcharge it will take effect the first day of the month following receipt of the attestation. If that day is the first day of the month, the change to the surcharge begins on that day;

(iii) During the annual open enrollment. A subscriber must attest if during the month prior to the annual open enrollment the subscriber was:

• Incurring the surcharge;

• Not incurring the surcharge because the spouse's or state registered domestic partner's share of the medical premium through his or her employer-based group medical ((~~insurance~~)) was more than ninety-five percent of the UMP Classic's premiums; or

• Not incurring the surcharge because the actuarial value of benefits provided through the spouse's or state registered domestic partner's employer-based group medical ((~~insurance~~)) was less than ninety-five percent of the UMP Classic's actuarial value.

A subscriber must update his or her attestation on the required form. An employee must submit an updated attestation to his or her employing agency. Any other subscriber must submit an updated attestation to the PEBB program. The subscriber's attestation or any correction to a subscriber's attestation must be received no later than December 31st of the year in which the annual open enrollment occurs. If the subscriber's attestation results in a premium surcharge, being added or removed, the change to the surcharge will take effect January 1st of the following year; and

(iv) When there is a change in the spouse's or state registered domestic partner's employer-based group medical ((~~insurance~~)). An employee must submit an updated attestation to his or her employing agency within sixty days of when the spouse's or state registered domestic partner's employer-based group medical ((~~insurance~~)) status changes. Any other subscriber must submit an updated attestation to the PEBB program no later than sixty days after the spouse's or state registered domestic partner's employer-based group medical ((~~insurance~~)) changes.

• A change that results in a premium surcharge will begin the first day of the month following the status change. If that day is the first day of the month, the change to the premium surcharge begins on that day.

• A change that results in removing the premium surcharge will begin the first day of the month following receipt of the attestation. If that day is the first day of the month, the change to the premium surcharge begins on that day.

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 PEBB medical 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 as long as the employee remains in waived status.

(3) An employee who covers his or her spouse or state registered domestic partner who has waived his or her own PEBB medical must attest, but a premium surcharge will not be applied.

(4) A subscriber who covers his or her spouse or state registered domestic partner who elected not to enroll in TRICARE must attest, but a premium surcharge will not be applied.

(b) A premium surcharge will be applied to a subscriber who does not attest as described in (a) of this subsection.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-08-187 How do employing agencies correct enrollment errors and is there a limit on retroactive enrollment? An employing agency that fails to timely enroll an employee, or his or her dependent, in public employees benefits board (PEBB) benefits must correct the error as described in this section. An agency must correct a failure to notify an employee timely of his or her eligibility for PEBB benefits and the employer contribution; or a failure to accurately enroll PEBB insurance coverage; or a failure to accurately enroll PEBB insurance coverage as ((~~required by~~)) described in WAC 182-08-197 (1)(b); or a failure to accurately reflect premium surcharge status.

The employing agency or the PEBB program's designee must enroll the employee and the employee's dependent, as elected, in PEBB benefits as described in subsection (1) of this section, reconcile premium payments and premium surcharges as described in subsection (2) of this section, and provide recourse as described in subsection (3) of this section.

Note: If the employing agency failed to provide the notice required in WAC 182-12-113 or the employer group contract before the end of the employee's thirty-one day enrollment period described in WAC 182-08-197 (1)(a), the employing agency must provide the employee a written notice of eligibility for PEBB benefits and offer a new enrollment period. Employees who do not return the required enrollment forms default to enrollment according to WAC 182-08-197 (1)(b).

(1) **Enrollment.**

(a) PEBB medical and dental enrollment is effective the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (3) of this section. If the enrollment error is identified on the first day of the month, the enrollment correction is effective that day;

(b) Basic life and basic long-term disability (LTD) insurance enrollment is retroactive to the first day of the month following the day the employee became newly eligible, or the first day of the month the employee regained eligibility, as described in WAC 182-08-197. If the employee became newly eligible on the first working day of a month, basic life and basic LTD insurance ((~~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 life and optional LTD 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 coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(iii) If the employee was eligible to continue optional life insurance ((~~coverage~~)) and optional LTD insurance under the period of leave but did not, the employee must provide evidence of insurability and receive approval from the contracted vendor.

(d) If the employee is eligible and elects (or elected) to enroll in the medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP), enrollment is limited to three months prior to the date enrollment is processed, but not earlier than the current plan year. If an employee was not enrolled in an FSA or DCAP as elected, the employee may adjust his or her election. The employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect.

(2) **Premium payments.**

(a) The employing agency must remit to the authority the employer contribution and the employee contribution for health plan premiums, premium surcharges, basic life, and basic LTD from the date insurance coverage begins as described in subsections (1) and (3)(a)(i) of this section. If a state agency failed to notify a newly eligible employee of his or her eligibility for PEBB benefits, the state agency may only collect the employee contribution for health plan premiums and premium surcharges for coverage for months following notification of a new enrollment period.

(b) When an employing agency fails to correctly enroll the amount of optional life insurance or optional LTD insurance ((~~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 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) Employee eligibility for PEBB benefits begins on the first day of the month following the date eligibility is established as described in WAC 182-12-114. Dependent eligibility is described in WAC 182-12-260, and dependent enrollment is described in WAC 182-12-262. When retroactive correction of an enrollment error is limited as described in subsection (1) of this section, the employing agency must work with the employee, and the authority, to implement retroactive PEBB insurance coverage within the following parameters:

(i) Retroactive enrollment in a PEBB health plan;

(ii) Reimbursement of claims paid;

(iii) Reimbursement of amounts paid for 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 noncovered services or in the case of an individual who is not eligible for PEBB benefits.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

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, and charter schools 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 PEBB 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 PEBB 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 PEBB medical is waived as described in WAC 182-12-128.

(4) Employees of employer groups and charter schools 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 PEBB medical is waived as described in WAC 182-12-128.

(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 medical 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 described in WAC 182-12-114 or 182-12-131.

(6) The terms of payment to HCA for employer groups and charter schools shall be stipulated under contract with the HCA.

AMENDATORY SECTION (Amending WSR 11-22-036, filed 10/26/11, effective 1/1/12)

WAC 182-08-196 What happens if my health plan becomes unavailable? (1) Subscribers must select a new health plan within sixty days of their chosen health plan becoming unavailable due to a change in contracting service area or the subscriber or subscriber's dependent ceasing to be eligible because of his or her enrollment in medicare.

(a) Employees must notify their employing agency of their new health plan ((~~choice~~)) election.

(b) All other subscribers must notify the PEBB program of their new health plan ((~~choice~~)) election.

(c) The effective date of the change in health plan will be the first day of the month following the later of the date the health plan becomes unavailable or the date the form is received.

(2) The PEBB program will change health plan enrollment as follows if the subscriber fails to select a new health plan as required under subsection (1) of this section:

(a) Employees who fail to select a new health plan within the required time period will be enrolled in a successor plan if one is available or will be enrolled in a plan designated by the director.

(b) All other subscribers who fail to select a new health plan within the required time period will be enrolled in a successor plan if one is available or a plan designated by the director.

(3) Any subscriber enrolled in a health plan as described in subsection (2) of this section may not change health plans except as allowed in WAC 182-08-198.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-08-197 When must a newly eligible employee, or an employee who regains eligibility for the employer contribution, select public employees benefits board (PEBB) benefits and complete required forms? An employee who is newly eligible or who regains eligibility for the employer contribution toward public employees benefits board (PEBB) benefits enrolls as described in this section.

(1) When an employee is newly eligible for PEBB benefits:

(a) An employee must complete the required forms indicating his or her enrollment elections, including an election to waive PEBB medical if the employee chooses to waive PEBB medical as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency. Forms must be received by his or her employing agency no later than thirty-one days ((~~(sixty days for life insurance)~~)) after the employee becomes eligible for PEBB benefits under WAC 182-12-114.

(i) An employee may enroll in optional life and optional long-term disability (LTD) insurance up to the guaranteed issue without evidence of insurability if the required forms are returned to the employee's employing agency as required.

An employee may apply for enrollment in optional life and optional LTD insurance ((~~coverage~~)) over the guaranteed issue at any time during the calendar year by submitting the required form to the vendor for approval.

(ii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee will automatically enroll in the premium payment plan upon enrollment in PEBB medical so employee medical premiums are taken on a pretax basis. To opt out of the premium payment plan, a new employee must complete the required form and return it to his or her state agency. The form must be received by his or her state agency no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(iii) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee may enroll in the state's medical flexible spending arrangement (FSA) or dependent care assistance program (DCAP) or both, except as limited by subsection (4) of this section. To enroll in these optional PEBB benefits, the employee must return the required form to his or her state agency or the PEBB program's designee. The form must be received by the state agency or the PEBB program's designee no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(b) If a newly eligible employee's employing agency does not receive the employee's required forms indicating medical, dental, life insurance, and LTD insurance elections, and the employee's tobacco use status attestation within thirty-one days ((~~and life insurance elections within sixty days~~)) of the employee becoming eligible, his or her enrollment will be as follows for those elections not received within thirty-one days:

(i) Uniform Medical Plan Classic;

(ii) Uniform Dental Plan;

(iii) Basic life insurance;

(iv) Basic long-term disability insurance;

(v) Dependents will not be enrolled; and

(vi) A tobacco use surcharge will be incurred as described in WAC 182-08-185 (1)(b).

(2) The employer contribution toward PEBB insurance coverage ends according to WAC 182-12-131. When an employee's employment ends, participation in the state's salary reduction plan ends.

(3) When an employee loses and later regains eligibility for the employer contribution toward PEBB insurance coverage following a period of leave described in WAC 182-12-133(1) and 182-12-142 (1) and (2). PEBB medical and dental begins on the first day of the month the employee is in pay status eight or more hours:

(a) The employee must complete the required forms indicating his or her enrollment elections, including an election to waive PEBB medical if the employee chooses to waive PEBB medical as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency except as described in (d) of this subsection. Forms must be received by the employing agency no later than thirty-one days after the employee regains eligibility, except as described in subsection (3)(b) of this section:

(i) An employee who self-paid for optional life insurance coverage after losing eligibility will have that level of coverage reinstated without evidence of insurability effective the first day of the month in which the employee is in pay status eight or more hours;

(ii) An employee who was eligible to continue optional life under continuation coverage but discontinued that 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 to the PEBB designee when he or she regains eligibility for the employer contribution.

(b) An employee in any of the following circumstances does not have to return a form indicating optional LTD insurance elections. His or her optional LTD insurance will be automatically reinstated effective the first day of the month he or she is in pay status eight or more hours:

(i) The employee continued to self-pay for his or her optional LTD insurance after losing eligibility for the employer contribution;

(ii) The employee was not eligible to continue optional LTD insurance after losing eligibility for the employer contribution.

(c) If an employee's employing agency does not receive the required forms within thirty-one days of the employee regaining eligibility, medical, dental, life insurance, tobacco use surcharge, and LTD insurance enrollment will be as described in subsection (1)(b) of this section, except as described in (b) of this subsection.

(d) If an employee is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) the employee may enroll in the state's medical FSA or DCAP or both, except as limited by subsection (4) of this section. To enroll in these optional PEBB benefits, the employee must return the required form to his or her state agency or the PEBB program's designee. The form must be received by the employee's state agency or the PEBB program's designee no later than thirty-one days after the employee becomes eligible for PEBB benefits.

(4) If an employee who is eligible to participate in the state's salary reduction plan (see WAC 182-12-116) is hired into a new position that is eligible for PEBB benefits in the same year, the employee may not resume participation in DCAP or medical FSA until the beginning of the next plan year, unless the time between employments is less than thirty days and the employee notifies the new state agency and the DCAP or FSA administrator of his or her employment transfer within the current plan year.

(5) An employee's PEBB insurance coverage elections remain the same when an employee transfers from one employing agency to another employing agency without a break in PEBB coverage. This includes movement of an employee between any entities described in WAC 182-12-111 and participating in PEBB benefits. PEBB insurance coverage elections also remain the same when an employee has a break in employment that does not interrupt his or her employer contribution toward PEBB insurance coverage.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-08-198 When may a subscriber change health plans? Subscribers may change health plans at the following times:

(1) **During annual open enrollment:** Subscribers may change health plans during the public employees benefits board (PEBB) annual open enrollment period. The subscriber must submit the required enrollment forms to change his or her health plan. An employee((~~s~~)) submits the enrollment forms to ((~~their~~)) his or her employing agency. All other subscribers submit the enrollment forms to the PEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** Subscribers may change health plans outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both. To make a health plan change, the subscriber must submit the required enrollment forms (and a completed disenrollment form, if required). The forms must be received no later than sixty days after the event occurs. An employee((~~s~~)) submits the enrollment forms to ((~~their~~)) his or her employing agency. All other subscribers submit the enrollment forms to the PEBB program. Subscribers must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(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~~)) his or her employer contribution toward his or her employer-based group health ((~~insurance~~)) plan;

(d) The subscriber's dependent has a change in his or her own employment status that affects his or her eligibility for the employer contribution under his or her employer-based group health plan;

Exception: For the purposes of special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

(e) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability. If the subscriber moves and the subscriber's current health plan is not available in the new location the subscriber must select a new health plan. 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)~~)) (f) A court order or national medical support notice (see also WAC 182-12-263) requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

((~~(f)~~)) (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;

((~~(g)~~)) (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);

((~~(h)~~)) (i) Subscriber or a subscriber's dependent becomes entitled to coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare, or enrolls in or ((~~cancels~~)) terminates enrollment in a medicare Part D plan. If the subscriber's current health plan becomes unavailable due to the subscriber's or a subscriber's dependent's entitlement to medicare, the subscriber must select a new health plan as described in WAC 182-08-196(1);

((~~(i)~~)) (j) Subscriber or a subscriber's dependent's current health plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

((~~(j)~~)) (k) Subscriber or a subscriber's dependent experiences a disruption of care that could function as a reduction in benefits for the subscriber or the subscriber's dependent for a specific condition or ongoing course of treatment. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable; or

(ii) Transplant within the last twelve months; or

(iii) Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or

(iv) Recent major surgery still within the postoperative period of up to eight weeks; or

(v) Third trimester of pregnancy.

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

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

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 form must be submitted to his or her employing agency. To enroll or reenroll in medical FSA or DCAP the employee must submit the required form to his or her employing agency or the public employees benefits board (PEBB) program's designee. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election ((~~will be~~)) becomes 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 Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the employee must submit the required forms as instructed on the forms. The required forms must be received no later than sixty days after the event occurs. The employee must provide evidence of the event that created the special open enrollment.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the employee for tax purposes under IRC Section 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 required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a domestic partnership when the dependent is a tax dependent of the subscriber;

• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

• A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

• A child becoming eligible as a dependent with a disability.

(ii) Employee's dependent no longer meets PEBB eligibility criteria because:

• Employee has a change in marital status;

• Employee's domestic partnership with a state registered domestic partner who 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~~)) his or her employer contribution toward his or her employer-based group health ((~~insurance~~)) plan;

(v) The employee's dependent has a change in his or her own employment status that affects his or her eligibility for the employer contribution under his or her employer-based group health plan;

Exception: For the purposes of special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

(vi) Employee or an employee's dependent has a change in enrollment under ((~~another~~)) an employer-based group health ((~~insurance~~)) plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(((~~vi~~))) (vii) Employee or an employee's dependent has a change in residence that affects health plan availability;

(((~~vii~~))) (viii) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(((~~viii~~))) (ix) A court order or national medical support notice (see also WAC 182-12-263) requires the employee or

any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(((~~(ix)~~))) (x) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(((~~(x)~~))) (xi) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP);

(((~~(xi)~~))) (xii) Employee or an employee's dependent becomes entitled to coverage under medicare((~~,~~)) or the employee or an employee's dependent loses eligibility for coverage under medicare((~~, or enrolls in or terminates enrollment in a medicare Part D plan~~));

(((~~(xii)~~))) (xiii) Employee or an employee's dependent's current health plan becomes unavailable because the employee or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) may require evidence that the employee or employee's dependent is no longer eligible for an HSA;

(((~~(xiii)~~))) (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~~)) his or her health plan election if the employee's or dependent's physician stops participation with the employee's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

• Active cancer treatment such as chemotherapy or radiation therapy for up to ninety days or until medically stable; or

• Transplant within the last twelve months; or

• Scheduled surgery within the next sixty days (elective procedures within the next sixty days do not qualify for continuity of care); or

• Recent major surgery still within the postoperative period of up to eight weeks; or

• Third trimester of pregnancy.

(((~~(xiv)~~))) (xv) Employee or employee's dependent becomes eligible and enrolls in TRICARE, or loses eligibility for TRICARE.

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

(b) **Medical flexible spending arrangement (FSA).** An employee may enroll or change his or her election under the medical FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or change in election will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;

• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

• A child becoming eligible as an extended dependent through legal custody or legal guardianship; or

• A child becoming eligible as a dependent with a disability.

(ii) Employee's dependent no longer meets PEBB eligibility criteria because:

• Employee has a change in marital status;

• Employee's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;

• An eligible dependent child turns age twenty-six or otherwise does not meet dependent child eligibility criteria;

• An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

• An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the FSA;

(v) A court order or national medical support notice requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) Employee or an employee's dependent becomes entitled to coverage under medicare.

(c) **Dependent care assistance program (DCAP).** An employee may enroll or change his or her election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or change in election will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a domestic partnership if the domestic partner qualifies as a tax dependent of the subscriber;

• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

• 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~~)) an 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 qualifying relative of the employee as defined in Internal Revenue Code Section 152.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-08-220 Advertising or promotion of public employees benefits board (PEBB) benefit plans. (1) In order to assure equal and unbiased representation of public employees benefits board (PEBB) benefits, contracted vendors must comply with all of the following:

(a) All materials describing PEBB benefits must be prepared by or approved by the health care authority (HCA) before use.

(b) Distribution or mailing of all benefit descriptions must be performed by or under the direction of the HCA.

(c) All media announcements or advertising by a contracted vendor which includes any mention of the "public employees benefits board," "PEBB," "health care authority," "HCA," any reference to benefits for "state employees," or "retirees," or any group of ((~~employees~~)) enrollees covered by PEBB benefits, must receive the advance written approval of the HCA.

(2) Failure to comply with any or all of these requirements by a PEBB contracted vendor or subcontractor may result in contract termination by the HCA, refusal to continue or renew a contract with the noncomplying party, or both.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-08-235 Employer group and charter school application process. This section applies to employer groups as defined in WAC 182-08-015 and to charter schools. An employer group or charter school may apply to obtain public employees benefits board (PEBB) insurance coverage through a contract with the health care authority (HCA). ((~~With the exception of school districts and educational service districts, the authority will approve or deny applications through the evaluation criteria described in WAC 182-08-240. To apply, employer groups must submit the documents and information described in this rule to the public employees benefits board (PEBB) program~~))

(1) Employer groups and charter schools with less than five thousand employees must apply at least sixty days before the requested coverage effective date. ((~~School districts and educational service districts are only~~)) Employer groups and charter schools with five thousand or more employees must apply at least one hundred twenty days before the requested coverage effective date. To apply, employer groups and charter schools must submit the documents and information described in subsection (2) of this section to the PEBB program as follows:

(a) School districts, educational service districts, and charter schools are required to provide the documents described in subsections ((~~(1), (2), and (3)~~)) (2)(a) through (c) of this section((~~. If school districts or educational service districts are required by the superintendent of public instruction to purchase insurance coverage provided by the authority, they are required to submit documents and information described in subsections (1)(c), (2), and (3) of this section.~~

~~(1)~~));

Exception: School districts and educational service districts required by the superintendent of public instruction to purchase PEBB insurance coverage provided by the authority are required to submit documents and information described in subsection (2)(a)(iii), (b), and (c) of this section.

(b) Counties, municipalities, political subdivisions, and tribal governments with fewer than five thousand employees are required to provide the documents and information described in subsection (2)(a) through (f) of this section;

(c) Counties, municipalities, political subdivisions, and tribal governments with five thousand or more employees will have their application approved or denied through the evaluation criteria described in WAC 182-08-240 and are required to provide the documents and information described in subsection (2)(a) through (d), (f), and (g) of this section; and

(d) All employee organizations representing state civil services employees and the Washington health benefit exchange, regardless of the number of employees, will have their application approved or denied through the evaluation criteria described in WAC 182-08-240 and are required to provide the documents and information described in subsection (2)(a) through (d), (f), and (g) of this section.

(2) Documents and information required with application:

(a) A letter of application that includes the information described in (a)(i) through ((~~(d)~~)) (iv) of this subsection:

(((~~(a)~~)) (i) A reference to the ((~~employer~~)) group's authorizing statute;

(((~~(b)~~)) (ii) A description of the organizational structure of the ((~~employer~~)) group and a description of the employee

bargaining unit or group of nonrepresented employees for which the ((~~employer~~)) group is applying;

(((~~c~~))) (iii) Employer tax ID number (TIN); and

(((~~d~~))) (iv) A statement of whether the ((~~employer~~)) group is ((~~requesting only medical or medical, dental, life, and long-term disability (LTD) insurance~~)) applying to obtain only medical or all available PEBB insurance coverages. School districts and educational service districts must purchase medical, dental, life, and LTD insurance.

(((~~2~~))) (b) A resolution from the ((~~employer~~)) group's governing body authorizing the purchase of PEBB insurance coverage.

(((~~3~~))) (c) 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~~))) (d) 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~~))) (i) Employee ID (any identifier which uniquely identifies the employee; for dependents the employee's unique identifier must be used);

(((~~b~~))) (ii) Age;

(((~~c~~))) (iii) Gender;

(((~~d~~))) (iv) First three digits of the member's zip code based on residence;

(((~~e~~))) (v) Indicator of whether the employee is active or retired, if the ((~~employer~~)) group is requesting to include retirees; and

(((~~f~~))) (vi) Indicator of whether the member is enrolled in coverage.

(((~~5~~))) (e) Historical claims and cost information that include the following:

(i) Large claims history for twenty-four months by quarter that excludes the most recent three months;

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;

(iii) Summary of historical plan costs; and

(iv) The director or designee may make an exception to the claims and cost information requirements based on the size of the group.

Exception: If the current health plan does not have a case management program then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim.

(f) If the application is for a subset of the ((~~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 (d) of this 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)~~)) (g) Employer groups ((~~with greater than two thousand five hundred eligible employees~~)) described in subsection (1)(c) and (d) of this section must submit to an actuarial evaluation of the group provided by an actuary designated by the PEBB program. The ((~~employer~~)) group must pay for the cost of the evaluation. This cost is nonrefundable. ((~~An employer~~)) A group that is approved will not have to pay for an additional actuarial evaluation if it applies to add another bargaining unit within two years of the evaluation. Employer groups of this size must provide the following:

(i) Large claims history for twenty-four months, by quarter that excludes the most recent three months;

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;

(iii) Executive summary of benefits;

(iv) Summary of benefits and certificate of coverage; and

(v) Summary of historical plan costs.

(((~~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.~~))

Exception: If the current health plan does not have a case management program then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim.

(3) The authority may automatically deny a group application if the group fails to provide the required information and documents described in this section.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-08-237 May a local government entity or tribal government entity applying for participation in public employees benefits board (PEBB) insurance coverage include their retirees? A local government or tribal government that applies for participation in public employees benefits board (PEBB) insurance coverage under WAC 182-08-235 ((~~may~~)) will have a one-time opportunity to request inclusion of retired employees who are covered under its retiree health plan at the time of application.

(1) The authority will use the following criteria to approve or deny a request to include retirees:

(a) The local government or tribal government retiree health plan must have existed at least three years before the date of the employer group application;

(b) Eligibility for coverage under the local government's or tribal government's retiree health plan must have required immediate enrollment in retiree health plan coverage upon termination of employee coverage; and

(c) The retirees must have maintained continuous enrollment in the local government or tribal government retiree health plan.

(2) If the local government's or tribal government's application is for a subset of their employees (e.g., bargaining unit) only retirees previously within the bargaining unit may be included in the transfer.

(3) Retirees and dependents included in the transfer unit are subject to the enrollment and eligibility rules outlined in chapters 182-08, 182-12 and 182-16 WAC.

(((~~3~~))) (4) Employees eligible for retirement subsequent to the local government or tribal government transferring to PEBB health plan coverage must meet retiree eligibility as outlined in chapter 182-12 WAC.

(((~~4~~))) (5) To protect the integrity of the risk pool, if total local government or tribal government retiree enrollment exceeds ten percent of the total PEBB retiree population, the PEBB program may:

(a) Stop approving inclusion of retirees with local government or tribal government unit transfers; or

(b) Adopt a new rating methodology reflective of the cost of covering local government or tribal government retirees.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-08-240 How will the health care authority (HCA) decide to approve or deny ((~~an employer~~)) a group application? ((~~Employer~~)) This section only applies to employee organizations representing state civil service employees and the Washington health benefit exchange, regardless of the number of employees, counties, municipalities, political subdivisions, and tribal governments with five thousand or more employees. Group applications for participation in public employees benefits board (PEBB) insurance coverage provided through the ((~~public employees benefits board (~~))PEBB((~~)~~)) program are approved or denied by the health care authority (HCA) based upon the information and documents submitted by the ((~~employer~~)) group and the employer group evaluation (EGE) criteria described in this rule. ((~~The authority may automatically deny an employer group application if the employer group fails to provide the required information and documents described in WAC 182-08-235.~~))

(1) ((~~Employer~~)) Groups are evaluated as a single unit. To support this requirement the ((~~employer~~)) group must provide a census file, as described in WAC 182-08-235 ((~~(1) through (5)~~)) (2)(d), and additional information as described in WAC 182-08-235((~~(6)~~)) (2)(g) for all employees eligible to participate under the ((~~employer~~)) group's current health plan. If the ((~~employer~~)) group's application is for both employees and retirees, the census file data and additional information for retired employees participating under the ((~~employer~~)) group's current health plan must also be included.

(a) If the ((~~employer~~)) group's application is only for participation of its employees, the PEBB enrollment data used to evaluate the ((~~employer~~)) group will be state agency employee data.

(b) If ((~~an employer~~)) a group's application is for participation of both its employees and retirees, the PEBB enrollment data used to evaluate the ((~~employer~~)) group will include data from the PEBB nonmedicare risk pool ((~~which includes~~)) limited to state retiree enrollment data and state agency employee data.

(2) ((~~An employer~~)) A group must pass the EGE criteria or the actuarial evaluation required in subsection (3) of this section as a single unit before the application can be approved. For purposes of this section a single unit includes all employees eligible under the ((~~employer~~)) group's current health plan. If the application is only for a bargaining unit, then the bargaining unit must be evaluated using the EGE criteria in addition to all eligible employees of ((~~employer~~)) the group as a single unit. If the ((~~employer~~)) group passes the EGE criteria as a single unit, but an individual bargaining unit does not, the ((~~employer~~)) group may only participate if all eligible employees of the entity participate.

(3) The authority will ((~~determine which of the criteria in (a) though (d) of this subsection is used to evaluate the employer group based upon the total number of eligible employees in the single unit.~~

~~(a) **Micro groups** (a single unit of one to ten employees) must meet the following criteria in order to pass the EGE evaluation:~~

~~(i) Provide proof of current coverage or proof of prior coverage within the last twelve months; and~~

~~(ii) The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor as determined by the authority for the like population within the nonmedicare PEBB risk pool as described in subsection (1) of this section.~~

~~(b) **Small and medium groups** (a single unit of eleven to three hundred employees) must meet the following criterion in order to pass the EGE evaluation: The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor as determined by the authority for the like population within the nonmedicare PEBB risk pool as described in subsection (1) of this section.~~

~~(c) **Large groups** (a single unit of three hundred one to two thousand five hundred employees) must meet the following criteria in order to pass the EGE evaluation:~~

~~(i) The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor as determined by the authority for the like population within the nonmedicare PEBB risk pool as described in subsection (1) of this section;~~

~~(ii) One of the following two conditions must be met:~~

~~• The frequency of large claims must be less than or equal to the historical benchmark frequency for the PEBB like population within the nonmedicare population as described in subsection (1) of this section; and~~

~~• The ongoing large claims management report must demonstrate that the frequency of ongoing large claims is less than or equal to the recurring benchmark frequency for the PEBB like population within the nonmedicare population as described in subsection (1) of this section.~~

~~(d) **Jumbo groups** (a single unit of two thousand five hundred one or more employees) must meet the following criteria in order to pass the actuarial evaluation:~~

~~(i)~~)) use the following criteria to evaluate the group.

(a) The member level census file demographic data must indicate a relative underwriting factor that is equal to or better than the relative underwriting factor as determined by the authority for the like population within the nonmedicare PEBB risk pool as described in subsection (1) of this section;

((~~(ii)~~)) (b) One of the following two conditions must be met:

((~~•~~)) (i) The frequency of large claims must be less than or equal to the PEBB historical benchmark frequency for the PEBB like population within the nonmedicare population as described in subsection (1) of this section;

((~~•~~)) (ii) The ongoing large claims management report must demonstrate that the frequency of ongoing large claims is less than or equal to the recurring benchmark frequency for the PEBB like population within the nonmedicare population as described in subsection (1) of this section.

((~~(iii)~~)) (c) Provide an executive summary of benefits;

((~~(iv)~~)) (d) Provide a summary of benefits and certificate of coverage;

((~~(v)~~)) (e) Provide a summary of historical plan costs; and

((~~(vi)~~)) (f) The evaluation of criteria in ((~~(d)(iii), (iv) and (v)~~)) (c), (d), and (e) of this subsection must indicate that the historical cost of benefits for the ((~~employer~~)) group is equal to or less than the historical cost of the PEBB like population within the nonmedicare population as described in subsection (1) of this section for a comparable plan design.

(4) An approved group application is valid for three hundred sixty-five calendar days after the date the application is approved by the authority. If ((~~an employer~~)) a group applies to add additional bargaining units after the three hundred sixty-five calendar day period has ended, the group must be reevaluated.

(5) An entity whose ((~~employer~~)) group application is denied may appeal the authority's decision to the PEBB appeals committee through the process described in WAC 182-16-038.

(6) An entity whose ((~~employer~~)) group application is approved may purchase insurance for its employees under the participation requirements described in WAC 182-08-245.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-08-245 Employer group and charter school participation requirements. This section applies to an employer group as defined in WAC 182-08-015 or a charter school that is approved to purchase insurance for its employees through a contract with the health care authority (HCA).

(1) Prior to enrollment of employees in public employees benefits board (PEBB) insurance coverage, the employer group or charter school must:

(a) Remit to the authority the required start-up fee in the amount publicized by the PEBB program;

(b) Sign a contract with the authority;

(c) Determine employee and dependent eligibility and terms of enrollment for PEBB insurance coverage by the criteria outlined in the employer group's or charter school's contract with the authority;

(d) Determine eligibility in order to ensure the PEBB program's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. This means the employer group or charter school may only consider employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities, whether or not those activities qualify as essential governmental functions to be eligible; and

(e) Ensure PEBB insurance coverage is the only employer-sponsored coverage available to groups of employees eligible for PEBB insurance coverage under the contract.

(2) Pay premiums under its contract with the authority based on the following premium structure:

(a) The premium rate structure for school districts ((~~and~~)), educational service districts, and charter schools will be a composite rate equal to the rate charged to state agencies plus an amount equal to the employee premium based on health plan election and family enrollment. School districts and educational service districts must collect an amount equal to the premium ((~~surcharge(s)~~)) surcharges applied to an employee's account by the authority from their employees and include the funds in their payment to the authority.

Exception: The authority will allow districts that enrolled prior to September 1, 2002, to continue participation based on a tiered rate structure. The authority may require the district to change to a composite rate structure with ninety days advance written notice.

(b) The premium rate structure for employer groups other than districts and charter schools described in (a) of this subsection will be a tiered rate based on health plan election and family enrollment. Employer groups must collect an amount equal to the premium ((~~surcharge(s)~~)) surcharges applied to an employee's account by the authority from their employees and include the funds in their payment to the authority.

Exception: The authority will allow employer groups that enrolled prior to January 1, 1996, to continue to participate based on a composite rate structure. The authority may require the employer group to change to a tiered rate structure with ninety days advance written notice.

(3) Counties, municipalities, political subdivisions, and tribal governments must pay the monthly employer group rate surcharge in the amount invoiced by the authority.

(4) If an employer group or charter school wants to make subsequent changes to the contract, the changes must be submitted to the authority for approval.

(((~~(4)~~))) (5) The employer group or charter school must maintain participation in PEBB insurance coverage for at least one full year. An employer group or charter school may only end participation at the end of a plan year unless the authority approves a mid-year termination. To end participation, an employer group or charter school must provide written notice to the PEBB program at least sixty days before the requested termination date.

(((~~(5)~~))) (6) Upon approval to purchase insurance through a contract with the authority, the employer group or charter school must provide a list of employees and dependents that are enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage and the remaining number of months available to them based on their qualifying event. These employees and dependents may enroll in a PEBB ((~~medical and dental~~)) health plan as COBRA ((~~enrollees~~)) subscribers for the remainder of the months available to them based on their qualifying event.

(((~~(6)~~))) (7) Enrollees in PEBB insurance coverage under one of the continuation of coverage provisions allowed under chapter 182-12 WAC or retirees included in the transfer unit as allowed under WAC 182-08-237 cease to be eligible as of the last day of the contract and may not continue enrollment beyond the end of the month in which the contract is terminated.

Exception: If an employer group, other than a school district or educational service district, ends participation, retired and disabled employees who began participation before September 15, 1991, are eligible to continue enrollment in PEBB insurance coverage if the employee continues to meet the procedural and eligibility requirements of WAC 182-12-171. Employees who enrolled after September 15, 1991, who are enrolled in PEBB retiree insurance coverage cease to be eligible under WAC 182-12-171, but may continue health plan enrollment under COBRA (see WAC 182-12-146).

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

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 PEBB medical, or employees may enroll in or change their election under the dependent care assistance program (DCAP), the medical flexible spending arrangement (FSA), or the premium payment plan.

"Authority" or "HCA" means the health care authority.

"Benefits-eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Blind vendor" means a "licensee" as defined in RCW 74.18.200.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all legal holidays as set forth in RCW 1.16.050.

"Continuation coverage" means the temporary continuation of PEBB health plan coverage available to enrollees after a qualifying event occurs as administered under Title XXII of the Public Health Service (PHS) Act, 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in a PEBB health plan by a retiree or eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, ((~~e-mails~~)) electronic mail, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employee" includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other

political subdivision of the state ((~~seeks and receives the approval of~~)) submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); and (f) employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under this chapter or by the authority under this chapter.

"Employer" means the state of Washington as defined by RCW 41.05.011.

"Employer-based group dental" means group dental related to a current employment relationship. It does not include dental coverage available to retired employees, individual market dental coverage, or government-sponsored programs such as medicaid.

"Employer-based group health plan" means group medical and group dental related to a current employment relationship. It does not include medical or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical ((~~insurance~~))" means group medical ((~~insurance coverage~~)) related to a current employment relationship. It does not include medical ((~~insurance~~)) coverage available to retired employees, individual market medical ((~~insurance~~)) coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the authority by a state agency, employer group, or charter school for its eligible employees as described under WAC 182-12-114 and 182-12-131 and the employee's eligible dependents as described in WAC 182-12-260.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, educational service districts, and employee organizations representing state civil service employees, obtaining employee benefits through a contractual agreement with the authority as described in WAC 182-08-245.

"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency, employer group or charter school for employees eligible in WAC 182-12-114 and 182-12-131. It also means basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by school districts or an educational service district.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal retiree medical plan" means the Federal Employees Health Benefits program (FEHB) or TRICARE which are not employer-based group medical ((~~insurance~~)).

"Health plan" means a plan offering medical or dental, or both, developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

((~~"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.

"Pay status" means all hours for which an employee receives pay.

"PEBB" means the public employees benefits board.

"PEBB appeals committee" means the committee that considers appeals relating to the administration of PEBB benefits by the PEBB program. The director has delegated the authority to hear appeals at the level below an administrative hearing to the PEBB appeals committee.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or state registered domestic partner choosing not to enroll in his or her employer-based group medical ((~~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.

"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 PEBB medical, 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~~)) related to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary, or eligible 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, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids ((~~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 employer-based group medical ((~~insurance~~)), TRICARE, or medicare as allowed under WAC 182-12-128, or is on approved educational leave and obtains ((~~other~~)) another employer-based group health ((~~insurance~~)) plan as allowed under WAC 182-12-136.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-111 Which entities and individuals are eligible for public employees benefits board (PEBB) benefits? 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 PEBB insurance coverage for groups of employees described in (a)(i) of this subsection and for members of the group's governing authority as described in (a)(i), (ii), and (iii) of this subsection at the option of each employer group:

(a) All eligible employees of the entity must transfer as a unit with the following exceptions:

(i) Bargaining units may elect to participate separately from the whole group;

(ii) Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group; and

(iii) 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) Employer groups must apply through the process described in WAC 182-08-235. ((~~School district and educational service district applications must provide the documents described in WAC 182-08-235 (1), (2), and (3). If a 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 from employees of employee organizations representing state civil service employees, the Washington health benefit exchange, and employer groups with five thousand or more employees, except for school districts and educational service districts are subject to review and approval by the health care authority (HCA)((~~. With the exception of a school district or educational service district, the authority will approve or deny an employer group's application~~)) based on the employer group evaluation criteria described in WAC 182-08-240.

(c) Employer groups and charter schools participate through a contract with the authority as described in WAC 182-08-245.

(3) **School districts ((~~and~~)), educational service districts, and charter schools.** In addition to subsection (2) of this section, the following applies to school districts ((~~and~~)), educational service districts, and charter schools:

(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 and an amount equal to any applicable premium surcharge as would be charged to state employees for each participating school district ((~~or~~)), educational service district, or charter school.

(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) Employees of the Washington health benefit exchange are subject to the same rules as employees of an employing agency in chapters 182-08, 182-12 and 182-16 WAC.

(5) **Eligible nonemployees.**

(a) Blind vendors actively operating a business enterprise program facility in the state of Washington and deemed eligible by the department of services for the blind (DSB) may voluntarily participate in PEBB medical. Dependents of blind vendors are eligible as described in WAC 182-12-260. Eligible blind vendors and their dependents may enroll during the following times:

(i) When newly eligible: The DSB will notify eligible blind vendors of their eligibility in advance of the date they are eligible for enrollment in PEBB medical.

To enroll, blind vendors must submit the required forms to the DSB. The forms must be received by the DSB no later than thirty-one days after the blind vendor becomes eligible for PEBB medical.

(ii) During the annual open enrollment: Blind vendors may enroll during the annual open enrollment. The required form must be received by the DSB before the end of the annual open enrollment. Enrollment will begin January 1st of the following year.

(iii) Following loss of other medical insurance coverage: Blind vendors may enroll following loss of other medical insurance coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA). To enroll, blind vendors must submit the required forms to the DSB. The forms must be received by the DSB no later than sixty days after the loss of other medical insurance coverage. In addition to the required forms, the DSB will require blind vendors to provide evidence of loss of other medical insurance coverage.

(iv) Blind vendors who cease to actively operate a facility become ineligible to participate in PEBB medical as described in (a) of this subsection. Enrollees who lose eligibility for coverage may continue enrollment in PEBB medical on a self-pay basis under COBRA coverage as described in WAC 182-12-146(5).

(v) Blind vendors are 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 PEBB insurance coverage as long as they remain eligible under that section.

(6) **Individuals and entities 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 an employee.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-113 What are the obligations of a state agency in the application of employee eligibility? (1) All state agencies must carry out all actions, policies, and guidance issued by the public employees benefits board (PEBB) program necessary for the operation of benefit plans, education of employees, claims administration, and appeals process including those described in chapters 182-08, 182-12, and 182-16 WAC. State agencies must:

(a) Use the methods provided by the PEBB program to determine eligibility and enrollment in benefits, unless otherwise approved in writing;

(b) Provide eligibility determination reports with content and in a format designed and communicated by the PEBB program or otherwise as approved in writing by the PEBB program; and

(c) Carry out corrective action and pay any penalties imposed by the authority and established by the board when the state agency's eligibility determinations fail to comply with the criteria under these rules.

(2) All state agencies must determine employee eligibility for PEBB benefits and employer contribution according to the criteria in WAC 182-12-114 and 182-12-131. State agencies must:

(a) Notify newly hired employees of PEBB rules and guidance for eligibility and appeal rights;

(b) Provide written notice to faculty who are potentially eligible for benefits and employer contribution of their potential eligibility ((~~under~~)) as described in WAC 182-12-114(3) and 182-12-131;

(c) Inform an employee in writing whether or not he or she is eligible for benefits upon employment. The written communication must include a description of any hours that are excluded in determining eligibility and information about the employee's right to appeal eligibility and enrollment decisions;

(d) Routinely monitor all employees' eligible work hours to establish eligibility and maintain the employer contribution toward PEBB insurance coverage;

(e) Make eligibility determinations based on the criteria of the eligibility category that most closely describes the employee's work circumstances per the PEBB program's direction;

(f) Identify when a previously ineligible employee becomes eligible or a previously eligible employee loses eligibility; and

(g) Inform an employee in writing whether or not he or she is eligible for benefits and the employer contribution whenever there is a change in work patterns such that the employee's eligibility status changes. At the same time, state agencies must inform employees of the right to appeal eligibility and enrollment decisions.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-12-114 How do employees establish eligibility for public employees benefits board (PEBB) benefits? Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in subsections (1) through (5) of this section shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

Hours that are excluded in determining eligibility include standby hours and any temporary increases in work hours, of six months or less, caused by training or emergencies that have not been or are not anticipated to be part of the employee's regular work schedule or pattern. Employing agencies must request the public employees benefits board (PEBB) program's approval to include temporary training or emergency hours in determining eligibility.

For how the employer contribution toward PEBB insurance coverage is maintained after eligibility is established under this section, see WAC 182-12-131.

(1) Employees are eligible for PEBB benefits as follows, except as ((~~provided~~)) described in subsections (2) through (5) of this section:

(a) **Eligibility.** An employee is eligible if he or she ((~~works~~)) is anticipated to work an average of at least eighty hours per month and ((~~works~~)) is anticipated to work for at least eight hours in each month for more than six consecutive months.

(b) **Determining eligibility.**

(i) **Upon employment:** An employee is eligible from the date of employment if the employing agency anticipates the employee will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern:** If an employing agency revises an employee's anticipated work hours or anticipated duration of employment such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern:** An employee who is determined to be ineligible, but later meets the eligibility criteria in (a) of this subsection, becomes eligible the first of the month following the six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward PEBB insurance coverage. Employees must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position ((~~to~~)) with hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward PEBB insurance coverage ((~~under~~)) as described in WAC 182-12-131(1).

(d) **When PEBB insurance coverage begins.** Medical ((~~and~~)), dental ((~~insurance coverage~~)), basic life insurance, and basic long-term disability insurance ((~~coverage~~)) begin on the first day of the month following the date an employee

becomes eligible. If the employee becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

(2) **Seasonal employees,** as defined in WAC 182-12-109, are eligible as follows:

(a) **Eligibility.** A seasonal employee is eligible if he or she ((~~works~~)) is anticipated to work an average of at least eighty hours per month and ((~~works~~)) is anticipated to work for at least eight hours in each month of at least three consecutive months of the season. A season is any recurring, cyclical period of work at a specific time of year that lasts three to eleven months.

(b) **Determining eligibility.**

(i) **Upon employment:** A seasonal employee is eligible from the date of employment if the employing agency anticipates that he or she will work according to the criteria in (a) of this subsection.

(ii) **Upon revision of anticipated work pattern.** If an employing agency revises an employee's anticipated work hours such that the employee meets the eligibility criteria in (a) of this subsection, the employee becomes eligible when the revision is made.

(iii) **Based on work pattern.** An employee who is determined to be ineligible for benefits, but later works an average of at least eighty hours per month and works for at least eight hours in each month and works for more than six consecutive months, becomes eligible the first of the month following a six-month averaging period.

(c) **Stacking of hours.** As long as the work is within one state agency, employees may "stack" or combine hours worked in more than one position or job to establish eligibility and maintain the employer contribution toward PEBB insurance coverage. Employees must notify their employing agency if they believe they are eligible through stacking. Stacking includes work situations in which:

(i) The employee works two or more positions or jobs at the same time (concurrent stacking);

(ii) The employee moves from one position or job to another (consecutive stacking); or

(iii) The employee combines hours from a seasonal position or job ((~~to~~)) with hours from a nonseasonal position or job. An employee who establishes eligibility by stacking hours from a seasonal position or job with hours from a nonseasonal position or job shall maintain the employer contribution toward PEBB insurance coverage ((~~under~~)) as described in WAC 182-12-131(1).

(d) **When PEBB insurance coverage begins.** Medical ((~~and~~)), dental ((~~insurance coverage and~~)), basic life insurance, and basic long-term disability insurance ((~~coverage~~)) begin on the first day of the month following the day the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

(3) **Faculty** are eligible as follows:

(a) **Determining eligibility.** "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees is governed by RCW 28B.50.489.

(i) **Upon employment:** Faculty who the employing agency anticipates will work half-time or more for the entire instructional year, or equivalent nine-month period, are eligible from the date of employment.

(ii) **For faculty hired on quarter/semester to quarter/semester basis:** Faculty who the employing agency anticipates will not work for the entire instructional year, or equivalent nine-month period, are eligible at the beginning of the second consecutive quarter or semester of employment in which he or she is anticipated to work, or has actually worked, half-time or more. Spring and fall are considered consecutive quarters/semesters when first establishing eligibility for faculty that work less than half-time during the summer quarter/semester.

(iii) **Upon revision of anticipated work pattern:** Faculty who receive additional workload after the beginning of the anticipated work period (quarter, semester, or instructional year), such that their workload meets the eligibility criteria ((~~of~~)) as described in (a)(i) or (ii) of this subsection become eligible when the revision is made.

(b) **Stacking.** Faculty may establish eligibility and maintain the employer contribution toward PEBB insurance coverage by working as faculty for more than one institution of higher education. Faculty workloads may only be stacked with other faculty workloads to establish eligibility under this section or maintain eligibility ((~~under~~)) as described in WAC 182-12-131(3). When a faculty works for more than one institution of higher education, the faculty must notify his or her employing agencies that he or she works at more than one institution and may be eligible through stacking.

(c) **When PEBB insurance coverage begins.**

(i) Medical ((~~and~~)), dental ((~~insurance coverage and~~)), basic life insurance, and basic long-term disability insurance ((~~coverage~~)) begin on the first day of the month following the day the faculty becomes eligible. If the faculty becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

(ii) For faculty hired on a quarter/semester to quarter/semester basis under (a)(ii) of this subsection, medical ((~~and~~)), dental ((~~insurance coverage and~~)), basic life insurance, and basic long-term disability insurance ((~~coverage~~)) begin the first day of the month following the beginning of the second consecutive quarter/semester of half-time or more employment. If the first day of the second consecutive quarter/semester is the first working day of the month, then PEBB insurance coverage begins at the beginning of the second consecutive quarter/semester.

(4) **Elected and full-time appointed officials of the legislative and executive branches of state government** are eligible as follows:

(a) **Eligibility.** A legislator is eligible for PEBB benefits on the date his or her term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible on the date their terms begin or the date they take the oath of office, whichever occurs first.

(b) **When PEBB insurance coverage begins.** Medical ((~~and~~)), dental ((~~insurance coverage and~~)), basic life insurance, and basic long-term disability insurance ((~~coverage for an eligible employee~~)) begin on the first day of the month following the day ((~~he or she~~)) the employee becomes eligible.

If the employee becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

(5) **Justices and judges** are eligible as follows:

(a) **Eligibility.** A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for PEBB benefits on the date they take the oath of office.

(b) **When PEBB insurance coverage begins.** Medical ((~~and~~)), dental ((~~insurance coverage and~~)), basic life insurance, and basic long-term disability insurance ((~~coverage for an eligible employee~~)) begin on the first day of the month following the day ((~~he or she~~)) the employee becomes eligible. If the employee becomes eligible on the first working day of a month, then PEBB insurance coverage begins on that date.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-12-116 Who is eligible to participate in the state's salary reduction plan? (1) Employees of state agencies are eligible to participate in the state's salary reduction plan provided they are eligible for PEBB benefits as described in WAC 182-12-114 and they elect to participate within the time frames described in WAC 182-08-197, 182-08-187, or 182-08-199.

(2) Employees of employer groups, as defined in WAC 182-12-109, and charter schools are not eligible to participate in the state's salary reduction plan.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-123 Is 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,~~)) An individual who has more than one source of eligibility for enrollment in PEBB health plan coverage (called "dual eligibility") is limited to one enrollment.

(2) An eligible employee may waive PEBB medical and enroll as a dependent under the health plan of his or her spouse, state registered domestic partner, or parent as ((~~stated~~)) described in WAC 182-12-128.

(3) A dependent enrolled in a PEBB health plan who becomes eligible for PEBB benefits as an employee must elect to enroll in PEBB benefits as described in WAC 182-08-197 (1) or (3). This includes making an election to enroll in or waive enrollment in PEBB medical as described in WAC 182-12-128 (1)(a).

(a) If the employee does not waive enrollment in PEBB medical, the employee is not eligible to remain enrolled in his or her spouse's, state registered domestic partner's, or parent's PEBB health plan as a dependent. If the employee's spouse, state registered domestic partner, or parent does not remove the employee (who is enrolled as a dependent) from his or her subscriber account, the PEBB program will terminate the employee's enrollment as a dependent the last day of the month before the employee's employer-paid coverage begins.

Exception: An enrolled dependent who becomes newly eligible for PEBB benefits as an employee 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.

(b) If the employee elects to waive his or her enrollment in PEBB medical, the employee will remain enrolled in PEBB medical under his or her spouse's, state registered domestic partner's, or parent's PEBB health plan as a dependent.

(4) A child who is eligible for medical and dental under two subscribers may be enrolled as a dependent under the health plan of only one subscriber.

(5) When an employee is eligible for the employer contribution towards PEBB insurance coverage due to employment in more than one PEBB-participating employing agency the following provisions apply:

(a) The employee must choose to enroll under only one employing agency.

Exception: Faculty who stack to establish or maintain eligibility ((~~under~~)) as described in WAC 182-12-114(3) with two or more state institutions of higher education will be enrolled under the employing agency responsible to pay the employer contribution according to WAC 182-08-200(2).

(b) If the employee loses eligibility under the employing agency he or she chose to enroll under as described in ((~~subsection (5)~~)) (a) of this ((~~section~~)) subsection, the employee must notify his or her other employing agency no later than sixty days from the date PEBB coverage ends through the employing agency described in (a) of this subsection to transfer coverage.

(c) The employee's PEBB insurance coverage elections remain the same when an employee transfers from enrollment under one employing agency to another employing agency without a break in PEBB insurance coverage, as described in (b) of this subsection.

(6) A retiree who defers enrollment in a PEBB health plan as described in WAC 182-12-200 by enrolling as an eligible dependent in a health plan sponsored by PEBB, a Washington state school district, ((~~or~~)) a Washington state education service district, or a Washington state charter school and who loses the employer contribution for such coverage must enroll in PEBB retiree insurance coverage as described in WAC 182-12-171 or defer enrollment as described in WAC 182-12-205.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-128 When may an employee waive enrollment in public employees benefits board (PEBB) medical and when may he or she enroll in PEBB medical after having waived enrollment? An employee may waive enrollment in public employees benefits board (PEBB) medical if he or she is enrolled in other employer-based group medical ((~~insurance~~)), TRICARE, or medicare. An employee who waives enrollment in PEBB medical must enroll in den-

tal, basic life insurance, and basic long-term disability insurance (unless the employing agency does not participate in these PEBB insurance coverages).

(1) To waive enrollment in PEBB medical, the employee must submit the required form to his or her employing agency at one of the following times:

(a) **When the employee becomes eligible:** An employee may waive PEBB medical when he or she becomes eligible for PEBB benefits. The employee must indicate his or her election to waive enrollment in PEBB medical on the required form and submit the form to his or her employing agency. The form must be received by the employing agency no later than thirty-one days after the date the employee becomes eligible (see WAC 182-08-197). PEBB medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) **During the annual open enrollment:** An employee may waive PEBB medical during the annual open enrollment. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** An employee may waive PEBB medical during a special open enrollment as described in subsection (4) of this section.

The employee must submit the required form to his or her employing agency. The form must be received no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment.

PEBB medical will be waived the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, PEBB medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical will be waived the last day of the previous month.

(2) If an employee waives PEBB medical, the employee's eligible dependents may not be enrolled in medical.

(3) Once PEBB medical is waived, the employee is only allowed to enroll in PEBB medical at the following times:

(a) During the annual open enrollment. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will begin January 1st of the following year.

(b) During a special open enrollment. A special open enrollment allows an employee to change his or her enrollment outside of the annual open enrollment. A special open enrollment may be created when one of the events described in subsection (4) of this section occurs.

The employee must submit the required form to his or her employing agency. The form must be received no later than sixty days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment.

PEBB medical will begin the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical will begin the first of the month in which the event occurs.

(4) **Special open enrollment:** Any one of the events in (a) through (((~~j~~))) (k) of this subsection may create a special open enrollment. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the employee, the employee's dependent, or both.

(a) Employee acquires a new dependent due to:

(i) Marriage or registering for a state domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(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~~)) his or her employer contribution toward his or her employer-based group medical ((~~insurance~~));

(d) The employee's dependent has a change in his or her own employment status that affects his or her eligibility for the employer contribution under his or her employer-based group medical;

Exception: For the purposes of special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

(e) Employee or an employee's dependent has a change in enrollment under ((~~another~~)) an employer-based group medical ((~~insurance~~)) plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(((~~(e)~~))) (f) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States;

(((~~(f)~~))) (g) 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~~)) a health plan for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(((~~(g)~~))) (h) Employee or an employee's dependent becomes entitled to coverage under medicaid or a state children's health insurance program (CHIP), or the employee or

an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(((~~(h)~~))) (i) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP);

(((~~(i)~~))) (j) Employee or employee's dependent becomes eligible and enrolls in TRICARE, or loses eligibility for TRICARE;

(((~~(j)~~))) (k) Employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

AMENDATORY SECTION (Amending WSR 13-22-019, filed 10/28/13, effective 1/1/14)

WAC 182-12-129 What happens when an employee moves from an eligible to an otherwise ineligible position or job due to a layoff? This section applies to employees employed by state agencies (as defined in this chapter), including benefits-eligible seasonal employees, and is intended to address situations where an employee moves from one position or job to another due to a layoff, as described in WAC 182-12-109. This section does not apply to employees with an anticipated end date.

If an employee moves from an eligible to an otherwise ineligible position due to layoff, the employee may retain his or her eligibility for the employer contribution toward public employees benefits board (PEBB) insurance coverage for each month that the employee is in pay status for at least eight hours. To maintain eligibility using this section the employee must:

• Be hired into a position with a state agency within twenty-four months of the original eligible position ending; and

• Upon hire, notify the employing state agency that he or she is potentially eligible to use this section.

This section ceases to apply if the employee is employed in a position eligible for ((~~public employees benefits board (~~))PEBB((~~)~~)) benefits under WAC 182-12-114 within twenty-four months of leaving the original position.

After the twenty-fourth month, the employee must reestablish eligibility ((~~under~~)) as described in WAC 182-12-114.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-131 How do eligible employees maintain the employer contribution toward public employees benefits board (PEBB) insurance coverage? The employer contribution toward public employees benefits board (PEBB) insurance coverage begins on the day that ((~~public employees benefits board (~~))PEBB((~~)~~)) benefits begin ((~~under~~)) as described in WAC 182-12-114. This section describes under what circumstances employees maintain eligibility for the employer contribution toward PEBB insurance coverage.

(1) **Maintaining the employer contribution.** Except as described in subsections (2), (3), and (4) of this section, employees who have established eligibility for benefits ((~~under~~)) as described in WAC 182-12-114 are eligible for the employer contribution each month in which they are in pay status eight or more hours per month.

(2) **Maintaining the employer contribution - Benefits-eligible seasonal employees.**

(a) Benefits-eligible seasonal employees (eligible ((~~under~~)) as described in WAC 182-12-114(2)) who work a season of less than nine months are eligible for the employer contribution in any month of the season in which they are in pay status eight or more hours during that month. The employer contribution toward PEBB insurance coverage for seasonal employees returning after their off season begins on the first day of the first month of the season in which they are in pay status eight hours or more.

(b) Benefits-eligible seasonal employees (eligible ((~~under~~)) as described in WAC 182-12-114(2)) who work a season of nine months or more are eligible for the employer contribution:

(i) In any month of the season in which they are in pay status eight or more hours during that month; and

(ii) Through the off season following each season worked, but the eligibility may not exceed a total of twelve consecutive calendar months for the combined season and off season.

(3) **Maintaining the employer contribution - Eligible faculty.**

(a) Benefits-eligible faculty anticipated to work half time or more the entire instructional year or equivalent nine-month period (eligible ((~~under~~)) as described in WAC 182-12-114 (3)(a)(i)) are eligible for the employer contribution each month of the instructional year, except as described in subsection (7) of this section.

(b) Benefits-eligible faculty who are hired on a quarter/semester to quarter/semester basis (eligible ((~~under~~)) as described in WAC 182-12-114 (3)(a)(ii)) are eligible for the employer contribution each quarter or semester in which employees work half-time or more.

(c) Summer or off-quarter/semester coverage: All benefits-eligible faculty (eligible ((~~under~~)) as described in WAC 182-12-114 (3)(a) and (b)) who work an average of half-time or more throughout the entire instructional year or equivalent nine-month period and work each quarter/semester of the instructional year or equivalent nine-month period are eligible for the employer contribution toward summer or off-quarter/semester PEBB insurance coverage.

Exception: Eligibility for the employer contribution toward summer or off-quarter/semester 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~~)) as described in WAC 182-12-114 (3)(a) and (b)) who worked an average of half-time or more in each of the two preceding academic years are potentially eligible to receive uninterrupted employer contribution ((~~to~~)) toward PEBB insurance coverage. "Academic year" means summer, fall, winter, and spring quarters or summer, fall, and spring

semesters and begins with summer quarter/semester. In order to be eligible for the employer contribution through two-year averaging, the faculty must provide written notification of his or her potential eligibility to his or her employing agency or agencies within the deadlines established by the employing agency or agencies. Faculty continue to receive uninterrupted employer contribution for each academic year in which they:

(i) Are employed on a quarter/semester to quarter/semester basis and work at least two quarters or two semesters; and

(ii) Have an average workload of half-time or more for three quarters or two semesters.

Eligibility for the employer contribution under two-year averaging ceases immediately if the eligibility criteria is not met or if the eligibility criteria becomes impossible to meet.

(e) Faculty who lose eligibility for the employer contribution: All benefits-eligible faculty (eligible ((~~under~~)) as described in WAC 182-12-114 (3)(a) and (b)) who lose eligibility for the employer contribution will regain it if they return to a faculty position where it is anticipated that they will work half-time or more for the quarter/semester no later than the twelfth month after the month in which they lost eligibility for the employer contribution. The employer contribution begins on the first day of the month in which the quarter/semester begins.

(4) **Maintaining the employer contribution - Employees on leave and under the special circumstances listed below.**

(a) Employees who are on approved leave under the federal Family and Medical Leave Act (FMLA) continue to receive the employer contribution as long as they are approved under the act.

(b) Unless otherwise indicated in this section, employees in the following circumstances receive the employer contribution only for the months they are in pay status eight hours or more:

(i) Employees on authorized leave without pay;

(ii) Employees on approved educational leave;

(iii) Employees receiving time-loss benefits under workers' compensation;

(iv) Employees called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); or

(v) Employees applying for disability retirement.

(5) **Maintaining the employer contribution - Employees who move from an eligible to an otherwise ineligible position due to a layoff** maintain the employer contribution toward PEBB insurance coverage ((~~under the criteria~~)) as described in WAC 182-12-129.

(6) **Employees who are in pay status less than eight hours in a month.** Unless otherwise indicated in this section, when there is a month in which employees are not in pay status for at least eight hours, employees:

(a) Lose eligibility for the employer contribution for that month; and

(b) Must reestablish eligibility for PEBB benefits ((~~under~~)) as described in WAC 182-12-114 in order to be eligible for the employer contribution again.

(7) **The employer contribution toward PEBB insurance coverage ends** in any one of these circumstances for all employees:

(a) When employees fail to maintain eligibility for the employer contribution as indicated in the criteria in subsection (1) through (6) of this section.

(b) When the employment relationship is terminated. As long as the employing agency has no anticipation that the employee will be rehired, the employment relationship is terminated:

(i) On the date specified in an employee's letter of resignation; or

(ii) On the date specified in any contract or hire letter or on the effective date of an employer-initiated termination notice.

(c) When employees move to a position that is not anticipated to be eligible for PEBB benefits ((~~under~~)) as described in WAC 182-12-114, not including changes in position due to a layoff.

The employer contribution toward PEBB benefits cease for employees and their enrolled dependents the last day of the month in which employees are eligible for the employer contribution under this section.

Exception: If the employing agency deducted the employee's premium for PEBB insurance coverage after the employee was no longer eligible for the employer contribution, PEBB insurance coverage ends the last day of the month for which employee premiums were deducted.

(8) **Options for continuation coverage by self-paying.** During temporary or permanent loss of the employer contribution toward PEBB insurance coverage, employees have options for providing continuation coverage for themselves and their dependents by self-paying the ((~~full~~)) premium set by the health care authority (HCA). These options are available ((~~according to~~)) as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, 182-12-148, and 182-12-270.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-133 What options for continuation coverage are available to employees and their dependents during certain types of leave or when employment ends due to a layoff? Employees who have established eligibility for public employees benefits board (PEBB) benefits ((~~under~~)) as described in WAC 182-12-114 may continue coverage for themselves and their dependents during certain types of leave or when their employment ends due to a layoff.

(1) Employees who are no longer eligible for the employer contribution toward PEBB insurance coverage due to an event described in (c)(i) through (vi) of this subsection may continue PEBB insurance coverage by self-paying the ((~~full~~)) premium set by the health care authority (HCA) from the date the employer contribution is lost:

(a) Employees may self-pay for a maximum of twenty-nine months. The employee must pay the premium amounts for PEBB insurance coverage as premiums become due. If the monthly premium((~~s are more than~~)) or premium surcharge remains unpaid for sixty days ((~~delinquent~~)), PEBB insurance coverage will ((~~end as of~~)) be terminated retroactive to the last day of the month for which ((~~a full~~)) the

monthly premium and premium surcharge was paid as described in WAC 182-08-180 (1)(b).

(b) Employees may continue any combination of medical, dental, and life insurance; however, only employees on approved educational leave or called in to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA) may continue either basic or both basic and optional long-term disability insurance.

(c) Employees in the following circumstances qualify to continue coverage under this subsection:

(i) Employees who are on authorized leave without pay;

(ii) Employees who are on approved educational leave;

(iii) Employees who are receiving time-loss benefits under workers' compensation;

(iv) Employees who are called to active duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA);

(v) Employees whose employment ends due to a layoff as defined in WAC 182-12-109; or

(vi) Employees who are applying for disability retirement.

(2) The number of months that employees self-pay the premium while eligible as described in subsection (1) of this section will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees who are no longer eligible for continuation coverage as described in subsection (1) of this section but who have not used the maximum number of months allowed under COBRA coverage may continue medical ((~~and~~)), dental, or both for the remaining difference in months by self-paying the premium as described in WAC 182-12-146.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-136 May 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 other employer-based group medical or dental ((~~insurance~~)), or both, may waive continuation of such coverage for each full calendar month in which they maintain coverage under the other ((~~insurance~~)) employer-based medical or dental. 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 employer-based group medical or dental ((~~insurance~~)) ends, provided evidence of such other coverage is provided to the PEBB program upon application for reenrollment.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-138 What options are available if an employee is approved for the federal Family and Medical Leave Act (FMLA)? (1) An employee on approved leave under the federal Family and Medical Leave Act (FMLA) may continue to receive the employer contribution toward public employees benefits board (PEBB) insurance coverage in accordance with the federal FMLA. The employee may also continue current optional life and optional long-term disability. The employee's employing agency is responsible for determining if the employee is eligible for leave under FMLA and the duration of such leave.

(2) If an employee's contribution toward premiums is more than sixty days delinquent, PEBB insurance coverage will end as of the last day of the month for which a ((~~full~~)) premium was paid.

(3) If an employee exhausts the period of leave approved under FMLA, PEBB insurance coverage may be continued by self-paying the ((~~full~~)) premium set by the HCA, with no contribution from the employer, ((~~under~~)) as described in WAC 182-12-133(1) while on approved leave.

AMENDATORY SECTION (Amending WSR 11-22-036, filed 10/26/11, effective 1/1/12)

WAC 182-12-141 If an employee reverts from an eligible position, what happens to his or her public employees benefits board (PEBB) insurance coverage? (1) If an employee reverts for reasons other than a layoff and is not eligible for the employer contribution toward public employees benefits board (PEBB) insurance coverage under this chapter, he or she may continue PEBB insurance coverage by self-paying the ((~~full~~)) premium set by the HCA for up to eighteen months under the same terms as an employee who is granted leave without pay under WAC 182-12-133(1). If the monthly premium or premium surcharge remains unpaid for sixty days, PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and premium surcharge was paid as described in WAC 182-08-180 (1)(b).

(2) If an employee is reverted due to a layoff, the employee may be eligible for the employer contribution toward insurance coverage under the criteria of WAC 182-12-129. If determined not to be eligible under WAC 182-12-129, the employee may continue PEBB insurance coverage by self-paying the ((~~full~~)) premium set by the HCA under WAC 182-12-133.

AMENDATORY SECTION (Amending WSR 10-20-147, filed 10/6/10, effective 1/1/11)

WAC 182-12-142 What options for continuation coverage are available to faculty and seasonal employees who are between periods of eligibility? (1) **Faculty** may continue any combination of medical, dental and life insurance ((~~coverage~~)) by self-paying the ((~~full~~)) premium set by the HCA, with no contribution from the employer, for a maximum of twelve months between periods of eligibility. The employee must pay the premium amounts associated with public employees benefits board (PEBB) insurance coverage as premiums become due. If the monthly premium((~~s are more than~~)) or premium surcharge remains unpaid for sixty days ((~~delinquent~~)), PEBB insurance coverage will ((~~end as of~~)) be terminated retroactive to the last day of the month for which ((~~a full~~)) the monthly premium or premium surcharge was paid as described in WAC 182-08-180 (1)(b).

(2) **Benefits-eligible seasonal employees** may continue any combination of medical, dental, and life insurance ((~~coverage~~)) by self-paying the ((~~full~~)) premium set by the health care authority (HCA), with no contribution from the employer, for a maximum of twelve months between periods of eligibility. The employee must pay the premium amounts associated with PEBB insurance coverage as premiums become due. If the monthly premium((~~s are more than~~)) or premium surcharge remains unpaid for sixty days ((~~delinquent~~)), PEBB insurance coverage will ((~~end as of~~)) be terminated retroactive to the last day of the month for which ((~~a full~~)) the monthly premium and premium surcharge was paid as described in WAC 182-08-180 (1)(b).

(3) **COBRA.** An employee who is no longer eligible for continuation coverage as described in subsections (1) and (2) of this section, but who has not used the maximum number of months allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), may continue medical and dental for the remaining difference in months by self-paying the ((~~full~~)) premium set by the HCA under COBRA as described in WAC 182-12-146. The number of months that a faculty or seasonal employee self-pays premiums under the criteria in subsection (1) or (2) of this section will count toward the total months of continuation coverage allowed under COBRA.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-146 When is an enrollee eligible to continue public employee's benefits board (PEBB) health plan coverage under Consolidated Omnibus Budget Reconciliation Act (COBRA)? An enrollee may continue public employee's benefits board (PEBB) health plan coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) by self-paying the ((~~full~~)) premium set by the health care authority (HCA). Premiums must be paid as described in WAC 182-08-180 (1)(b).

(1) An employee or an employee's dependent who loses eligibility for the employer contribution toward PEBB insurance coverage and who qualifies for continuation coverage under COBRA may continue medical, dental, or both.

(2) An employee or an employee's dependent who loses eligibility for continuation coverage described in WAC 182-12-133, 182-12-138, 182-12-141, 182-12-142, or 182-12-148 but who has not used the maximum number of months allowed under COBRA may continue medical, dental, or both for the remaining difference in months.

(3) A retired employee who loses eligibility for PEBB retiree insurance because an employer group, with the exception of school districts ((~~and~~)), educational service districts, and charter schools ceases participation in PEBB insurance coverage may continue medical, dental, or both.

(4) A retired employee, or a dependent of a retired employee, who is no longer eligible to continue coverage ((~~under~~)) as described in WAC 182-12-171 may continue medical, dental, or both.

(5) A blind vendor who ceases to actively operate a facility as described in WAC 182-12-111 (5)(a) may continue enrollment in ((~~public employees benefits board~~ (~~)~~))PEBB((~~)~~)) medical for the maximum number of months allowed under COBRA as described in this section.

A blind vendor is not eligible for PEBB retiree insurance coverage.

AMENDATORY SECTION (Amending WSR 12-20-022, filed 9/25/12, effective 11/1/12)

WAC 182-12-148 What options for continuation coverage are available to employees during their appeal of dismissal? (1) Employees awaiting hearing of a dismissal action before any of the following may continue their public employees benefits board (PEBB) insurance coverage by self-paying the ((~~full~~)) premium set by the health care authority (HCA), with no contribution from the employer, on the same terms as an employee who is granted leave as described in WAC 182-12-133:

(a) The personnel resources board;

(b) An arbitrator; or

(c) A grievance or appeals committee established under a collective bargaining agreement for union represented employees.

(2) The employee must pay premium amounts and premium surcharges associated with PEBB insurance coverage as premiums and surcharges become due. If the monthly premium or premium surcharge remains unpaid for sixty days, PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and premium surcharge was paid as described in WAC 182-08-180 (1)(b).

(3) If the dismissal is upheld, all PEBB insurance coverage will end at the end of the month in which the decision is entered, or the date to which premiums have been paid, whichever is later, with the exception described in subsection ((~~(3)~~)) (4) of this section.

((~~(3)~~)) (4) If the dismissal is upheld and the employee is eligible under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), the employee may continue medical and dental for the remaining months available under COBRA. See WAC 182-12-146 for information on COBRA. The number of months the employee self-paid premiums during the appeal will count toward the total number of months allowed under COBRA.

((~~(4)~~)) (5) If the board, arbitrator, committee, or court sustains the employee in the appeal and directs reinstatement of employer paid PEBB insurance coverage retroactively, the employing agency must forward to HCA the full employer contribution for the period directed by the board, arbitrator, committee, or court and collect from the employee the employee's share of premiums due, if any.

(a) HCA will refund to the employee any premiums the employee paid that may be provided for as a result of the reinstatement of the employer contribution only if the employee makes retroactive payment of any employee contribution amounts associated with the PEBB insurance coverage. In the alternative, at the request of the employee, HCA may deduct the employee's contribution from the refund of any premiums self-paid by the employee during the appeal period.

(b) All optional life and optional long-term disability insurance which was in force at the time of dismissal shall be

reinstated retroactively only if the employee makes retroactive payment of premium for any such optional coverage which was not continued by self-payment during the appeal process. If the employee chooses not to pay the retroactive premium, evidence of insurability will be required to restore such optional coverage.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-171 When is a retiring employee eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage? A retiring employee is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) insurance coverage as a retiree if he or she meets procedural and substantive eligibility requirements as described in subsections (1) and (2) of this section.

(1) **Procedural requirements.** A retiring employee must enroll or defer enrollment in PEBB retiree insurance coverage as described in (a) and (b) of this subsection:

(a) To enroll in PEBB retiree insurance coverage, the required form must be received by the PEBB program no later than sixty days after the employee's employer-paid coverage, Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, or continuation coverage ends. The effective date of PEBB retiree insurance coverage is the first day of the month after the employee's employer-paid coverage, COBRA coverage, or continuation coverage ends.

(b) To defer enrollment in a PEBB health plan, the employee must defer enrollment as described in WAC 182-12-200 or 182-12-205.

(c) A retiring employee and his or her enrolled dependents who are entitled to medicare must enroll and maintain enrollment in both medicare parts A and B if the employee retired after July 1, 1991. If a retiree or an enrolled dependent becomes entitled to medicare after enrollment in PEBB retiree insurance coverage, he or she must enroll and maintain enrollment in medicare parts A and B to remain enrolled in PEBB retiree insurance coverage.

Note: If an enrollee who is entitled to medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in PEBB retiree insurance coverage. The enrollee may continue PEBB health plan enrollment as described in WAC 182-12-146.

(2) **Substantive eligibility requirements.**

(a) An employee as defined in WAC 182-12-109 who is ((~~enrolled in~~)) eligible for PEBB benefits or an employee who is enrolled in basic benefits through a Washington state school district ((~~or~~)), educational service district as defined in RCW 28A.400.270, or a charter school and ends public employment after becoming vested in a Washington state-sponsored retirement plan may enroll or defer enrollment in PEBB retiree insurance coverage if he or she meets procedural and substantive eligibility requirements.

(i) To be eligible to continue enrollment or defer enrollment in PEBB insurance coverage as a retiree, the employee must be eligible to retire under a Washington state-sponsored retirement plan when the employee's employer-paid coverage, COBRA coverage, or continuation coverage ends.

(ii) A retiring employee who does not meet his or her Washington state-sponsored retirement plan's age requirement when his or her employer-paid coverage or COBRA coverage, or continuation coverage ends, but who meets the age requirement within sixty days of coverage ending, may request an appeal as described in WAC 182-16-032. His or her eligibility will be reviewed by the PEBB appeals committee. An employee must meet PEBB retiree insurance coverage procedural requirements as described in subsection (1) of this section.

(b) A retiring employee of a state agency must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring employee who receives a lump-sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan; or

(ii) A retiring employee who is a member of a Plan 3 retirement plan, also called a separated employee (defined in RCW 41.05.011((~~(20)~~)) (21)), must meet his or her Plan 3 retirement eligibility criteria. The employee does not have to receive a retirement plan payment to enroll in retiree insurance coverage;

(c) A retiring employee of a Washington higher education institution who is a member of a higher education retirement plan (HERP) must immediately begin to receive a monthly retirement plan payment, or meet his or her HERP plan's retirement eligibility criteria, or be at least age fifty-five with ten years of state service;

(d) A retiring employee of an employer group participating in PEBB insurance coverage under contractual agreement with the authority must be eligible to retire as described in (i) or (ii) of this subsection to be eligible to continue PEBB insurance coverage as a retiree, except for a school district ((~~or~~)), educational service district, or charter school employee who must meet the requirements as described in subsection (2)(e) of this section.

(i) A retiring employee who is eligible to retire under a retirement plan sponsored by an employer group or tribal government that is not a Washington state-sponsored retirement plan must meet the same age and years of service requirements as if he or she was a member of public employees retirement system Plan 1 or Plan 2 during his or her employment.

(ii) A retiring employee who is eligible to retire under a Washington state-sponsored retirement plan must immediately begin to receive a monthly retirement plan payment, with exceptions described in subsection (2)(b)(i) and (ii) of this section.

(iii) A retired employee of an employer group, except a Washington state school district or educational service district, that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage if he or she enrolled after September 15, 1991. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-146.

(iv) A retired employee of a tribal government employer that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-146.

(e) A retiring employee of a Washington state school district ((~~or~~)), Washington state educational service district, or a Washington state charter school must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring employee who ends employment before October 1, 1993; or

(ii) A retiring employee who receives a lump-sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan, or the employee enrolled before 1995; or

(iii) A retiring employee who is a member of a Plan 3 retirement system, also called a separated employee (defined in RCW 41.05.011((~~(20)~~)) (21)), must meet his or her Plan 3 retirement eligibility criteria; or

(iv) An employee who retired as of September 30, 1993, and began receiving a monthly retirement plan payment from a Washington state-sponsored retirement system (as defined in chapters 41.32, 41.35 or 41.40 RCW) is eligible if he or she enrolled in a PEBB health plan no later than the health care authority's (HCA's) annual open enrollment period for the year beginning January 1, 1995.

(3) An elected or a full-time appointed state official of the legislative or executive branch of state government who voluntarily or involuntarily leaves public office is eligible to continue PEBB insurance coverage as a retiree if he or she meets procedural requirements of subsection (1) of this section.

(4) Washington state-sponsored retirement plans include:

(a) Higher education retirement plans;

(b) Law enforcement officers' and firefighters' retirement system;

(c) Public employees' retirement system;

(d) Public safety employees' retirement system;

(e) School employees' retirement system;

(f) State judges/judicial retirement system;

(g) Teachers' retirement system; and

(h) State patrol retirement system.

(i) The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered Washington state-sponsored retirement systems for Washington State University Extension for an employee covered under PEBB insurance coverage at the time of retirement.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-200 How does a retiree who is enrolled as a dependent in a health plan sponsored by public employees benefits board (PEBB), a Washington state school district, ((~~or~~)) a Washington state educational service district, or a Washington state charter school defer enrollment under PEBB retiree insurance coverage? (1) A retiree may defer enrollment in a public employees benefits board (PEBB) health plan during the period of time he or she is enrolled as a dependent in a health plan sponsored by PEBB, a Washington state school district, ((~~or~~)) a Washington state education service district, or a Washington state charter school, including such coverage under Consolidated Omnibus Budget Reconciliation Act (COBRA) or continuation coverage.

(2) A retiree who defers enrollment in medical must defer enrollment in dental. Retirees must be enrolled in medical to enroll in dental.

(3) A retiree who defers coverage may later enroll in a PEBB health plan if he or she provides evidence of continuous enrollment in a health plan sponsored by PEBB, a Washington state school district, ((~~or~~)) a Washington state educational service district, or a Washington state charter school and submits the required form as described in (a) and (b) of this subsection:

(a) During the PEBB annual open enrollment period. The required form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(b) When enrollment in a health plan sponsored by PEBB, a Washington state school district, ((~~or~~)) a Washington state educational service district, or a Washington state charter school ends, or such coverage under COBRA or continuation coverage ends. The retiree must submit the required form to enroll or defer enrollment as described in WAC 182-12-171 (1)(a). The required form must be received by the PEBB program no later than sixty days after coverage ends. PEBB health plan coverage begins the first day of the month following the date the other coverage ends.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-205 May retirees defer or voluntarily terminate enrollment under public employees benefits board (PEBB) retiree insurance coverage at or after retirement? The following provisions apply when retirees defer or voluntarily terminate enrollment under public employees benefits board (PEBB) retiree insurance coverage when enrolled in other coverage:

(1) Retirees who defer enrollment in a PEBB health plan also defer enrollment for all eligible dependents, except as described in subsection (2)(c) of this section.

(2) Retirees may defer enrollment in a PEBB health plan at or after retirement if continuously enrolled in other medical as described in this section or WAC 182-12-200. Retirees who defer enrollment in medical must defer enrollment in dental. Retirees must be enrolled 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 employer-based group medical ((~~insurance~~)) as an employee or the dependent of an employee, or such medical insurance contin-

ued under Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage or continuation coverage.

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

(3) To defer PEBB health plan enrollment, retiring employees or enrolled subscribers must submit the required forms to the PEBB program.

(a) If retiring employees submit the required forms to defer enrollment in a PEBB health plan after their employer-paid coverage, COBRA coverage, or continuation coverage ends as described in WAC 182-12-171 (1)(b), enrollment will be deferred the first of the month following the date their employer-paid coverage, COBRA coverage, or continuation coverage ends. The forms must be received by the PEBB program no later than sixty days after the employer-paid coverage, COBRA coverage, or continuation 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 the required form is received by the PEBB program. If the form is received on the first day of the month, coverage will end on the last day of the previous month.

(4) Retirees who defer enrollment while enrolled in coverage as described in subsection (2)(a) through (d) of this section and lose such coverage must enroll in a PEBB retiree health plan as described in WAC 182-12-171 or defer enrollment as described in this section or WAC 182-12-200.

(5) Retirees who meet substantive eligibility requirements in WAC 182-12-171(2) and whose employer-paid coverage, COBRA coverage, or continuation coverage ended between January 1, 2001, and December 31, 2001, was not required to submit the deferral form at that time, but must have met all procedural requirements as stated in this section, WAC 182-12-171, and 182-12-200.

(6) Retirees who defer may later enroll themselves and their dependents in a PEBB health plan as follows:

(a) Retirees who defer enrollment while enrolled in employer-based group medical ((~~insurance,~~)) or such medical insurance continued under COBRA coverage or continuation coverage may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment in such coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their employer-based group medical ((~~insurance~~)) or such coverage under COBRA coverage or continuation coverage ends. The required 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 employer-based group medical ((~~insurance~~)) coverage, COBRA coverage, or continuation coverage 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 such coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When the federal retiree medical plan coverage ends. The required 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 such coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their medicaid coverage ends. The required 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 form must be received by the PEBB program no later than the last day of the calendar year in which 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 such coverage to the PEBB program:

(i) During the PEBB annual open enrollment period. The required form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When exchange coverage ends. The required 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 dependents in PEBB medical than a medical assistance program.

(7) Retirees who request to voluntarily terminate their PEBB retiree insurance coverage must do so in writing. The written termination request must be received by the PEBB program. Retirees who voluntarily terminate their enrollment in PEBB retiree insurance coverage also terminate enrollment for all eligible dependents. PEBB insurance coverage will end on the last day of the month in which the PEBB program receives the termination request. If the termination request is received on the first day of the month, PEBB insurance coverage will end on the last day of the previous month.

Exception: When a member is enrolled in a medicare advantage plan then PEBB insurance coverage will end on the last day of the month when the medicare advantage form is received.

AMENDATORY SECTION (Amending WSR 09-23-102, filed 11/17/09, effective 1/1/10)

WAC 182-12-207 When can a retiree or eligible dependent's public employees benefits board (PEBB) insurance coverage be canceled by the health care authority (HCA)? A retiree or eligible dependent's public employees benefits board (PEBB) insurance coverage can be ((~~canceled by~~)) terminated by the health care authority (HCA) for the following reasons:

(1) Failure to comply with the PEBB program's procedural requirements, including failure to provide information or documentation requested by the due date in written requests from the PEBB program;

(2) Knowingly providing false information;

(3) Failure to pay the monthly premium or premium surcharge when due ((~~or an underpayment of premium~~)) as described in WAC 182-08-180 (1)(b);

(4) Misconduct. If a retiree's PEBB insurance coverage is ((~~canceled~~)) terminated for misconduct, PEBB insurance coverage will not be reinstated at a later date. Examples of such termination include, but are not limited to the following:

(a) Fraud, intentional misrepresentation or withholding of information the subscriber knew or should have known was material or necessary to accurately determine eligibility or the correct premium; or

(b) Abusive or threatening conduct repeatedly directed to an HCA employee, a health plan or other HCA contracted vendor providing insurance coverage on behalf of the HCA, its employees, or other persons.

If a retiree's PEBB insurance coverage is ((~~canceled~~)) terminated by HCA for the above reasons, PEBB insurance coverage for all of the retiree's eligible dependents is also ((~~canceled~~)) terminated.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-208 What are the requirements regarding enrollment in 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 and his or her dependents must be enrolled in medical to enroll in dental.

(3) A subscriber enrolling in dental must stay enrolled for at least two years before dental can be dropped unless he or she defers medical and dental 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 under Consolidated Omnibus Budget Reconciliation Act (COBRA), or continuation coverage may drop PEBB dental, before completing the two-year enrollment requirement. Coverage will end on the last day of the month in which the required 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 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 coverage or continuation coverage ends. The required 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 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-250 Public employees benefits board (PEBB) insurance coverage eligibility for survivors of emergency service personnel killed in the line of duty. Surviving spouses, state registered domestic partners, and dependent children of emergency service personnel who are killed in the line of duty are eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage.

(1) This section applies to the surviving spouse, the surviving state registered domestic partner, and dependent children of emergency service personnel "killed in the line of duty" as determined by the Washington state department of labor and industries.

(2) "Emergency service personnel" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010.

(3) "Surviving spouse, state registered domestic partner, and dependent children" means:

(a) A lawful spouse;

(b) An ex-spouse as defined in RCW 41.26.162;

(c) A state registered domestic partner as defined in RCW 26.60.020(1); and

(d) Children. The term "children" includes children of the emergency service worker up to age twenty-six. Children with disabilities as defined in RCW 41.26.030(6) are eligible at any age. "Children" is defined as:

(i) Biological children (including the emergency service worker's posthumous children);

(ii) Stepchildren or children of a state registered domestic partner;

(iii) Legally adopted children;

(iv) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(v) Children specified in a court order or divorce decree; or

(vi) Children as defined in RCW 26.26.101.

(4) Surviving spouses, state registered domestic partners, and children who are entitled to medicare must enroll in both parts A and B of medicare.

(5) The survivor (or agent acting on his or her behalf) must submit the required forms to the PEBB program to either enroll or defer enrollment in 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 retiree insurance coverage may choose among the following options for when their enrollment in a PEBB health plan will begin:

(a) June 1, 2006, for survivors whose required forms are received by the PEBB program no later than September 1, 2006;

(b) The first of the month that is not earlier than sixty days before the date that the PEBB program receives the required forms (for example, if the PEBB program receives the required forms on August 29, the survivor may request health plan enrollment to begin on July 1st); or

(c) The first of the month after the date that the PEBB program receives the required forms.

For surviving spouses, state registered domestic partners, and children who enroll, monthly health plan premiums and premium surcharges must be paid by the survivor as described in WAC 182-08-180 (1)(b) except as provided in RCW 41.26.510(5) and 43.43.285 (2)(b).

(7) Survivors must choose one of the following two options to maintain eligibility for retiree insurance coverage:

(a) Enroll in a PEBB health plan:

(i) Enroll in medical; or

(ii) Enroll in medical and dental.

(iii) Survivors enrolling in dental must stay enrolled for at least two years before dental can be dropped, unless they defer medical and dental coverage as described in WAC 182-12-205, or drop dental as described in WAC 182-12-208(4).

(iv) Dental only is not an option.

(b) Defer enrollment:

(i) Survivors may defer enrollment in a PEBB health plan if continuously enrolled in other coverage as described in WAC 182-12-205 (2).

(ii) Survivors may enroll in a PEBB health plan as described in WAC 182-12-205(4) when they lose other coverage. Survivors must provide evidence that they were continuously enrolled in other such coverage when enrolling in a PEBB health plan. The required form and evidence of continuous enrollment must be received by the PEBB program no later than sixty days after such coverage ends.

(iii) PEBB health plan enrollment and premiums will begin the first day of the month following the day that the other coverage ended for eligible spouses and children who enroll.

(8) Survivors may change their health plan during annual open enrollment. In addition to annual open enrollment, survivors may change health plans as described in WAC 182-08-198.

(9) Survivors will lose their right to enroll in retiree insurance coverage if they:

(a) Do not apply to enroll or defer PEBB health plan enrollment within the timelines as described in subsection (5) of this section; or

(b) Do not maintain continuous enrollment in other coverage during the deferral period, as described in subsection (7)(b)(i) of this section.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-260 Who are eligible dependents? To be enrolled in a health plan, a dependent must be eligible under this section and the subscriber must comply with enrollment procedures outlined in WAC 182-12-262.

The public employees benefits board (PEBB) program verifies the eligibility of all dependents and will request documents from subscribers that provide evidence of a dependent's eligibility. The PEBB program will remove a subscriber's enrolled dependents from health plan enrollment if the PEBB program is unable to verify a dependent's eligibility. The PEBB program will not enroll or reenroll dependents

into a health plan if the PEBB program is unable to verify a dependent's eligibility.

The subscriber must notify the PEBB program, in writing, when his or her dependent is not eligible under this section. The notification must be received by the PEBB program no later than sixty days after the date his or her dependent is no longer eligible under this section. See WAC 182-12-262 (2)(a) for the consequences of not removing an ineligible dependent from PEBB insurance coverage.

The following are eligible as dependents:

(1) Lawful spouse. Former spouses are not eligible dependents upon finalization of a divorce or annulment, even if a court order requires the subscriber to provide health insurance for the former spouse.

(2) State registered domestic partner. State registered domestic partner ((~~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)~~)) as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090. Former state registered domestic partners are not eligible dependents upon dissolution or termination of a partnership, even if a court order requires the subscriber to provide health insurance for the former partner.

(3) Children. Children are eligible ((~~up to~~)) through the last day of the month in which their twenty-sixth birthday occurred except as described in (i) of this subsection. Children are defined as the subscriber's:

(a) Children ((~~as defined~~)) based on establishment of a parent-child relationship as described 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 state registered domestic partner ends through divorce, annulment, dissolution, termination, or death;

(d) Legally adopted children;

(e) Children for whom the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of the child;

(f) Children of the subscriber's state registered domestic partner;

(g) Children specified in a court order or divorce decree;

(h) Extended dependents in the legal custody or legal guardianship of the subscriber, the subscriber's spouse, or subscriber's state registered domestic partner. The legal responsibility is demonstrated by a valid court order and the child's official residence with the custodian or guardian. "Children" does not include foster children for whom support payments are made to the subscriber through the state department of social and health services foster care program; and

(i) Children of any age with a developmental disability or physical handicap that renders the child incapable of self-sustaining employment and chiefly dependent upon the subscriber for support and maintenance provided such condition occurs before the age twenty-six:

(i) The subscriber must provide evidence of the disability and evidence that the condition occurred before age twenty-six;

(ii) The subscriber must notify the PEBB program, in writing, when his or her dependent is not eligible under this section. The notification must be received by the PEBB program no later than sixty days after the date that a child age twenty-six or older no longer qualifies under this subsection;

(iii) A child with a developmental disability or physical handicap who becomes self-supporting is not eligible under this subsection as of the last day of the month in which he or she becomes capable of self-support;

(iv) A child with a developmental disability or physical handicap age twenty-six and older who becomes capable of self-support does not regain eligibility under (i) of this subsection if he or she later becomes incapable of self-support;

(v) The PEBB program will periodically certify the eligibility of a dependent child with a disability beginning at age twenty-six, but no more frequently than annually after the two-year period following the child's twenty-sixth birthday.

(4) Parents.

(a) Parents covered under PEBB medical before July 1, 1990, may continue enrollment on a self-pay basis as long as:

(i) The parent maintains continuous enrollment in PEBB medical;

(ii) The parent qualifies under the Internal Revenue Code as a dependent of the subscriber;

(iii) The subscriber continues enrollment in PEBB insurance coverage; and

(iv) The parent is not covered by any other group medical plan.

(b) Parents eligible under this subsection may be enrolled with a different health plan than that selected by the subscriber. Parents may not add additional dependents to their PEBB insurance coverage.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) **Enrolling dependents in public employees benefits board (PEBB) benefits.** A dependent must be enrolled in the same health plan coverage as the subscriber, and the subscriber must be enrolled to enroll his or her dependent except as provided in WAC 182-12-205 (2)(c). Subscribers may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in public employees benefits board (PEBB) benefits. If eligibility is verified and the dependent is enrolled, the dependent's effective date will be the same as the subscriber's effective date.

(b) **During the annual open enrollment.** PEBB health plan coverage begins January 1st of the following year.

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section. The subscriber

must satisfy the enrollment requirements as described in subsection (4) of this section.

(2) **Removing dependents from a subscriber's health plan coverage.**

(a) **A dependent's eligibility for enrollment in health plan coverage ends the last day of the month the dependent** meets the eligibility criteria as described in WAC 182-12-250 or 182-12-260. Employees must notify their employing agency when a dependent is no longer eligible. All other subscribers must notify the PEBB program when a dependent is no longer eligible. Consequences for not submitting notice within sixty days of the last day of the month the dependent loses eligibility for health plan coverage may include, but are not limited to:

(i) The dependent may lose eligibility to continue health plan coverage under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) **Employees have the opportunity to remove dependents:**

(i) During the annual open enrollment. The dependent will be removed the last day of December; or

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section.

(c) **Retirees, survivors, and enrollees with PEBB continuation coverage ((~~under~~)) as described in WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148 may remove dependents** from their PEBB insurance coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. Unless otherwise approved by the PEBB program, the dependent will be removed from the subscriber's PEBB insurance coverage prospectively. PEBB insurance coverage will end on the last day of the month in which the written notice is received by the PEBB program. If the written notice is received on the first day of the month, coverage will end on the last day of the previous month.

(3) **Special open enrollment.** Subscribers may enroll or remove their dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both.

• Health plan coverage will begin the first of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment begins on that day.

• Enrollment of an extended dependent or a dependent with a disability will be the first day of the month following eligibility certification.

• The dependent will be removed from the subscriber's health plan coverage the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

• 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 for a state domestic partnership;

(ii) Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption;

(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~~)) his or her employer contribution toward his or her employer-based group health ((~~insurance~~)) plan;

(d) The subscriber's dependent has a change in his or her own employment status that affects his or her eligibility for the employer contribution under his or her employer-based group health plan;

Exception: For the purposes of special open enrollment "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

(e) Subscriber or a subscriber's dependent has a change in enrollment under ((~~another~~)) an employer-based group health ((~~insurance~~)) plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(((~~(e)~~))) (f) 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)~~))) (g) A court order or national medical support notice (see also WAC 182-12-263) requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(((~~(g)~~))) (h) 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)~~))) (i) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or a state children's health insurance program (CHIP).

(4) **Enrollment requirements. A subscriber must submit the required forms within the time frames described in this subsection.** Employees submit the required forms to their employing agency. All other subscribers submit the required forms to the PEBB program. In addition to the required forms indicating dependent enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment.

(a) If a subscriber wants to enroll his or her eligible dependents when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the required forms that the subscriber submits within the relevant time frame described in WAC 182-08-197, 182-08-187, 182-12-171, or 182-12-250.

(b) If a subscriber wants to enroll eligible dependents during the PEBB annual open enrollment period, the required forms must be received no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the required forms must be received no later than sixty days after the dependent becomes eligible except as provided in (d) of this subsection.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption, the subscriber should notify the PEBB program by submitting the required form as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the required form must be received no later than twelve months after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption.

(e) If the subscriber wants to enroll a child age twenty-six or older as a child with a disability, the required forms must be received no later than sixty days after the last day of the month in which the child reaches age twenty-six or within the relevant time frame described in WAC 182-12-262 (4)(a), (b), and (f).

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

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

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~~)) required forms to enroll or defer enrollment in 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~~)) as described in 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~~)) as described in WAC 182-12-260.

(c) If a spouse, state registered domestic partner, or child of an eligible retiree is not enrolled in a PEBB health plan at the time of the retiree's death, the dependent is eligible to enroll or defer enrollment as a survivor under retiree insurance coverage. The dependent must submit the ((~~appropriate~~)) required form(s) to enroll or defer PEBB health plan enrollment. The forms must be received by the PEBB program no later than sixty days after the retiree's death. To enroll in a PEBB health plan, the dependent must provide evidence of continuous enrollment in medical coverage from the most recent open enrollment for which the dependent was not enrolled in a PEBB medical plan prior to the retiree's death.

(3) The spouse, state registered domestic partner, or child of a deceased school district ((~~or~~)), educational service district employee, or a charter school is eligible to enroll or defer enrollment as a survivor under PEBB retiree insurance coverage at the time of the employee's death provided the employee died on or after October 1, 1993. The dependent must immediately begin receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW and submit the ((~~appropriate~~)) required form to enroll or defer enrollment in PEBB retiree insurance coverage. The form must be received by the PEBB program no later than sixty days after the date of the employee's death.

(a) The employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The employee's children may continue health plan enrollment until they lose eligibility ((~~under~~)) as described in WAC 182-12-260.

(4) If a premium or surcharge payment received by the authority is sufficient as described in WAC 180-08-180 (1)(c)(ii) to maintain PEBB health plan enrollment after the employee's or retiree's death, the PEBB program will consider the payment as notice of the survivor's intent to continue enrollment.

If the dependent's enrollment ended due to the death of the employee or retiree, the PEBB program will reinstate the survivor's enrollment without a gap subject to payment of premium.

(5) In order to avoid duplication of group medical coverage, surviving dependents may defer enrollment in a PEBB health plan ((~~under~~)) as described in WAC 182-12-200 and 182-12-205.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-12-270 What options for continuation coverage are available to dependents who cease to meet the eligibility criteria as described in WAC 182-12-260? If eligible, dependents may continue health plan enrollment under one of the continuation coverage options in subsection (1) or (2) of this section by self-paying the ((~~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 dependent must pay premium and premium surcharge amounts associated with PEBB insurance coverage as premiums and premium surcharges become due. If the monthly premium or premium surcharge remain unpaid for sixty days, PEBB insurance coverage will be terminated retroactive to the last day of the month for which the monthly premium and premium surcharge was paid as described in WAC 182-08-180 (1)(b). The public employees benefits board (PEBB) program must receive the ((~~appropriate~~)) required forms as outlined in the *PEBB Initial Notice of COBRA and Continuation Coverage Rights*. Options for continuing health plan enrollment are based on the reason that eligibility was lost.

(1) Spouses, state registered domestic partners, or children who lose eligibility due to the death of an employee or retiree may be eligible to continue health plan enrollment ((~~under provisions of~~)) as described in WAC 182-12-250 or 182-12-265; or

(2) Dependents who lose eligibility because they no longer meet the eligibility criteria as described in WAC 182-12-260 are eligible to continue health plan enrollment under provisions of the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). See WAC 182-12-146 for more information on COBRA.

Exception: A dependent who loses eligibility because a state registered domestic partnership or same-sex marriage is dissolved may continue health plan enrollment under an extension of PEBB insurance 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 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-16-010 Appeals—Purpose and scope. (1) For WAC 182-16-025 through 182-16-040, the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by the authority in public employees benefits board (PEBB) benefits related proceedings. The model rules of procedure may be found in chapter 10-08 WAC. Other procedural rules adopted in chapters 182-08, 182-12, and 182-16 WAC are supplementary to the model rules of procedure. In the case of a conflict between the model rules of procedure and the procedural rules adopted in WAC 182-16-025 through 182-16-040, the procedural rules adopted shall govern.

(2) WAC 182-16-050 through 182-16-110 describes the general rules and procedures that apply to an administrative hearing, requested under WAC 182-16-050, of a PEBB appeals committee decision.

(a) WAC 182-16-050 through 182-16-110 supplements the Administrative Procedure Act (APA), chapter 34.05 RCW, and the model rules of procedure in chapter 10-08 WAC. The model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended are adopted for use in a hearing. In the case of a conflict between the model rules of procedure and the rules adopted in WAC 182-16-050 through 182-16-110, the rules adopted in WAC 182-16-050 through 182-16-110 shall prevail.

(b) If there is a conflict between WAC 182-16-050 through 182-16-110 and specific PEBB program rules, the specific PEBB program rules prevail. PEBB program rules are found in chapters 182-08, 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.

(3) The definitions in WAC 182-16-020 apply throughout this chapter.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-16-020 Definitions. ((~~As used in~~)) The following definitions apply throughout this chapter ((~~the term~~)):

"Appellant" means a person or entity who requests a review by the PEBB appeals committee or an administrative hearing about the action of the HCA or its designee.

"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~~)) a subscriber, a dependent, or an applicant, with regard to PEBB benefits including, but not limited to, actions or communications expressly designated as a "denial," "denial notice," or "cancellation notice."

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan authorized in chapter 41.05 RCW.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, ((~~e-mails~~)) electronic mail, electronic files, or other printed or written items.

"Employee" includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state ((~~seeks and receives the approval of~~)) submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); and (f) employees of a charter school established under chapter 28A.710 RCW. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under this chapter or by the authority under this chapter.

"Employer-based group medical ((~~insurance~~))" means employer-based group medical ((~~insurance coverage~~)) related to a current employment relationship. It does not include medical ((~~insurance~~)) coverage available to retired employees, individual market medical ((~~insurance~~)) coverage, or government-sponsored programs such as medicare or medicaid.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, school districts, educational service districts, and employee organizations representing state civil service employees, obtaining employee benefits through a contractual agreement with the authority as described in WAC 182-08-245.

"Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; charter school; or a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"File" or "filing" means the act of delivering documents to the presiding officer's office.

"Final order" means an order that is the final PEBB program decision.

"Health plan" means a plan offering medical or dental, or both, developed by the public employees benefits board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Hearing" means a proceeding before a presiding officer that gives ((~~a party~~)) an appellant an opportunity to be heard in a dispute about a decision made by the PEBB appeals committee, including prehearing conferences, dispositive motion hearings, status conferences, and evidentiary hearings.

"Hearing representative" means a person who is authorized to represent the PEBB program in an administrative hearing. The person may be an assistant attorney general, a licensed attorney, or authorized HCA employee.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

((~~"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 insurance coverage" means any health plan, life insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired ((~~and disabled~~)) employees (as described in WAC 182-12-171), eligible dependents (as described in WAC 182-12-250 and 182-12-260), and others as defined in RCW 41.05.011.

"Prehearing conference" means a proceeding scheduled and conducted by a presiding officer to address issues in preparation for a hearing.

"Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's premium contribution, due to an enrollee's tobacco use or a subscriber's spouse or state registered domestic partner choosing not to enroll in his or her employer-based group medical ((~~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.

"Service" or "serve" means the delivery of documents as described in WAC 182-16-067.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government, and all personnel thereof. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education, and any unit of state government established by law.

"Subscriber" means the employee, retiree, COBRA beneficiary, 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, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids ((~~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 14-20-058, filed 9/25/14, effective 1/1/15)

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 may appeal that decision to the employer group through the process established by the employer group.

Exception: Any employee of an employer group aggrieved by a decision regarding life insurance, LTD insurance, eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive may appeal that decision to the PEBB appeals committee by the process described in WAC 182-16-032.

(3) Any subscriber or dependent aggrieved by a decision made by the PEBB program with regard to PEBB eligibility, enrollment, premium payments, premium surcharge, eligibility to participate in the PEBB wellness incentive program, or eligibility to receive a PEBB wellness incentive, may appeal that decision to the PEBB appeals committee by the process described in WAC 182-16-032.

(4) Any PEBB enrollee aggrieved by a decision regarding the administration of a ((~~PEBB medical plan, self-insured dental plan, insured dental~~)) health 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 employee aggrieved by a decision regarding the administration of a benefit offered under the state's salary reduction plan may appeal that decision by the process described in WAC 182-16-036.

(7) Any subscriber aggrieved by a decision made by the third-party administrator contracted to administer the PEBB wellness incentive program 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 14-20-058, filed 9/25/14, effective 1/1/15)

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 no later than thirty days after the date of the initial denial notice. The contents of the request for review are to be provided ((~~in accordance with~~)) as described in WAC 182-16-040.

(a) Upon receiving the request for review, the employing state agency shall make a complete review of the initial denial by one or more staff who did not take part in the initial denial. As part of the review, the employing state agency may hold a formal meeting or hearing, but is not required to do so.

(b) The employing state agency shall render a written decision within thirty days of receiving the request for review. The written decision shall be sent to the ((~~appellant~~)) employee or employee's dependent who submitted the request for review.

(c) A copy of the employing state agency's written decision shall be sent to the employing state agency's administrator or designee and to the public employees benefits board (PEBB) appeals manager. The employing state agency's written decision shall become the employing state agency's final decision effective fifteen days after the date it is rendered.

(d) The employing state agency may reverse eligibility, premium surcharge, or enrollment decisions based only on circumstances that arose due to delays caused by the employing state agency or error(s) 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 no later than thirty days after the date of the employing state agency's written decision on the request for review.

The contents of the notice of appeal are to be provided ((~~in accordance with~~)) as described in WAC 182-16-040.

(a) The PEBB appeals manager shall notify the appellant in writing when the notice of appeal has been received.

(b) The PEBB appeals committee shall render a written decision to the appellant within thirty days of receiving the notice of appeal. The committee may extend the thirty-day time requirement for rendering a decision upon issuing a written finding of a good reason explaining the cause for the delay.

(c) Any appellant who disagrees with the decision of the PEBB appeals committee may request an administrative hearing, as described in WAC 182-16-050.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-16-038 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 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~~)) as described in WAC 182-16-040.

(1) The PEBB appeals manager shall notify the ((~~appealing party~~)) appellant 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 reason explaining the cause for the delay.

(3) Any ((~~appealing party~~)) appellant 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 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-16-040 What should the request for review or notice of appeal contain? A request for review or notice of appeal should contain all of the following:

(1) The name and mailing address of the ((~~appealing~~)) party submitting the request for review or notice of appeal;

(2) The name and mailing address of the appealing party's representative, if any;

(3) Documentation, or reference to documentation, of decisions previously rendered through the appeal process, if any;

(4) A statement identifying the specific portion of the decision being appealed and clarifying what is believed to be unlawful or in error;

(5) A statement of facts in support of the appealing party's position;

(6) Any information or documentation that the appealing party would like considered and substantiates why the decision should be reversed. Information or documentation submitted at a later date, unless specifically requested by the PEBB appeals manager, may not be considered in the appeal decision;

(7) The type of relief sought;

(8) A statement that the appealing party has read the notice of appeal and believes the contents to be true and correct; and

(9) The signature of the appealing party or the appealing party's representative.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-16-050 How can an ((~~enrollee or entity request an administrative hearing if~~)) appellant aggrieved by a written decision made by the public employees benefits board (PEBB) appeals committee request an administrative hearing? (1) Any ((~~party~~)) appellant aggrieved by a written 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 written request for an administrative hearing no later than thirty calendar days ((~~of~~)) after the date ((~~after~~)) of the written decision ((~~by~~)) letter from the PEBB appeals committee.

(3) The director, or his or her designee, shall preside at all hearings resulting from the filings of appeals under this section.

(4) All hearings must be conducted in compliance with WAC 182-16-050 through 182-16-110, chapter 34.05 RCW, and chapter 10-08 WAC, as described in WAC 182-16-010(2).

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

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) The appellant may act as his or her own representative or have anyone represent him or her, except employees of the health care authority (HCA) or HCA's authorized agents.

(3) If the ((~~party who requested a hearing~~)) appellant is represented by a ((~~party~~)) person who is not an attorney admitted to practice in Washington state, the representative must provide the presiding officer and other parties with the representative's name, address, and telephone number. In cases involving confidential information, the nonattorney representative must provide the hearing representative with a signed, written consent permitting release to the nonattorney representative of personal health information protected by state or federal law.

(((~~(3)~~))) (4) An attorney admitted to practice law in Washington state, who wishes to represent the ((~~party who requested a hearing~~)) appellant, must file a written notice of appearance containing the attorney's name, address, and telephone number with the presiding officer's office and serve all parties with the notice. The attorney must file a written notice of withdrawal of representation with the presiding officer's office and serve all parties with the notice.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-16-055 Mailing address changes. (1) The ((~~party who requested the hearing must tell~~)) appellant must notify the hearing representative and the presiding officer as soon as possible, when the ((~~party's~~)) appellant's mailing address changes.

(2) If ((~~that party~~)) the appellant does not notify the hearing representative and the presiding officer of a change in the ((~~party's~~)) appellant's mailing address and the presiding officer and hearing representative continue to ((~~mail~~)) serve notices and other important documents to the last known mailing address, the documents will be deemed ((~~received by the party~~)) served on the appellant.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

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~~)) electronic 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. Service of copies of the motion must also be ((~~mailed~~)) made 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 pre-

siding 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~~)) as described in RCW 34.05.425. A petition to disqualify must be in writing and service promptly ((~~mailed~~)) made 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 or deny the petition in a written order, stating facts and reasons for the determination. The presiding officer must ((~~mail~~)) serve the order no later than seven days after receiving the petition for disqualification.

NEW SECTION

WAC 182-16-067 Service of documents on another party. (1) When the rules in this chapter or in other PEBB program rules or statutes require a party to serve copies of documents on other parties, a party must send copies of the documents to all other parties or their representatives in accordance with this section.

(2) Unless otherwise stated in applicable law, documents may be sent only as identified in this section to accomplish service. A party may serve someone by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail sent via the United States Postal Service or Washington state consolidated mail services;

(c) Fax;

(d) Commercial delivery service; or

(e) Legal messenger service.

(3) A party must serve all other parties or their representatives whenever the party files a motion, pleading, brief, or other document with the presiding officer's office, or when required by law.

(4) Service is complete when:

(a) Personal service is made;

(b) Mail is properly stamped, addressed, and deposited in the United States Postal Service;

(c) Mail is properly addressed, and deposited in the Washington state consolidated mail services;

(d) Fax produces proof of transmission;

(e) A parcel is delivered to a commercial delivery service with charges prepaid; or

(f) A parcel is delivered to a legal messenger service with charges prepaid.

(5) A party may prove service by providing any of the following:

(a) A signed affidavit or certificate of mailing;

(b) The certified mail receipt signed by the person who received the parcel;

(c) A signed receipt from the person who accepted the commercial delivery service or legal messenger service parcel;

(d) Proof of fax transmission.

(6) Service cannot be made by electronic mail unless mutually agreed to in advance and in writing by the parties.

(7) If the document is a subpoena, follow the compliance procedure as described in WAC 182-16-085.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-16-070 Calculating when a hearing deadline ends. (1) When counting days to calculate when a hearing deadline ends ((~~under~~)) as described in WAC 182-16-050 through 182-16-110:

(a) Do not include the day of the action, notice, or order. For example, if service of a hearing decision is ((~~mailed~~)) made 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.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-16-071 Time requirements for service of notices ((~~mailed~~)) made by the presiding officer. (1) The presiding ((~~officer must mail~~)) officer's office must serve a notice of a hearing to all parties and their representatives at least ((~~fourteen~~)) twenty-one 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~~)) serve a notice of the prehearing conference or dispositive motion hearing to the parties and their representatives at least seven business days before the date of the prehearing conference or dispositive motion hearing except:

(a) The 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.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

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~~)) appellant 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~~)) appellant 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.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

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) In each administrative hearing, the presiding officer must grant each party's first request for a continuance. The continuance may be up to thirty calendar days.

(b) The presiding officer may grant each party up to one additional continuance of up to thirty calendar days because of extraordinary circumstances established at a proceeding.

(c) After granting a continuance, the presiding officer's office must:

(i) Immediately telephone all other parties to inform them the hearing was continued; and

(ii) Serve an order of continuance on the parties no later than fourteen days before the new hearing date. All orders of continuance must provide a new deadline ((~~for mailing documents to~~)) for filing documents with the presiding officer. The new ((~~mailing~~)) filing deadline can be no less than ten calendar days prior to the new hearing date. If the continuance is granted pursuant to (b) of this subsection, then the order of continuance must also include findings of fact that state with specificity the extraordinary circumstances for which the presiding officer granted the continuance.

(3) Regardless of whether a party has been granted a continuance as described in subsection (1) of this section, the presiding officer must grant a continuance if a new issue is raised during the hearing and a party requests a continuance.

AMENDATORY SECTION (Amending WSR 15-22-099, filed 11/4/15, effective 1/1/16)

WAC 182-16-080 Determining if an administrative hearing right exists. (1) ((~~A party~~)) An appellant has a right to a hearing only if a law or program rule gives that right. If the ((~~party~~)) appellant 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~~)) as described in WAC 182-16-030 (2)(b), 182-16-032(7), 182-16-035(4), 182-16-036 (1)(f), (2)(b), (3)(b), or 182-16-038(2); and

(b) A hearing of the PEBB appeals committee's written decision has been ((~~timely~~)) requested ((~~pursuant to~~)) timely as described in 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.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

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~~)) appellant must attend or participate in any scheduled prehearing conference. If the ((~~party requesting the hearing~~)) appellant 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~~)) Establish a schedule for:

(i) The exchange and filing of briefs;

(ii) Provide a list of proposed witnesses;

(iii) Providing exhibit lists; and

(iv) Providing 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~~)) serve 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~~)) service date of the order. The presiding officer must ((~~mail~~)) serve 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.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

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~~)) To request a dispositive motion hearing ((~~by filing~~)) a party must file a written dispositive motion with the presiding officer and ((~~mailing~~)) serves 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~~)) file 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)~~)) motions, any response to ((~~that motion(s)~~)) the motions, and argument on the ((~~motion(s)~~)) motions. Prior to rescheduling any necessary hearings, the presiding officer must ((~~mail~~)) serve a written order on the dispositive ((~~motion(s)~~)) motions.

(8) The presiding officer must ((~~mail~~)) serve the written order on the dispositive ((~~motion(s)~~)) motions to all parties no later than eighteen calendar days after the dispositive motion hearing is held. Orders on dispositive motions are subject to motions for reconsideration or petitions for judicial review ((~~pursuant to~~)) as described in WAC 182-16-105 and 182-16-110.

NEW SECTION

WAC 182-16-085 Subpoenas. (1) Presiding officers, the hearing representative, and attorneys for the parties may prepare subpoenas in accordance with Civil Rule 45, unless otherwise stated. Any party may request the presiding officer to prepare a subpoena on his or her behalf.

(2) The presiding officer may schedule a prehearing conference to decide whether to issue a subpoena.

(3) If a party requests the presiding officer prepare a subpoena on its behalf, the party is responsible for:

(a) Service of the subpoena; and

(b) Any costs associated with:

(i) Compliance with the subpoena; and

(ii) Witness fees as described in RCW 34.05.446(7).

(4) Service of a subpoena must be made by a person who is at least eighteen years old and not a party to the hearing. Service of the subpoena is complete when the person serving the subpoena:

(a) Gives the person or entity named in the subpoena a copy of the subpoena; or

(b) Leaves a copy of the subpoena with a person over the age of eighteen at the residence or place of business of the person or entity named in the subpoena.

(5) To prove service of a subpoena on a witness, the person serving the subpoena must file with the presiding officer's office a signed, written, and dated statement that includes:

(a) The name of the person to whom service of the subpoena occurred;

(b) The date of the service of the subpoena occurred;

(c) The address where the service of the subpoena occurred; and

(d) The name, age, and address of the person who provided service of the subpoena.

(6) A party may request the presiding officer quash (set aside) or change a subpoena request at any time before the deadline given in the subpoena.

(7) A presiding officer may quash (set aside) or change a subpoena if it is unreasonable.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

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 mat-

ter. 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~~)) as described in subsections (3) through (7) of this section.

(3) If the presiding officer enters and ((~~mails~~)) serves an order dismissing the hearing, the ((~~party that originally requested the hearing~~)) appellant may file a written request to vacate (set aside) the order of dismissal. Upon receipt of a request to vacate an order of dismissal, the presiding officer must schedule and ((~~mail~~)) serve notice of a prehearing conference as described 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~~)) serve 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.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

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~~)) serve 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.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

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~~)) appellant 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~~)) serve a written order dismissing the case. If a hearing request is withdrawn, the ((~~party~~)) appellant will not be able to request another administrative hearing on the same PEBB appeals committee decision.

(4) If ((~~a party~~)) an appellant withdraws an administrative hearing request, the order of dismissal may only be vacated (set aside) ((~~according to~~)) as described in WAC 182-16-090.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

WAC 182-16-100 Final order deadline—Required information. (1) Within ninety days after the hearing record is closed, the presiding officer shall ((~~mail~~)) serve a final order that shall be the final decision of the authority. The presiding officer shall ((~~mail~~)) serve 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.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

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. Within ten business days after the date the presiding officer's service date of the final order, a party may file a motion for reconsideration, stating the specific grounds upon which the relief is requested.

(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 service date of 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~~)) serve 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 service date of the presiding officer's notice as described in (c) of this subsection ((~~was mailed~~)), or the response will not be considered.

(e) Service of responses to a motion for reconsideration must be ((~~mailed~~)) made 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.

AMENDATORY SECTION (Amending WSR 14-20-058, filed 9/25/14, effective 1/1/15)

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~~)) appellant 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~~)) appellant should consult RCW 34.05.510 through 34.05.598 for further details and requirements of the judicial review process.

WSR 16-17-116
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Pharmacy)

[Filed August 22, 2016, 3:56 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-886-180 Approved legend drugs, the pharmacy quality assurance commission (commission) is proposing to add acetylpromazine, atipamezole, azaperone, isoflurane, dexmedetomidine, tolazoline, and xylazine to the list of approved legend drugs authorized for use by agents and biologist[s] of the Washington department of fish and wildlife (WDFW) management chemical capture programs.

Hearing Location(s): Red Lion Hotel, 1225 North Wenatchee Avenue, Wenatchee, WA 98801, on September 29, 2016, at 1:40 p.m.

Date of Intended Adoption: September 29, 2016.

Submit Written Comments to: Doreen Beebe, Pharmacy Quality Assurance Commission, P.O. Box 47852, Olympia, WA 98504-7852, e-mail https://fortress.wa.gov/doh/policyreview, fax (360) 236-2260, by September 26, 2016.

Assistance for Persons with Disabilities: Contact Doreen Beebe by September 26, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission, in consultation with WDFW, has determined that the request to add atipamezole, azaperone, isoflurane, and tolazoline to the list of approved legend drugs under WAC 246-886-180 is appropriate. As approved drugs, they are available for use by WDFW authorized agents to immobilize or capture individual animals to be moved, treated, and examined or for any other legitimate purpose. In addition, a technical correction adds acetylpromazine, dexmedetomidine, and xylazine, which were omitted from this list in 2012 when chapter 246-886 WAC, Animal control—Legend drugs and controlled substances, was restructured under WSR 12-21-118.

Reasons Supporting Proposal: Chemical capture methods should be performed using drugs that provide adequate sedation for the safety of the WDFW authorized agent and the welfare of the animal. RCW 69.41.080 authorizes the pharmacy quality assurance commission to add legend drugs to the approved list as needed. The proposed rule makes available new drug combinations and pharmaceuticals that have demonstrated through wildlife research to be more effective in certain circumstances and with certain species, such as marine mammals.

Statutory Authority for Adoption: RCW 69.41.080, 18.64.005.

Statute Being Implemented: RCW 69.41.080.

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

Name of Proponent: Washington state department of health, pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting: Doreen Beebe, P.O. Box 47852, Olympia, WA 98504-7852, (360) 236-4834; Implementation and Enforcement: Steve

Saxe, RPh, FACHE, P.O. Box 47852, Olympia, WA 98504-7852, (360) 236-4853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(b), a small business economic impact statement is not required for proposed rules that relate only to internal governmental operations and that are not subject to violation by a nongovernmental party.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(ii) exempts rules that relate only to internal governmental operations that are not subject to violation by a nongovernment [nongovernmental] party.

August 19, 2016
Tim Lynch, PharmD, MS, Chair
Pharmacy Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 12-21-118, filed 10/23/12, effective 11/23/12)

WAC 246-886-180 Approved legend drugs. The following legend drugs are designated as "approved legend drugs" for use by agents and biologists of the Washington state department of fish and wildlife chemical capture programs:

(1) ((~~Naltrexone~~)) Acetylpromazine;
(2) ((~~Detomidine~~)) Atipamezole;
(3) ((~~Metdetomidine; and~~)) Azaperone;
(4) ((~~Yohimbine.~~)) Detomidine;
(5) Dexmedetomidine;
(6) Isoflurane;
(7) Metdetomidine;
(8) Naltrexone;
(9) Tolazoline;
(10) Yohimbine; and
(11) Xylazine.

WSR 16-17-117
PROPOSED RULES
OFFICE OF FINANCIAL MANAGEMENT

[Filed August 23, 2016, 8:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-07-065.

Title of Rule and Other Identifying Information: New sections in chapter 82-75 WAC all payer health care claims, procedures for data release and reasons to deny a request for data.

Hearing Location(s): Office of Financial Management (OFM), Insurance Building, 302 Sid Snyder Avenue S.W., Conference Room 440, Olympia, WA 98501, on September 29, 2016, at 10:00 a.m.

Date of Intended Adoption: November 1, 2016.

Submit Written Comments to: Susan Meldazy, OFM, P.O. Box 43113, Olympia, WA 98504-3113, e-mail apcd@ofm.wa.gov, fax (360) 664-2832. Comments must be submitted by September 29, 2016.

Assistance for Persons with Disabilities: Contact OFM by September 26, 2016, TTY (360) 753-4107 or (360) 902-3092.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 43.371 RCW directs OFM to establish a statewide all payer health care claims data base (WA-APCD) to support transparent public reporting of health care information. RCW 43.371.050(2) and 43.371.070 (1)(d), (e) and (g) provides that the OFM director shall adopt rules necessary to implement this chapter and provides specific areas in which rules shouldbe adopted.

These new rules provide the process for requests for data from WA-APCD, reasons for the denial of a request and the process for administrative review and appeal of a denial of a request. The rules also provide additional definitions related to these new rules.

These rules begin to set the requirements necessary to allow requests to be submitted, reviewed and approved/denied so that data may be released.

Reasons Supporting Proposal: The proposed new rules continue to implement chapter 43.371 RCW.

Statutory Authority for Adoption: Chapter 43.371 RCW.

Statute Being Implemented: Chapter 43.371 RCW.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting: Roselyn Marcus, 302 Sid Snyder Avenue S.W., Olympia, WA 98501, (360) 902-0434; Implementation and Enforcement: Thea Mounts, General Administration Building, Olympia, Washington 98501, (360) 902-0552.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do not have an impact to small businesses, as that term is defined in statute.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are not significant legislative rules, as defined in statute. These rules are not subject to this requirement.

August 23, 2016
Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

AMENDATORY SECTION (Amending WSR 16-04-068, filed 1/29/16, effective 2/29/16)

WAC 82-75-030 Additional definitions authorized by chapter 43.371 RCW. The following additional definitions apply throughout this chapter unless the context clearly indicates another meaning.

"Claim" means a request or demand on a carrier, third-party administrator, or the state labor and industries program for payment of a benefit.

"Coinsurance" means the percentage or amount an enrolled member pays towards the cost of a covered service.

"Copayment" means the fixed dollar amount a member pays to a health care provider at the time a covered service is

provided or the full cost of a service when that is less than the fixed dollar amount.

"Data management plan" or "DMP" means a formal document that outlines how a data requestor will handle the WA-APCD data to ensure privacy and security both during and after the project.

"Data release committee" or "DRC" is the committee required by RCW 43.371.020 (5)(h) to establish a data release process and to provide advice regarding formal data release requests.

"Data submission guide" means the document that contains data submission requirements including, but not limited to, required fields, file layouts, file components, edit specifications, instructions and other technical specifications.

"Data use agreement" or "DUA" means the legally binding document signed by the lead organization and the data requestor that defines the terms and conditions under which access to and use of the WA-APCD data is authorized, how the data will be secured and protected, and how the data will be destroyed at the end of the agreement term.

"Deductible" means the total dollar amount an enrolled member pays on an incurred claim toward the cost of specified covered services designated by the policy or plan over an established period of time before the carrier or third-party administrator makes any payments under an insurance policy or health benefit plan.

"Director" means the director of the office of financial management.

"Health benefits plan" or "health plan" has the same meaning as in RCW 48.43.005.

"Health care" means care, services, or supplies related to the prevention, cure or treatment of illness, injury or disease of an individual, which includes medical, pharmaceutical or dental care. Health care includes, but is not limited to:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and

(b) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

"Lead organization" means the entity selected by the office of financial management to coordinate and manage the data base as provided in chapter 43.371 RCW.

"Member" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

"Office" means the Washington state office of financial management.

"PHI" means protected health information as defined in the Health Insurance Portability and Accountability Act (HIPAA). Incorporating this definition from HIPAA, does not, in any manner, intend or incorporate any other HIPAA rule not otherwise applicable to the WA-APCD.

"Subscriber" means the insured individual who pays the premium or whose employment makes him or her eligible for coverage under an insurance policy or member of a health benefit plan.

"WA-APCD" means the statewide all payer health care claims data base authorized in chapter 43.371 RCW.

"Washington covered person" means any eligible member and all covered dependents where the state of Washington has primary jurisdiction, and whose laws, rules and regulations govern the members' and dependents' insurance policy or health benefit plan.

DATA REQUESTS AND RELEASE PROCEDURES

NEW SECTION

WAC 82-75-200 General data request and release procedures. (1) The lead organization must adopt clear policies and procedures for data requests and data release. At a minimum, the lead organization, in coordination with the data vendor, must develop procedures for making a request for data, how data requests will be reviewed, how decisions will be made on whether to grant or disapprove release of the requested data, and data release processes. The policies and procedures must be approved by the office.

(2) The lead organization should help data requestors identify the best ways to describe and tailor the data request, understand the privacy and security requirements, and understand the limitations on use and data products derived from the data released.

(3) The lead organization must maintain a log of all requests and action taken on each request. The log must include at a minimum the following information: Name of requestor, data requested, purpose of the request, whether the request was approved or denied, if approved the date and data released, and if denied the date and reason for the denial. The lead organization shall post the log on the WA-APCD web site that the lead organization is required to maintain.

NEW SECTION

WAC 82-75-210 Procedures for data requests. (1) The lead organization must use an application process for data requests.

(2) In addition to the requirements in RCW 43.371.050 (1), at a minimum, the application must require the following information:

(a) Detailed information about the project for which the data is being requested including, but not limited to:

(i) Purpose of the project and data being requested, and level of detail for the data requested.

(ii) Methodology for data analysis and timeline for the project.

(iii) Copy of an Institutional Review Board (IRB) protocol and approval or Exempt Determination and application for the IRB exemption for the project review. Researchers must use an IRB that has been registered with the United States Department of Health and Human Services Office of Human Research Protections. The IRB may however be located outside the state of Washington.

(iv) Staffing qualifications and resumes.

(v) Information on third-party organizations or individuals who may have access to the requested data as part of the project for which the data is requested. The information provided must include the same information required by the

requestor, as applicable. Data cannot be shared with third parties except as approved in a data request.

(b) Information regarding whether the requestor has, within the three years prior to the data request date, violated a data use agreement, nondisclosure agreement or confidentiality agreement. Such information must include, but not be limited to, the facts surrounding the violation or data breach, the cause of the violation or data breach, and all steps taken to correct the violation or data breach and prevent a reoccurrence.

(c) Information regarding whether the requestor has, within the five years prior to the data request date, been subject to a state or federal regulatory action related to a data breach and has been found in violation and assessed a penalty, been a party to a criminal or civil action relating to a data breach and found guilty or liable for that breach, or had to take action to notify individuals due to a data breach for data maintained by the data requestor or for which the data requestor was responsible for maintaining in a secure environment.

(d) Submittal of the project's data management plan (DMP), which DMP must include the information required in WAC 82-75-220.

(e) Require all recipients of protected health information (PHI) to provide an attestation from an authorized individual that the recipient of the requested data has data privacy and security policies and procedures in place on the date of the request and will maintain these policies and procedures for the project period, these policies and procedures comply with Washington state laws and rules, and meet the standards and guidelines required by the Washington state office of chief information officer. Data recipients must also attest that recipients will provide copies of the data privacy and security policies and procedures upon request by the lead organization.

NEW SECTION

WAC 82-75-220 Data management plan. (1)(a) The lead organization must require data requestors to submit data management plans with the data request application. Data management plans must comply with the Washington state office of chief security officer standards.

(b) Additional organizations that are involved in using the data in the data requestors' projects must also provide the information required in the data management plan for their organizations.

(2) Data management plans must provide detailed information including, but not limited to, the following:

(a) Physical possession and storage of the data files, including details about the third-party vendor and personnel handling the data; the facilities, hardware and software that will secure the data; and the physical, administrative and technical safeguards in place to ensure the privacy and security of the released data.

(b) Data sharing, electronic transmission and distribution, including the data requestor's policies and procedures for sharing, transmitting, distributing and tracking data files; physical removal and transport of data files; staff restriction to data access; and use of technical safeguards for data access (e.g., protocols for passwords, log-on/log-off, session time out and encryption for data in motion and at rest).

(c) Data reporting and publication, including who will have the main responsibility for notifying the lead organization of any suspected incidents where the security and privacy of the released data may have been compromised; how DMPs are reviewed and approved by the data requestor; and whether the DMPs will be subjected to periodic updates during the DUA period for the released data.

(d) Completion of project tasks and data destruction, including the data requestor's process to complete the certificate of destruction form and the policies and procedures to:

(i) Dispose of WA-APCD data files upon completion of its project.

(ii) Protect the WA-APCD data files when staff members of project teams (as well as collaborating organizations) terminate their participation in projects. This may include staff exit interviews and immediate termination of data access.

(iii) Inform the lead organization of project staffing changes, including when individual staff members' participation in projects is terminated, voluntarily or involuntarily, within twenty-one calendar days of the staffing change.

(iv) Ensure that the WA-APCD data and any derivatives or parts thereof are not used following the completion of the project.

NEW SECTION

WAC 82-75-230 Review of data requests. (1) The lead organization must establish a transparent process for the review of data requests, which includes a process for public review for specific requests. The process must include a timeline for processing requests, and notification procedures to keep the requestor updated on the progress of the review. The process must also include the ability for the public to comment on requests that include the release of protected health information or proprietary financial information or both. The office shall have final approval over the process and criteria used for review of data requests and all subsequent changes.

(2) The lead organization must post on the WA-APCD web site all requests that include the release of protected health information or proprietary financial information, and the schedule for the receipt of public comment on the request. The time frame for public comment should not be less than fourteen calendar days. The lead organization must post the final decision for the request within seven days after the decision is made.

(3) The lead organization has the responsibility to convene the DRC when needed to review data requests and make a recommendation to the lead organization as to whether to approve or deny a data request. The lead organization must establish an annual meeting schedule for DRC and post the schedule on the web site. The DRC must review requests for identifiable data and provide a recommendation regarding data release. The lead organization may request the DRC to review other data requests. The review must include a technical review of the data management plan by an expert on the DRC, staff from the office of chief information officer, or other technical expert. The DRC may recommend that the requestor provide additional information before a final deci-

sion can be rendered, approve the data release in whole or in part, or deny the release. For researchers who are required in RCW 43.371.050 (4)(a) to have IRB approval, the DRC may recommend provisional approval subject to the receipt of an IRB approval letter and protocol and submittal of a copy of the IRB letter to the lead organization.

(4) The lead organization may only deny a data request based on a reason set forth in WAC 82-75-280.

(5) The lead organization must notify the requestor of the final decision. The notification should include the process available for review or appeal of the decision.

(6) The lead organization must post all data requests and final decisions on the WA-APCD web site maintained by the lead organization.

NEW SECTION

WAC 82-75-240 Data release. (1) Upon approval of a request for data, the lead organization must provide notice to the requestor. The notice must include the following:

(a) The data use agreement (DUA). The DUA will include a confidentiality statement to which the requesting organization or individual must adhere.

(b) The confidentiality agreement that requestors and all other individuals who will have access to the released data, whether an employee of the requestor, subcontractor or other contractor or third-party vendor including data storage or other information technology vendor, who will have access to or responsibility for the data must sign. At a minimum, the confidentiality agreement developed for recipients must meet the requirements of RCW 43.371.050 (4)(a).

(2) A person with authority to bind the requesting organization must sign the DUA; or in the case of an individual requesting data, the individual must sign the DUA.

(3) All employees or other persons who will be allowed access to the data must sign a confidentiality agreement.

(4) No data may be released until the lead organization receives a signed copy of the DUA from the data requestor and signed copies of the confidentiality agreement.

(5) The lead organization must maintain a record of all signed agreements and retain the documents for at least six years after the termination of the agreements.

(6) Data fees, if applicable, must be paid in full to the lead organization. Itemized data fees assessed for each data request are subject to public disclosure and should be included in the approval that is posted on the WA-APCD web site.

NEW SECTION

WAC 82-75-250 Data use agreement. (1) The lead organization must develop a standard data use agreement. The office must approve the final form of the DUA, and all substantial changes to the form.

(2) At a minimum, the DUA shall include the following provisions:

(a) A start date and end date. The end date must be no longer than the length of the project for which the data is requested. The DUA may provide for the ability to extend the end date of the agreement upon good cause shown.

(b) The application for data should be incorporated into the DUA and attached as an exhibit to the agreement. There should be an affirmative provision that data provided for one project cannot be used for any other project or purpose.

(c) Data can be used only for the purposes described in the request. The data recipient agrees not to use, disclose, market, release, show, sell, rent, lease, loan or otherwise grant access to the data files specified except as expressly permitted by the DUA, confidentiality agreement if any and the approval letter.

(d) With respect to analysis and displays of data, the data recipient must agree to abide by Washington state law and rules, and standards and guidelines provided by the lead organization.

(e) A requirement for completion of an attestation by an officer or otherwise authorized individual of the data requestor that the data requestor will adhere to the WA-APCD's rules and lead organization policies regarding the publication or presentation to anyone who is not an authorized user of the data.

(f) A requirement that all requestor employees and all other individuals who access the data will sign a confidentiality agreement prior to data release. The confidentiality requirements should be set out in the DUA and include the consequences for failure to comply with the agreement.

(g) A requirement that any new employee who joins the organization or project after the data requestor has received the data and who will have access to the data must sign a confidentiality agreement prior and passed required privacy and security training prior to accessing the data.

(3) The office or lead organization may audit compliance with data use agreements and confidentiality agreements. The requestor must comply and assist, if requested, in any audit of these agreements.

(4) Breach of a data use agreement or confidentiality agreement may result in immediate termination of the data use agreement. The data requestor must immediately destroy all WA-APCD data in its possession upon termination of the data use agreement. Termination of the data use agreement is in addition to any other penalty or regulatory action taken or that may be taken as a result of the breach.

NEW SECTION

WAC 82-75-260 Confidentiality agreement. (1) The lead organization must develop a standard confidentiality agreement, as required, before data may be released. The office must approve the final form for confidentiality agreement, and all substantial changes to the form.

(2) The confidentiality agreement must be signed by all requestor employees and other third parties who may have access to the data.

(3) In addition to other penalties or regulatory actions that may be taken, including denial of future data requests, breach of a confidentiality agreement may result in immediate termination of the agreement. If an individual breaches the confidentiality agreement, the lead organization must review the circumstances and determine if the requestor's agreement should be terminated or only the agreement with the individual who caused the breach should be terminated.

When an agreement is terminated for breach of the confidentiality agreement, the data requestor or individual whose agreement is terminated must immediately destroy all WA-APCD data in his or her possession and provide an attestation of the destruction to the lead organization within seven business days. Attestation of destruction should be in the form as prescribed by the lead organization. Failure to destroy data or provide attestation of the destruction may result in other penalties or regulatory actions.

NEW SECTION

WAC 82-75-270 Data procedures at the end of the project. (1) Upon the end of the project or the termination of the data use agreement, the data recipient shall destroy all WA-APCD data. The data recipient must provide to the lead organization an attestation that the data has been destroyed according to the required standards set forth in the DUA. The attestation shall account for all copies of the data being used by the requestor, its employees, subcontractors, and any other person provided access to the data. Attestation of destruction should be in the form as prescribed by the lead organization.

(2) The attestation of data destruction must be provided within ten business days from the end of the project or termination of the DUA or confidentiality agreement, whichever is sooner.

(3) Failure to destroy data or provide attestation of the destruction may result in other penalties or regulatory actions.

NEW SECTION

WAC 82-75-280 Reasons to decline a request for data. The lead organization may decline a request for data for any of the following reasons:

(1) The requestor has violated a data use agreement, nondisclosure agreement or confidentiality agreement within three years of the date of request.

(2) Any person, other than the requestor, who will have access to the data has violated a data use agreement, nondisclosure agreement or confidentiality agreement within three years of the date of request.

(3) The requestor or any person other than the requestor, who will have access to the data, within the five years prior to the data request date, been subject to a state or federal regulatory action related to a data breach and has been found in violation and assessed a penalty, been a party to a criminal or civil action relating to a data breach and found guilty or liable for that breach, or had to take action to notify individuals due to a data breach for data maintained by the data requestor or for which the data requestor was responsible for maintaining in a secure environment.

(4) The proposed privacy and security protections in the data management plan on the date the data is requested are not sufficient to meet Washington state standards. The protections must be in place on the date the data is requested. For out-of-state requestors, meeting the standards in the state where the requestor or data recipient is located is not acceptable if those standards do not meet those required in Washington state.

(5) The information provided is incomplete or not sufficient to approve the data request.

(6) The proposed purpose for accessing the data is not allowable under WA-APCD statutes, rules or policies, or other state or federal statutes, rules, regulations or federal agency policy or standards for example the Department of Justice Statements of Antitrust Enforcement Policy in Health Care.

(7) The proposed use of the requested data is for an unacceptable commercial use or purpose. An unacceptable commercial use or purpose includes, but is not limited to:

(a) A requestor using data to identify patients using a particular product or drug to develop a marketing campaign to directly contact those patients; or

(b) A requestor using data to directly contact patients for fund-raising purposes; or

(c) A requestor intends to contact an individual whose data is released; or

(d) Sells, gives, shares or intends to sell, give or share released data with another entity or individual not included in the original application for the data and for which approval was given.

NEW SECTION

WAC 82-75-290 Process to review a declined data request. (1) A data requestor may request an administrative review of the lead organization's decision to deny a request for data.

(2) A request for an administrative review may be initiated by a written petition filed with the office and also provided to the lead organization within thirty calendar days after notice of the denial. The petition shall include the following information:

(a) Data requestor's name, address, telephone number, e-mail address and contact person.

(b) Information about the subject of the review including remedy requested.

(c) A detailed explanation as to the issue or area of dispute, and why the dispute should be decided in the data requestor's favor.

(3) The petition and all materials submitted will be reviewed by the director or director's designee. The reviewing official may request additional information or a conference with the data requestor. A decision from the reviewing official shall be provided in writing to the data requestor no later than thirty calendar days after receipt of the petition. A denial of the petition will include the reasons for the denial.

(4) The office will post the petition and final decision on the office web site. The lead organization will provide a link to the petition and decision from its WA-APCD web site.

NEW SECTION

WAC 82-75-300 Process to appeal of final denial of data request. (1) A data requestor may appeal the denial of its administrative review conducted in accordance with WAC 82-75-290.

(2) Request for an appeal must be submitted in writing to the office within fifteen calendar days after receipt of written

notification of denial of its administrative review, with a copy provided to the lead organization.

(3) The lead organization must provide notice and a copy of the appeal request to affected data suppliers within five days of being served. Data suppliers may seek to intervene in an appeal by submitting a petition to intervene to the office of administrative hearings, and serving the petition to intervene on the office, lead organization and requestor within five days of being notified of the appeal.

(4) Within ten business days of receipt of a written notice of appeal, the office will transmit the request to the office of administrative hearings (OAH).

(a) **Scheduling.** OAH will assign an administrative law judge (ALJ) to handle the appeal. The ALJ will notify parties of the time when any additional documents or arguments must be submitted. If a party fails to comply with a scheduling letter or established timelines, the ALJ may decline to consider arguments or documents submitted after the scheduled timelines. A status conference in complex cases may be scheduled to provide for the orderly resolution of the case and to narrow issues and arguments for hearing.

(b) **Hearings.** Hearings may be by telephone or in-person. The ALJ may decide the case without a hearing if legal or factual issues are not in dispute, the appellant does not request a hearing, or the appellant fails to appear at a scheduled hearing or otherwise fails to respond to inquiries. The ALJ will notify the appellant by mail whether a hearing will be held, whether the hearing will be in-person or by telephone, the location of any in-person hearing, and the date and time for any hearing in the case. The date and time for a hearing may be continued at the ALJ's discretion. Other office employees may attend a hearing, and the ALJ will notify the appellant when other office employees are attending. The appellant may appear in person or may be represented by an attorney.

(c) **Decisions.** The decision of the ALJ shall be considered a final decision. A petition for review of the final decision may be filed in the superior court. If no appeal is filed within the time period set by RCW 34.05.542, the decision is conclusive and binding on all parties. The appeal must be filed within thirty days from service of the final decision.

WSR 16-17-119
PROPOSED RULES
DEPARTMENT OF VETERANS AFFAIRS

[Filed August 23, 2016, 8:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-12-027.

Title of Rule and Other Identifying Information: Creating new sections to Title 484 WAC, Washington state department of veterans affairs (WDVA), to define eligibility and process for the veteran owned business certification program.

Hearing Location(s): WDVA, 1102 Quince Street S.E., Olympia, WA 98504, on September 27, 2016, 11:00 a.m. - 12:00 a.m.

Date of Intended Adoption: October 4, 2016.

Submit Written Comments to: WDVA, Heidi Audette, P.O. Box 41150, Olympia, WA 98504, e-mail heidia@dva.wa.gov, fax (360) 725-2197, by September 27, 2016.

Assistance for Persons with Disabilities: Contact Heidi Audette by September 27, 2016, TTY (360) 725-2199 or (360) 725-2154.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This WAC will further explain the process for a Washington state veteran owned business to become certified by WDVA. RCW 43.60A.190 - 43.60A.200 set forth the parameters for the program, this WAC will further define and explain the process.

Reasons Supporting Proposal: There are currently no WAC around the veteran owned business program.

Statutory Authority for Adoption: Chapter 43.60A RCW.

Statute Being Implemented: Chapter 5, Laws of 2010.

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

Name of Proponent: WDVA, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Heidi Audette, Olympia, Washington, (360) 725-2154; and Implementation: Jennifer Montgomery, Olympia, Washington, (360) 725-2169.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Neither a small business economic impact statement nor a school district fiscal impact statement are required with these changes as they impact only the existing veteran owned business certification program within WDVA.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not considered a significant legislative rule.

August 19, 2016
Heidi Audette
Communications and
Legislative Director

Chapter 484-60 WAC

VETERAN OWNED BUSINESS CERTIFICATION

NEW SECTION

WAC 484-60-005 Certified veteran and servicemember owned business list—WEBS registration. (1) To be listed as a certified veteran or servicemember owned business the business must:

Register on the department of enterprise services Washington electronic business solution (WEBS) and indicate the business is at least fifty-one percent owned by a veteran or service member as defined in this chapter.

(a) When notified by WEBS, the business owner must complete the certification process by sending requested documentation to Washington state department of veterans affairs (WDVA) that verifies the business meets the eligibility requirements.

(b) WEBS notifies the business owner whether or not they have been certified by WDVA.

(2) A list of all certified veteran or servicemember owned businesses shall be maintained on WDVA's public web site.

NEW SECTION

WAC 484-60-010 Certified veteran and servicemember owned business list—Certification process. (1) **Eligibility for certification.** WDVA must verify that the business is:

(a) At least fifty-one percent owned and controlled by:

(i) A veteran, defined as every person who at the time he or she seeks certification has received a discharge with an honorable characterization or received a discharge for medical reasons with an honorable record, where applicable, and who has served in at least one of the capacities listed in RCW 41.04.007; or

(ii) An active or reserve member in any branch of the armed forces of the United States, including the National Guard, Coast Guard, and armed forces reserves; and

(b) An enterprise which is incorporated in the state of Washington as a Washington domestic corporation, or an enterprise whose principal place of business is located within the state of Washington for enterprises which are not incorporated.

(c) The business may also be eligible if at least one veteran and the business meet the criteria in (a) and (b) of this subsection and the business:

(i) Is owned and controlled by a married couple or registered domestic partnership where only one spouse or partner is an eligible veteran, provided that the business is controlled and operated by the eligible veteran; or

(ii) Is operated by the nonveteran widow(er) of a veteran spouse or registered domestic partner who has not remarried or reregistered for up to ten years following the death of the veteran or until he or she remarries or reregisters, whichever is shorter, as long as the widow(er) remains an active participant in the day-to-day operations of the business and maintains at least fifty-one percent ownership; or

(iii) Is owned by more than one veteran and at least fifty-one percent of the business is owned by eligible veterans and the business is controlled and operated by those veterans; or

(iv) Is a corporate sponsored dealership, otherwise known as a franchise, and the business meets the following ownership standards:

(A) The veteran owner(s) have entered into a written agreement, contract, or arrangement with a national or regional corporation and has been granted a license to offer, sell, or distribute goods or services at wholesale or retail, leasing or otherwise use the name, service mark, trademark, or related characteristics of the sponsoring corporation.

(B) The veteran owner(s) must declare that the relationship between the corporate sponsor and the veteran owner(s) was not formed for the primary purpose of achieving certification under chapter 43.60A RCW as a veteran or servicemember owned business, or any similar provision of any ordinance, regulation, rule or law; or

(v) Is a nonprofit veteran service organization department or office in Washington state and is listed by the U.S. Department of Veterans Affairs in the Directory of Veterans Service Organizations and registered as a nonprofit with the Washington secretary of state; or

(vi) Is a business that is certified by the Vets First Verification Program or VetBiz and the business provides that certification letter and proof that the business is incorporated in the state of Washington as a Washington domestic corporation, or proof that the business is an enterprise whose principal place of business is located within the state of Washington for enterprises which are not incorporated.

(2) **Required documentation.** Before WDVA can certify a veteran or servicemember owned business, the business must supply WDVA with all requested documents to verify eligibility.

(3) **Decertification.** A business may be decertified at any time WDVA determines that the business does not meet the current criteria for eligibility.

(a) A certified business shall notify the office, in writing, within thirty calendar days of any changes in its veteran ownership status, control, operations, or incorporation status in the state of Washington. Failure to provide such notice in a timely manner may lead to decertification.

(b) When WDVA has determined that a certified business (i) no longer meets the certification criteria, or (ii) failed to supply additional information requested by the office in a timely manner, or (iii) failed to give timely notice of changes, WDVA will decertify the business in writing.

(4) **Administrative review of decertification decisions.**

(a) Upon receipt of a notice of decertification letter, the business may request an administrative review of the decision as authorized by RCW 34.05.482; 34.05.485; and 34.05.494. The request for administrative review must be received by WDVA within twenty calendar days of mailing of the notice of decertification to the last address supplied to WDVA by the business. The request for an administrative review must set forth the reasons the business believes WDVA's decision to decertify is in error and must include all supporting information and documentation.

(b) If WDVA has not received a request for an administrative review within twenty days of mailing of the notice of decertification letter, the decision to decertify becomes final.

(c) Upon receipt of the request for an administrative review, WDVA will review the request and any additional information provided and may conduct further investigation. An administrative review will be conducted by WDVA and the business will be given an opportunity to present evidence and argument.

(d) WDVA will thereafter notify the business in writing of its decision to either affirm or reverse the firm's decertification.

(e) If the business disagrees with WDVA's decision, the business may appeal in writing to the director of WDVA within twenty days of the initial decision. The business shall remain certified until:

(i) The entry of a final decertification decision by the director.

(ii) Decertification shall be effective immediately upon the entry of the final decision, and will not be stayed pending review by any court.

(f) Decertified businesses must remove any stickers, logos, or statements that identify them as a veteran or service-member owned business to the public.

NEW SECTION

WAC 484-60-015 Linked deposit program. Certified veteran or servicemember owned businesses may apply for the linked deposit program if:

(1) The veteran or service member owner possesses and exercises sufficient expertise specifically in the business' field of operation to make decisions governing the long-term direction and the day-to-day operations of the business; and

(2) The business is organized for profit and performing a commercially useful function; and

(3) The business meets the criteria for a small business concern as established under chapter 39.19 RCW; and

(4) The business meets the criteria for participation in the program as described in chapters 326-02 and 326-70 WAC.

WSR 16-17-120
PROPOSED RULES
DEPARTMENT OF VETERANS AFFAIRS

[Filed August 23, 2016, 8:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-12-028.

Title of Rule and Other Identifying Information: Washington state veterans homes, the existing WAC will be updated to comply with chapter 184, Laws of 2014, as well as updating references to other agency WAC, updating outdated language and using plain talk to clarify language.

Hearing Location(s): Washington State Department of Veterans Affairs (WDVA), 1102 Quince Street S.E., Olympia, WA 98504, on September 27, 2016, at 10:00 a.m. - 11:00 a.m.

Date of Intended Adoption: October 4, 2016.

Submit Written Comments to: WDVA, Heidi Audette, P.O. Box 41150, Olympia, WA 98504, e-mail heidia@dva.wa.gov, fax (360) 725-2197, by September 27, 2016.

Assistance for Persons with Disabilities: Contact Heidi Audette by September 27, 2016, TTY (360) 725-2199 or (360) 725-2154.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will update several WAC regarding the Washington veterans homes. Old sections that are no longer relevant because programs have changed over the years will be deleted. Other sections will be deleted because the veterans homes must follow other federal laws or laws/rules put forth by department of social and health services (DSHS) and so the WAC will indicate that staff members are to follow those federal or DSHS laws/rules. In addition, legislation was passed in 2014 which directs the state veterans homes to provide care to gold star parents, so these individuals are added to the list of those eligible for care in a state veterans home.

Reasons Supporting Proposal: Chapter 484-20 WAC has not been updated in several years. Chapter 184, Laws of 2014, have not been incorporated into WAC yet. The state veterans homes must follow federal and DSHS rules, and rather than restate those rules in chapter 484-20 WAC, we will now refer to them by name.

Statutory Authority for Adoption: Chapter 72.36 RCW.

Statute Being Implemented: Chapter 184, Laws of 2014.

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

Name of Proponent: WDVA, governmental.

Name of Agency Personnel Responsible for Drafting: Heidi Audette, Olympia, Washington, (360) 725-2154; Implementation: Gary Condra, Olympia, Washington, (360) 725-2202; and Enforcement: Glenda Vick, Olympia, Washington, (360) 725-2170.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Neither a small business economic impact statement nor a school district fiscal impact statement are required with these changes as they impact only the existing state veterans homes.

A cost-benefit analysis is not required under RCW 34.05.328. This rule change is not considered a significant legislative rule.

August 19, 2016
Heidi Audette
Communications and
Legislative Director

AMENDATORY SECTION (Amending WSR 04-19-026, filed 9/9/04, effective 10/10/04)

WAC 484-20-010 Definitions. The following words or phrases are used in this chapter in the meaning given, unless the context clearly indicates another meaning.

(1) Admission team - A team consisting of a designated veterans benefit specialist, an admissions coordinator, and designated medical or nursing staff.

(2) Adjudicative proceeding - In accordance with RCW 34.05.010(1), an adjudicative proceeding is a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an action by the agency.

(3) Administrative action - An act (as defined in RCW 34.05.010(3)) taken by the agency or state veterans home which implements or enforces a statute, applies an agency rule or order, or imposes sanctions or withholds benefits.

(4) Comprehensive care plan - A plan which outlines details of health care for medicaid certified nursing facility residents.

(5) Cost of care.

(a) Daily rate - ((~~The maximum daily cost (rate) to provide care and services to a medicaid recipient. The daily rate is set annually by the department of social and health services and applies to all medicaid certified nursing facility residents. A different daily rate is established for the Washington veterans home, the Washington soldiers home, and the eastern Washington veterans home (also known as the Spokane veterans home).~~)) The daily charge for room and board, nursing care, and covered ancillary items and services.

(b) Private rate - ((~~The daily cost (rate) to provide services to state veterans home residents who have resource levels exceeding standards in WAC 484-20-040. There is a different private rate for nursing care and domiciliary care. The private rate is based on actual operating costs.~~)) The daily rate, established by WDVA, to provide care and services to residents who do not meet medicaid institutional long-term care eligibility requirements according to WAC 182-513-1315. There is a different rate for nursing care and domiciliary care.

(c) Resident contribution - The monthly amount a resident pays to the state veterans home ((~~as partial payment of~~)) for the cost of care. If the resident is a medicaid recipient, the resident contribution is determined by the appropriate community service office. If the resident is not a medicaid recipient, the resident contribution is determined by the facility. The resident contribution is recalculated with any change in the resident's monthly income.

(6) Department - The department of veterans affairs.

(7) Director - The director of the department of veterans affairs or his/her designee.

(8) Domiciliary care - ((~~Is the provision of a home, with necessary ambulant medical care. To be entitled to domiciliary care, the applicant must consistently have a disability, disease or injury which is chronic in nature and produces disablement of such a degree and probable persistency as will incapacitate from earning a living for a prospective period.~~)) Shelter, food, and necessary medical care on an ambulatory self-care basis to assist eligible veterans who are suffering from a disability, disease or defect of such a degree that incapacitates the veteran from earning a living. However, the veteran, although not in need of hospitalization or nursing care services, needs to attain the physical, mental, and social well-being through special rehabilitative programs to restore the veteran to the highest level of functioning.

(9) Facility - Refers to either the Washington veterans home, or the Washington soldiers home, or the eastern Washington veterans home (also known as the Spokane veterans home), ((~~but **does not** include the medicaid certified nursing facility~~)) or the Walla Walla veterans home.

(10) ((~~Furlough - An approved absence for facility residents.~~)) Gold star parent - A parent whose child or children died while serving in the armed forces.

(11) Grievance - An oral or written statement of any difficulty, disagreement, or dispute relating in any way to a facility, a resident or facility staff.

(12) Grievance investigator - State veterans home social service staff or another appropriate person requested by the resident who investigates a grievance.

(13) Income - The receipt by an individual of any property or service which he/she can apply either directly, by sale, or conversion to meet his/her basic needs for food, clothing, and shelter.

(a) Earned income - Gross wages for services rendered and/or net earnings from self-employment. Earned income received at predictable intervals other than monthly or in unequal amounts will be converted to a monthly basis.

(b) Unearned income - All other income.

(14) Medicaid certified nursing facility - Refers to those nursing care units of each state veterans home that are medicaid certified as described under WAC ((~~388-97-005~~)) 388-97-0001.

(15) Personal needs allowance - In accordance with chapter 72.36 RCW the amount which a resident may retain from his/her income.

(16) ((~~Rehabilitation leave - A period of time granted to permit a resident to attempt to reestablish independent living or other care arrangements in a community of his/her choice while retaining the right to return to the facility without reapplying for admission.~~

~~(17) Rehabilitation plan - Describes individualized goals for professional treatment, counseling and/or guidance necessary to restore to the maximum extent possible the physical, mental and psychological functioning of an ill or disabled person.~~

~~(18)~~)) Resources - Cash or other liquid assets or any real or personal property that an individual or spouse, if any, owns and could convert to cash to be used for support or maintenance.

(a) When an individual can reduce a liquid asset to cash, it is a resource.

(b) If an individual cannot reduce an asset to cash, it is not considered an available resource.

(c) Liquid - Assets that are in cash or are financial instruments which are convertible to cash such as, but not limited to, cash in hand, stocks, savings, checking accounts, mutual fund shares, mortgage, promissory notes.

(d) Nonliquid - All other property both real and personal shall be evaluated according to the price that can reasonably be expected to sell for on the open market in the particular geographical area involved.

(((~~(19)~~))) (17) Resident - An individual who resides at a state veterans home.

(((~~(20)~~))) (18) Resident council - A group of residents elected in accordance with RCW 72.36.150 by facility residents.

(((~~(21)~~))) (19) Social leave - An approved absence for residents ((~~of medicaid certified nursing facility units~~)).

(((~~(22)~~))) (20) State veterans home - Refers to the Washington soldiers home and colony in Orting, the Washington veterans home in Retsil, the eastern Washington veterans home (also known as the Spokane veterans home), the Walla Walla veterans home, or all.

(((~~(23)~~))) (21) Staff - Any individual hired ((~~or contracted~~)) to provide care and services at the state veterans homes.

(((~~(24)~~))) (22) Superintendent - The licensed nursing home administrator appointed by the director to administer the day-to-day operations of a state veterans home.

Interim superintendent is a licensed nursing home administrator, appointed by the director to administer the day-to-day operations of a state veterans home, and who may or may not be a veteran. The director may appoint an interim superintendent while a superintendent candidate is completing an administrator in training program, or whenever a suitable candidate is not available.

AMENDATORY SECTION (Amending WSR 04-19-026, filed 9/9/04, effective 10/10/04)

WAC 484-20-015 Application for admission. (1) Applications for admission to a state veterans home shall be made using forms prescribed by the department.

(2) All applications shall include either a copy of the applicant's military discharge or a statement from the applicable military service denoting the dates and character of service. An individual whose eligibility is based on the military service of a spouse shall provide proof of the spouse's military service.

(3) An admissions team shall:

(a) Review each application to ensure inclusion of all information and documents necessary to determine eligibility for admission;

(b) For admission to a medicaid certified nursing facility, ensure a preadmission screening (in accordance with state regulations at WAC ((~~388-97-247~~)) 388-97-1910 through ((~~388-97-388~~)) 388-97-2000) and if necessary a preadmission screening and resident review (PASRR) (in accordance with state regulations at WAC ((~~388-97-247 through 388-97-260~~)) 388-97-2000) have been conducted; and

(c) ((~~Recommend to the director that the application be approved or denied.~~)) The applicant shall receive written notice of the decision in accordance with WAC 484-20-103.

(4) Applications are reviewed and approved or denied in the order of receipt.

AMENDATORY SECTION (Amending WSR 94-22-050, filed 10/31/94, effective 12/1/94)

WAC 484-20-023 Admission to a state veterans home. (1) Each state veterans home maintains several waiting lists, one for each program or service offered. The names of applicants approved for admission shall be placed on the waiting list for the program or service which the admission team has determined shall be most appropriate based on their health care/service needs. Applicants shall be listed in order of approval.

(2) Applicants are admitted from the waiting lists in the order in which their applications are approved; subject to bed availability in the program or service area for which admission has been approved.

(3) An applicant may be denied admission, or be moved from one waiting list to another when in the interim between application approval and scheduled admission:

(a) The applicant's health care needs have changed to the extent that the program or service for which he/she was originally approved can no longer meet his/her health care needs; or

(b) The applicant's service needs have changed to such an extent that the facility can no longer meet the applicant's health care/service needs.

(4) Any applicant whose name has been on a waiting list over ninety days is required to submit an up-to-date medical information form completed by his/her physician prior to being given an admission date.

(5) If an applicant declines a scheduled admission, (s)he will be placed at the bottom of the appropriate service waiting list. The next person on the waiting list will be invited for admission.

(((~~(6) If the applicant's financial status changes substantially in the interim between application approval and scheduled admission, or additional financial information becomes available, the applicant must submit an updated financial information form. If the change in financial status makes the applicant ineligible, due to excess resources, the applicant may be admitted under the provisions of WAC 484-20-040.~~)))

AMENDATORY SECTION (Amending WSR 94-22-050, filed 10/31/94, effective 12/1/94)

WAC 484-20-030 Eligibility—Military service. (1) An applicant must have served on active duty in:

(a) The armed forces of the United States government and must have received a discharge under honorable conditions; or

(b) The state militia (((~~Washington national guard~~))), and have been disabled in line of duty or have received a discharge under honorable conditions; or

(c) The Coast Guard, Merchant Mariners, or other nonmilitary organization when such service was recognized by the United States government as equivalent to service in the armed forces and have received a discharge under honorable conditions as evidenced by possession of a DD214, or similar document in accordance with WAC 484-20-015(2).

(2) Admission priorities are granted in the following order:

(a) Veterans who meet all eligibility requirements of this chapter;

(b) ((~~Veterans who meet all eligibility requirements except indigency and who will become indigent through purchase of necessary health care;~~

~~(c)~~)) Spouses or registered domestic partners of veterans as described in WAC 484-20-055; and

(((~~(d) Veterans who meet all eligibility requirements except indigency and agree to pay at the private rate.~~)) (c) Gold star parents, as described in WAC 484-20-010.

(3) Seventy-five percent or more of a veterans home's residents must be veterans meeting all eligibility requirements.

AMENDATORY SECTION (Amending WSR 04-19-026, filed 9/9/04, effective 10/10/04)

WAC 484-20-035 Eligibility—Transfer of resources. Eligibility for admission as related to transfer of resources is determined by application of medical assistance eligibility rules as defined in ((~~WAC 388-513-1364 through 388-513-1366~~)) chapter 182-513 WAC.

AMENDATORY SECTION (Amending WSR 04-19-026, filed 9/9/04, effective 10/10/04)

WAC 484-20-045 Eligibility—Inability to support self/need for care. (((~~(1)~~))) To be eligible for admission an applicant must ((~~be indigent as defined in WAC 484-20-040 and~~)) be in need of:

(((~~(a)~~))) (1) Medicaid certified nursing facility care as described in ((~~WAC 388-513-1315~~)) chapter 182-513 WAC; or

(((~~(b)~~))) (2) Nursing care other than medicaid certified nursing facility care; or

(((~~(c)~~))) (3) Domiciliary care.

(((~~(2) Applicants who are not in need of care as described in subsection (1) of this section are eligible for admission only if their application includes a rehabilitation plan. Such applicants shall be admitted for a specific period as defined by the rehabilitation plan. Any reductions or extensions of the period of residency are made upon recommendation of the interdisciplinary patient care team and are based on the resident's progress toward meeting or refusal to meet goals outlined in the rehabilitation plan.~~)))

AMENDATORY SECTION (Amending WSR 94-22-050, filed 10/31/94, effective 12/1/94)

WAC 484-20-055 Eligibility—Surviving spouse of veteran. The surviving spouse of a veteran may be admitted to a state veterans home provided:

(1) The veteran was a state resident at the time of death and would have been eligible for admission ((~~except for his/her income or resources~~)); and

(2) The spouse or registered domestic partner:

(a) Meets the provisions of WAC 484-20-045; and

(b) Has not remarried or registered a new domestic partnership with the Washington state secretary of state, a person who is not a state resident or who is not eligible for admission.

AMENDATORY SECTION (Amending WSR 94-22-050, filed 10/31/94, effective 12/1/94)

WAC 484-20-060 Eligibility—Married couple or domestic partnership. A ((~~married~~)) couple may be admitted to a state veterans home provided:

(1) They both meet the requirements of WAC 484-20-045.

(2) They are legally married or domestic partners registered with the Washington state secretary of state, and if not living together, are separated because of different health care needs.

(3) They have been married, or registered domestic partners, at least three years prior to application, or the spouse or registered domestic partner is personally eligible for admission.

(4) At least one meets the requirement of WAC 484-20-030.

AMENDATORY SECTION (Amending WSR 94-22-050, filed 10/31/94, effective 12/1/94)

WAC 484-20-061 Resident assessment and care plan. (((~~(1)~~))) In accordance with federal regulations at 42 C.F.R. § 483.20 and 38 C.F.R. § 51.110, the medicaid certified nursing facilities shall provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident actively participates.

(((~~(2) The medicaid certified nursing facility shall:~~

~~(a) Conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;~~

~~(b) At the time each resident is admitted, have physician orders for the resident's immediate care; and~~

~~(c) Ensure that the comprehensive assessment of a resident's needs describes the resident's capability to perform daily life functions and significant impairments in the functional capacity.~~

~~(3) The comprehensive assessment shall include at least the following information:~~

~~(a) Medically defined conditions and prior medical history;~~

~~(b) Medical status measurement;~~

~~(c) Physical and mental functional status;~~

~~(d) Sensory and physical impairments;~~

~~(e) Nutritional status and requirements;~~

~~(f) Special treatments or procedures;~~

~~(g) Mental and psychosocial status;~~

~~(h) Discharge potential;~~

~~(i) Dental condition;~~

~~(j) Activities potential;~~

~~(k) Rehabilitation potential;~~

~~(l) Cognitive status; and~~

~~(m) Drug therapy.~~

~~(4) The medicaid certified nursing facility shall conduct comprehensive assessments:~~

~~(a) No later than fourteen days after the date of admission;~~

~~(b) Promptly after any significant change in the resident's physical or mental condition; and~~

~~(c) In no case less often than once every twelve months.~~

~~(5) The medicaid certified nursing facility shall ensure:~~

~~(a) Each resident is examined no less than once every three months, and as appropriate, the resident's assessment is revised to assure the continued accuracy of the assessment; and~~

~~(b) The results of the assessment are used to develop, review and revise the resident's comprehensive plan or care under subsection (6) of this section.~~

~~(6) Comprehensive care planning. The medicaid certified nursing facility in compliance with federal regulations at 42 C.F.R. § 483.20 shall develop a comprehensive care plan for each resident that includes measurable objective and timetables to meet a resident's medical, nursing and mental and psychosocial needs that are identified in the comprehensive assessment. The comprehensive care plan shall:~~

~~(a) Describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being;~~

~~(b) Describe any services that would otherwise be required, but are not provided due to the resident's exercise of rights, including the right to refuse treatment;~~

~~(c) Be developed within seven days after completion of the comprehensive assessment;~~

~~(d) Be prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs; and~~

~~(e) Include the participation of the resident, the resident's family or the resident's legal representative.~~

~~(7) The medicaid certified nursing facility shall follow the informed consent process as specified in WAC 388-97-060 regarding the interdisciplinary team's care plan recommendations. The resident care plan shall contain the resident's statement of consent to or refusal of care and service goals. Consent or refusal may be provided by the resident's legal representative when allowed by state law.~~))

AMENDATORY SECTION (Amending WSR 94-22-050, filed 10/31/94, effective 12/1/94)

WAC 484-20-063 Bed hold. ((~~(1)~~)) All ((~~medicaid certified nursing~~)) facility residents shall receive written notice of the bed hold policy in accordance with federal regulations at 42 C.F.R. § ((~~486.12.~~

~~(2) Other facility residents shall pay the full resident contribution to hold a bed during periods of absence from the facility, unless an exception is made under the provisions of WAC 484-20-117~~)) 483.12 and 38 C.F.R. § 51.80.

AMENDATORY SECTION (Amending WSR 04-19-026, filed 9/9/04, effective 10/10/04)

WAC 484-20-065 Use of residents' income and resources. (1) **Monthly payments.** Each month residents shall pay ((~~to the state veterans home all income in excess of the established personal needs allowance. This payment shall be known as the~~)) his or her resident contribution as defined in WAC 484-20-010 ((~~(5)(c).~~)) on the department ((~~policy establishes the~~)) established payment due date. The amount paid shall not exceed the private rate for the program/service area in which the resident resides. Subsections (3) and (5) of this section list exceptions.

(2) **Personal needs allowance.**

(a) **Single residents.** If the resident's monthly income equals or exceeds the established personal needs allowance, he/she may retain the established personal needs allowance. If the individual's monthly income is less than the established personal needs allowance, his/her personal needs allowance shall be limited to:

(i) For residents who are medicaid recipients, the personal needs allowance authorized by the appropriate department of social and health services community service office; or

(ii) For residents who are not medicaid recipients to the income which he/she receives.

(b) **Married residents or registered domestic partners, both residing in the state veterans home.** If each individual's income equals or exceeds the established personal needs allowance, each may retain the established personal needs allowance. If one of the individual's monthly income is less than the established personal needs allowance, his/her personal needs allowance shall be limited to:

(i) For residents who are medicaid recipients, the personal needs allowance authorized by the appropriate department of social and health services community service office; or

(ii) For residents who are not medicaid recipients, to the income to which he/she has an individual right.

(3) **Exceptions to monthly payments.** (Note: This subsection (3) only applies to residents who are not medicaid recipients. The department of social and health services makes these ((~~types of~~)) determinations for residents who are medicaid recipients in accordance with applicable medicaid rules.) Residents may be authorized to retain (in addition to their personal needs allowance) ((~~the following:~~

~~(a) If a resident is on approved rehabilitation leave, monthly income which he/she would be entitled to receive if living in the community.~~

~~(b) If a resident is participating in an approved vocational rehabilitation program, the monthly vocational rehabilitation program earnings.~~

~~(c) If a resident is participating in a therapeutic employment program and it is documented in his/her plan of care, monthly therapeutic employment earnings; except for medicaid recipients the amount retained shall not exceed limits established under medical assistance eligibility rules (WAC 388-478-0070, 388-513-1315, and 388-513-1395)~~)) monthly therapeutic employment earnings, if the resident is participating in a therapeutic employment program and it is documented in his/her plan of care. The amount retained shall not exceed limits established under medical assistance eligibility rules.

(4) **Application for benefits/entitlements.**

(a) Residents are required to apply for any and all entitlements or benefits as soon as they become eligible. Residents and/or their representative must fully disclose all information required for determining eligibility for all entitlements and benefits.

(b) Agency veterans benefit staff shall assist residents to make application for entitlements and benefits.

(c) Residents who apply for medicaid and meet medical need requirements but are over the resource limits outlined in chapter 182-513 WAC, shall be advised ((~~to seek the necessary assistance (to include legal advice) to reduce their resources~~)) of their options and the consequences of being over medicaid resource limits. Residents shall be billed at the private rate until medicaid resource limits are met.

(5) **Support of a nonresident spouse.**

(a) If a resident is a medicaid recipient and has a community spouse, the provisions of chapter ((~~388-513~~)) 182-513 WAC apply; except where preempted by federal law; shall apply to income and resources.

(b) If a resident is not a medicaid recipient and has a community spouse, the provisions of chapter ((~~388-513~~)) 182-513 WAC apply; except where preempted by federal law; shall be used to determine:

(i) Available and exempt income and resources with regard to eligibility and resident participation;

(ii) Ownership of income and resources; and

(iii) Participation by the community spouse.

(6) Only subsection (4)(a) and (b) of this section applies to residents of the colony at the Washington soldiers home.

(7) **Resource limits.**

(a) For residents who are medicaid recipients, resource limits are in accordance with medicaid rules found at chapter ((~~388-513~~)) 182-513 WAC.

(b) For residents who are not medicaid recipients, resource limits shall be established by the facility using the

medicaid resource limit for a single or a married individual; whichever is applicable.

(c) If a resident who is a medicaid recipient receives or accumulates funds in excess of resource limits in (a) of this subsection, the case shall be referred to the appropriate department of social and health services community service office to adjust the resident contribution and/or determine continuing medicaid eligibility. If the community service office determines the resident is no longer eligible to receive medicaid benefits, the resident shall pay at the private rate until medicaid eligibility is reestablished.

(d) If a resident who is not a medicaid recipient receives or accumulates funds in excess of resource limits in (b) of this subsection, the resident shall pay at the private rate until accumulated funds are reduced to the resource limit.

(e) Exceptions to the resource limits in (b) of this subsection may be granted on a case-by-case basis if a resident has an approved discharge plan which includes a goal to reestablish independent community living through either an approved rehabilitation leave or participation in an approved vocational rehabilitation program.

(8) **Retroactive, lump sum benefits.**

(a) If a medicaid recipient receives a retroactive, lump sum award of benefits, he/she shall be required to report the award to the appropriate department of social and health services community service office. If the resident continues to be eligible for medicaid, the community service office will issue a new medicaid award letter which adjusts the resident contribution if appropriate. If the community service office determines the resident is no longer medicaid eligible, the award shall be counted as income for the month(s) in which moneys would have been received and the resident shall pay retroactively the resident contribution due from date of admission to date of receipt of the retroactive lump sum award; except the resident contribution will not be collected for those months during which the resident received medicaid benefits. If the resident's resources still exceed medicaid resource limits, the resident shall pay at the private rate until medicaid eligibility is reestablished.

(b) If a resident who is not a medicaid recipient receives a retroactive lump sum award, the award shall be counted as income for the month(s) in which moneys would have been received and the resident shall pay retroactively the resident contribution due from date of admission to date of receipt of the retroactive lump sum award.

(9) The estate of any individual who is a resident at the time of death will be charged for the balance of any cost of care which the resident did not pay during his/her residency in the state veterans home. The state veterans home shall ((~~periodically~~)) inform the resident of the total amount of any past due cost of care. For residents who are medicaid recipients, recovery shall be in accordance with chapter ((~~388-527~~)) 182-527 WAC. For any resident who is not a medicaid recipient, recovery shall be in accordance with a written agreement made at the time of admission.

(10) For any partial months of residency the resident's contribution shall apply first.

AMENDATORY SECTION (Amending WSR 94-22-050, filed 10/31/94, effective 12/1/94)

WAC 484-20-068 Resident council. (1) Each facility shall have resident council consisting of representatives elected by facility residents. Elections shall be held annually.

(2) The council shall annually elect a chair from among its members. The chair shall call and preside at council meetings.

(3) The resident council shall serve in an advisory capacity to the respective superintendents and to the director in all matters related to policy and operational decisions affecting resident care and life in the facility, to include, but not be limited to, input into the resident council biennial budget making process and facility supplementary policies and procedures. The superintendent shall give due and proper consideration to such input.

(4) Each resident council shall:

(a) Actively participate in development of choices regarding activities, food, living arrangements, personal care and other aspects of resident life; and

(b) When so requested by a resident, serve as an advocate in resolving grievances and ensuring resident rights are observed.

(5) Benefit fund.

(a) The resident council for each state veterans home shall annually review the proposed expenditures from the benefit fund. The resident council approves expenditures from the state veterans home benefit fund.

(b) Disbursements from the benefit fund shall be authorized by the superintendent after approval by the state veterans home resident council.

(6) Governance of the resident council.

(a) Bylaws, approved by the majority vote of the residents, shall define resident council operations.

(b) Bylaws shall be reviewed annually and amended as deemed appropriate by a majority vote of the residents.

(c) Bylaws shall include, but not be limited to definitions of mechanisms for:

(i) Annual elections of council members and chair;

(ii) Make up and responsibilities of any council committees;

(iii) Meeting schedules;

(iv) Determining the number of council members; and

(v) To ensure provisions for participation and representation from the medicaid certified nursing facility sections, should those residents choose to participate in resident council activities. When considering benefit fund related issues/expenditures in accordance with chapter 72.36 RCW and WAC 484-20-070, state veterans home benefit fund, the resident council shall ensure representation from ((~~the medicaid certified nursing facility sections~~)) all levels of care.

(d) The superintendent at each facility shall review and sign the bylaws, indicating agreement with and support of the bylaws.

(7) The resident council shall meet with the superintendent monthly and with the department director three times annually.

(8) Each resident council shall be provided the following:

(a) Meeting space;

(b) Appropriate equipment and supplies; and

(c) Clerical support for minutes of all resident council meetings as requested.

(9) All residents are eligible to serve on the resident council providing that they have signed the resident agreement which all residents receive upon admission to a state veterans home, and that they have not violated the provisions of WAC 484-20-090, the resident agreement or any agency or veterans home policies within the past twelve months.

AMENDATORY SECTION (Amending WSR 94-22-050, filed 10/31/94, effective 12/1/94)

WAC 484-20-070 State veterans home benefit fund. (1) Each veterans home shall maintain a benefit fund into which all private donations, bequeaths, and gifts to the facility shall be deposited, unless the donor made a specific request for use of the funds.

(2) The resident council shall participate in the identification of resident and facility needs for benefit fund solicitations.

(3) The resident council shall develop proposals for expenditures from the benefit fund. The minutes of the resident council meetings shall reflect the council's discussion and decision-making process related to proposed benefit fund expenditures. Facility fiscal staff may assist the resident council in the development of expenditure proposals as requested. The resident council shall ensure all areas of the state veterans home((~~, including the medicaid certified nursing facility,~~)) are represented during the council's discussion and decision-making process related to proposed benefit fund expenditures.

(4) Expenditures from the benefit fund shall be made as approved by the resident council and authorized by the superintendent. Whenever individuals or groups have made a donation, bequeath or gift to a state veterans home and have designated a specific purpose for such donation, bequeath or gift, the resident council and the superintendent shall take such designated purpose into account when approving expenditure of the funds. Should the resident council and the superintendent disagree over an expenditure approved by the resident council, the resident council or the superintendent may request a review by the director.

(5) Disbursements from the benefit fund shall be for the benefit and welfare of the residents of the respective state veterans home.

(6) The resident council shall receive monthly reports of income to and expenditures from the benefit fund.

AMENDATORY SECTION (Amending WSR 01-23-001, filed 11/7/01, effective 12/8/01)

WAC 484-20-080 Annual declaration of income and resources. (1) Each resident shall promptly provide the superintendent or designated representative with a statement reflecting all income and resources:

(a) Annually, at such time as determined by department policy;

(b) Within fourteen days of any change in income;

(c) Within fourteen days of receipt of any lump sum/back-award payment of benefits. The department shall provide forms for reporting of income and resources; and

(d) If the resident is able to demonstrate good cause, exceptions may be made to the reporting deadlines in (b) and (c) of this subsection.

(2) Each resident shall comply with any reporting requirements necessary to initiate/continue any benefits and/or pensions to which he/she is entitled.

(3) Reports shall be made at intervals and on forms prescribed by the entity paying the benefits and/or pension. Copies shall be submitted to the facility's administration for filing in the resident's administrative file:

(a) U.S. Department of Veterans Affairs benefits - As prescribed by the U.S. Department of Veterans Affairs.

(b) Social Security benefits - As prescribed by the Social Security Administration.

(c) Medicaid benefits - As prescribed by the department of social and health services.

(d) Other pensions and benefits - As prescribed by the entity paying the pension/benefit.

(4) When a resident is authorized to contribute to the support of a dependent under WAC 484-20-065, the dependent shall also be required to comply with any required reporting intervals, using the prescribed form(s).

(5) The veterans benefit specialist and business office staff ((~~at each facility~~)) shall be available to assist residents to complete and submit appropriate reports in a timely manner and to resolve any underpayment or overpayment of benefits.

(6) Failure to comply with all income and resource reporting requirements may result in overpayment or underpayment of the resident contribution. Underpayment of the resident contribution may be grounds to begin discharge proceedings in accordance with WAC 484-20-120. Notice of such administrative action shall be given in accordance with WAC 484-20-103.

AMENDATORY SECTION (Amending WSR 95-03-053, filed 1/12/95, effective 2/12/95)

WAC 484-20-085 ((~~Residents' rights and facility rules.~~)) Resident behavior and facility practices. All residents and facility staff shall be furnished a copy of the facility's policies regarding resident rights and a copy of chapter 484-20 WAC. Residents receive this information at the time of admission and within fifteen days of any change.

AMENDATORY SECTION (Amending WSR 01-23-001, filed 11/7/01, effective 12/8/01)

WAC 484-20-086 Restraints/prevention of abuse—Medicaid certified nursing facility. (((~~(1) Restraints. In accordance with~~)) State veterans homes shall follow federal regulations ((~~at~~)) in 42 C.F.R. § 483.13((~~, the resident has the right to be free from any physical or chemical restraints imposed for purposes of:~~

~~(a) Discipline or convenience, and not required to treat the resident's medical symptoms; or~~

~~(b) Preventing or limiting independent mobility or activity, except that a restraint may be used in a bona fide emergency situation when necessary to prevent a person from~~

~~inflicting injury upon self or others. The medicaid nursing facility shall obtain within seventy-two hours a physician's order for proper treatment resolving the emergency situation and eliminating the cause for the restraint.~~

~~(2) Abuse. The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.~~

~~(a) The medicaid certified nursing facility shall develop and implement written policies and procedures that prohibit mistreatment, neglect and abuse of residents and misappropriation of resident property.~~

~~(b) The medicaid certified nursing facility shall:~~

~~(i) Not use verbal, mental, sexual, or physical abuse, corporal punishment or involuntary seclusion; and~~

~~(ii) Not employ persons who have been:~~

~~(A) Found guilty of abusing, neglecting or mistreating residents; by a court of law; or~~

~~(B) Have had a finding entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents, and misappropriation of their property; and~~

~~(iii) Report any knowledge it has of actions by court of law against an employee, which would indicate unfitness for services as a nurse aide or other medicaid certified nursing facility staff to the state nurse aid registry or licensing authorities.~~

~~(c) The medicaid certified nursing facility shall ensure that all alleged violations involving mistreatment, neglect or abuse including injuries of unknown source, and misappropriation of resident property are reported immediately to the superintendent or designated representative of the medicaid certified nursing facility and to other officials in accordance with state law through established procedures (including the state survey and certification agency).~~

~~(d) The medicaid certified nursing facility shall:~~

~~(i) Have evidence that all alleged violations are thoroughly investigated; and~~

~~(ii) Prevent further potential abuse while the investigation is in progress.~~

~~(e) The results of all investigations shall be reported to the superintendent or his/her designated representative and to other officials in accordance with state law (including to the state survey and certification agency) within five working days of the incident, and if the alleged violation is verified, appropriate corrective action must be taken~~)) and 38 C.F.R. § 51.90.

AMENDATORY SECTION (Amending WSR 04-19-026, filed 9/9/04, effective 10/10/04)

WAC 484-20-087 Resident rights. ((~~In compliance with~~)) State veterans homes shall follow federal requirements ((~~at~~)) in 42 C.F.R. § 483.10((~~, residents of a state veterans home have the right to a dignified existence, self-determination and communication with and access to persons and services inside and outside the state veterans home. The state veterans homes shall protect and promote the rights of each resident, including those with limited cognition or other barriers that limit the exercise of rights:~~

~~(1) Exercise of rights.~~

~~(a) The resident has the right to exercise his or her rights as a resident of the state veterans home and as a citizen or resident of the United States.~~

~~(b) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the state veterans home in exercising his or her rights.~~

~~(c) In the case of a resident adjudged incompetent under the laws of the state by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under state law to act on the resident's behalf.~~

~~(d) In the case of a resident who has not been adjudged incompetent by the state court, any legal surrogate designated in accordance with state law may exercise the resident's rights to the extent provided by state law.~~

~~(e) The state veterans home shall not require the resident to sign any contract or agreement that purports to waive any right of the resident.~~

~~(2) Notice of rights and services.~~

~~(a) The state veterans home shall inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the state veterans home. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it shall be acknowledged in writing.~~

~~(b) The resident or his or her surrogate decision maker has the right:~~

~~(i) Upon an oral or written request, to access all records pertaining to the resident including clinical records within twenty-four hours for medicaid certified nursing facility residents and according to chapter 70.129 RCW, for other facility residents; and~~

~~(ii) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard, photocopies of the records or any portions of them upon request and two working days advance notice to the state veterans home.~~

~~(c) The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition.~~

~~(d) The resident has the right to refuse treatment, and to refuse to participate in experimental research; and~~

~~(e) The state veterans home shall according to federal regulations at 42 C.F.R. § 483.10 (e)(8):~~

~~(i) Inform each resident who is entitled to medicaid benefits, in writing, at the time of admission to the medicaid certified nursing facility or, when the resident becomes eligible for medicaid of:~~

~~(A) The items and services that are included in medicaid certified nursing facility services under the state plan and for which the resident may not be charged;~~

~~(B) Those other items and services that the state veterans home offers and for which the resident may be charged, and the amount of charges for those services; and~~

~~(ii) Inform each resident when changes are made to the items and services specified in (e)(i)(A) and (B) of this subsection.~~

(f) The state veterans home shall inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the state veterans home and of charges for those services, including any charges for services not covered under medicaid or the medicaid certified nursing facility daily rate.

(g) Disclosure of fees. Prior to admission, the state veterans home shall provide the applicant information on the amount which will be due upon admission.

(h) The state veterans home shall furnish a written description of legal rights which includes:

(i) A description of the manner of protecting personal funds, under subsection (3) of this section;

(ii) In the case of a medicaid certified nursing facility resident, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of admission and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the resident's medical care in his or her process of spending down to medicaid eligibility levels;

(iii) A posting of names, addresses, and telephone numbers of all pertinent state client advocacy groups such as the state survey and certification agency and the state ombudsman program, the protection and advocacy network, and the medicaid fraud control unit; and

(iv) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abuse, neglect, and misappropriation of resident property in the state veterans home.

(i) The state veterans home shall inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care.

(j) The medicaid certified nursing facility shall prominently display in the medicaid certified nursing facility written information and provide to residents and applicants for admission oral and written information about how to apply for and use of medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(k) Notification of changes.

(i) The state veterans home must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's surrogate decision maker and when appropriate, with the resident's consent, an interested family member when there is:

(A) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the resident from the state veterans home.

(ii) The state veterans home shall also promptly notify the resident and, if known, the resident's surrogate decision maker and when appropriate, with the resident's consent an interested family member when there is:

(A) A change in room or roommate assignment; or

(B) A change in resident rights under federal or state law or regulations.

(iii) The facility must record and periodically update the address and phone number of the resident's surrogate decision maker and interested family member.

(3) Protection of resident funds.

(a) The resident has the right to manage his or her financial affairs, and the state veterans home may not require residents to deposit their personal funds with the state veterans home.

(b) Management of personal funds. Upon written authorization of a resident, the state veterans home shall hold, safeguard, manage, and account for the personal funds of the resident deposited with the state veterans home.

(c) Accounting and records. The state veterans home must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(i) The system must preclude any commingling of resident funds with state veterans home funds or with the funds of any person other than another resident.

(ii) The individual financial records must be available through quarterly statements on request to the resident or his or her legal representative.

(d) Notice of certain balances. The state veterans home shall notify each resident that receives medicaid benefits:

(i) When the amount in the resident's account reaches two hundred dollars less than the SSI limit for one person; and

(ii) That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI limit for one person, the resident may lose eligibility for medicaid or SSI.

(e) Conveyance upon death. Upon the death of a resident with a personal fund deposited with the state veterans home, the state veterans home must convey within thirty days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate.

(f) Assurance of financial security. The state veterans homes are self insured and assure the security of personal funds of residents deposited with the state veterans home.

(g) Limitation on charges to personal funds. The state veterans home may not impose a charge against the personal funds of a resident for any item or service for which payment is made under medicaid, medicare or the U.S. Department of Veterans Affairs.

(h) The state veterans home shall:

(i) Not charge a resident (or the resident's representative) for any item or service not requested by the resident;

(ii) Not require a resident (or the resident's representative) to request any item or service as a condition of admission or continued stay; and

(iii) Inform the resident (or the resident's representative) requesting an item or services for which a charge will be made that there will be a charge for the item or service and what the charge will be.

(4) Free choice. The resident has the right to:

(a) Choose a personal attending physician;

(b) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(c) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the state, participate in planning care and treatment or changes in care and treatment.

(5) Privacy and confidentiality. The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(a) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the state veterans home to provide a private room for each resident;

(b) Except as provided in (c) of this subsection, the resident may approve or refuse the release of personal and clinical records to any individual outside the state veterans home;

(c) The resident's right to refuse release of personal and clinical records does not apply when:

(i) The resident is transferred to another health care institution; or

(ii) Record release is required by law.

(6) Grievances. A resident has the right to:

(a) Voice grievance without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished; and

(b) Prompt efforts by the state veterans home to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(7) Examination of survey results. A resident has the right to:

(a) Examine the results of the most recent survey or complaint investigation of the medicaid certified nursing facility conducted by federal or state surveyors or inspectors and any plan of correction in effect with respect to the medicaid certified nursing facility. The medicaid certified nursing facility shall:

(i) Publicly post a copy of the most recent survey and complaint investigation until the violation is corrected to the satisfaction of the department of social and health services, up to a maximum of one hundred twenty days;

(ii) Make a copy of the survey results available for examination in a place readily accessible to residents;

(iii) Post a notice that the results of the survey or investigation are available and the location of the surveys when not posted; and

(iv) Post surveys and notices in a place or places in plain view of the residents in the medicaid certified nursing facility, persons visiting those residents, and persons who inquire about placement in the medicaid certified nursing facility; and

(b) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

(8) Work. The resident has the right to:

(a) Refuse to perform services for the state veterans home;

(b) Perform services for the state veterans home, if he or she chooses, when:

(i) The state veterans home has documented the need or desire for work in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid; and

(iii) The resident agrees to the work arrangement described in the plan of care.

(9) Mail. The resident has the right to privacy in written communications, including the right to:

(a) Send and promptly receive mail that is unopened; and

(b) Have access to stationery, postage, and writing implements at the resident's own expense.

(10) Access and visitation rights.

(a) The resident has the right and the state veterans home shall provide immediate access to any resident by the following:

(i) Any representative from the federal or state agency administering medicaid or U.S. Department of Veterans Affairs health care programs;

(ii) The resident's individual physician;

(iii) Any representative of the state long term care ombudsman (established under section 307 (a)(12) of the Older American's Act of 1965);

(iv) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(v) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with consent of the resident.

(b) The state veterans home shall provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(c) The state veterans home shall allow representatives of the state ombudsman, described in (a)(iii) of this subsection, to examine a resident's clinical records with the written permission of the resident or the resident's surrogate decision maker, and consistent with state law.

(11) Telephone. The resident has the right to have twenty-four-hour access to a telephone which:

(a) Provides auditory privacy; and

(b) Is accessible to a person with a disability and accommodates a person with sensory impairment.

(12) Personal property. The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(a) No medicaid certified nursing facility shall require residents to sign waivers of potential liability for losses of personal property.

~~(b) The state veterans home shall have a system in place to safeguard personal property within the state veterans home.~~

~~(13) Roommates rooms.~~

~~(a) A resident shall have the right to share a room with his or her spouse when married residents live in the same state veterans home and both spouses consent to the arrangement.~~

~~(b) A resident shall have the right to receive three days notice of change in room or roommate except where the move is at the resident's request, a longer or shorter notice is required to protect the health or safety of the person or other resident, or an admission is necessary.~~

~~(c) The medicaid certified nursing facility shall make reasonable efforts to accommodate residents wanting to share the same room.~~

~~(14) Self-administration of drugs. An individual resident may self-administer drugs if the interdisciplinary care team has determined that this practice is safe.~~

~~(15) Refusal of certain transfers.~~

~~(a) An individual has the right to refuse a transfer to another room within the state veterans home, if the purpose of the transfer is to relocate a resident from a distinct part of the state veterans home that is a medicaid certified nursing facility to a part of the state veterans home that is not a medicaid certified nursing facility.~~

~~(b) A resident's exercise of the right to refuse transfer under (a) of this subsection does not affect the individual's eligibility or entitlement to medicare or medicaid benefits~~)) and 38 C.F.R. § 51.70.

AMENDATORY SECTION (Amending WSR 94-22-050, filed 10/31/94, effective 12/1/94)

WAC 484-20-088 Quality of life—Medicaid certified nursing facility. ((~~In accordance with~~)) State veterans homes shall follow federal requirements ((~~at~~)) in 42 C.F.R. § 483.15((~~, the medicaid certified nursing facility shall care for its residents in a manner and in an environment that promotes maintenance or enhancement or each resident's quality of life.~~

~~(1) Dignity.~~

~~(a) The medicaid certified nursing facility shall promote care for residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.~~

~~(b) The medicaid certified nursing facility shall provide treatment and care of each resident's personal care needs in a private area free from exposure to persons not involved in providing that care.~~

~~(2) Self-determination and participation. The resident has the right to:~~

~~(a) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;~~

~~(b) Interact with members of the community both inside and outside the state veterans home; and~~

~~(c) Make choices about aspects of his or her life in the state veterans home that are significant to the resident.~~

~~(3) Participation in resident and family groups.~~

~~(a) A resident has the right to organize and participate in resident groups in the state veterans home;~~

~~(b) A resident's family has the right to meet in the state veterans home with the families of other residents in the state veterans home;~~

~~(c) The medicaid certified nursing facility shall provide a resident or family group, if one exists, with private space;~~

~~(d) Staff or visitors may attend meetings at the group's invitation;~~

~~(e) The medicaid certified nursing facility shall provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings; and~~

~~(f) When a resident or family group exists, the medicaid certified nursing facility shall listen to the views and act upon the grievance and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the medicaid certified nursing facility.~~

~~(4) Participation in other activities. A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the state veterans home.~~

~~(5) Accommodation of needs. A resident has the right to reside and receive services in the medicaid certified nursing facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered.~~

~~(6) Activities. The medicaid certified nursing facility shall:~~

~~(a) Provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident.~~

~~(b) Provide activities meaningful to the residents seven days a week at various times throughout the day and evening based on individual resident's need and preference;~~

~~(c) The activities program must be directed by a qualified professional who:~~

~~(i) Is a qualified therapeutic recreation specialist or an activities professional who:~~

~~(A) Is licensed or registered, if applicable, by the state; and~~

~~(B) Is eligible for certification as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body on or after October 1, 1990; or~~

~~(ii) Has two years of experience in a social or recreational program within the last five years, one or which was full-time in a patient activities program in a health care setting; or~~

~~(iii) Has completed a training course approved by the state.~~

~~(7) Social services.~~

~~(a) The state veterans home shall provide medically related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.~~

~~(b) A medicaid certified nursing facility with more than one hundred twenty beds shall employ a qualified social worker on a full-time basis.~~

~~(c) A qualified social worker is an individual with:~~

~~(i) A bachelor's degree in social work or a bachelor's degree in a human services field including but not limited to sociology, special education, rehabilitation counseling, and psychology; and~~

~~(ii) One year of supervised social work experience in a health care setting working directly with individuals.~~

~~(8) Environment. The state veterans home shall:~~

~~(a) Provide a safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;~~

~~(b) Provide housekeeping and maintenance service necessary to maintain a sanitary, orderly, and comfortable interior;~~

~~(c) Maintain comfortable sound levels, to include:~~

~~(i) Minimizing the use of the public address system to ensure each use is in the best interest of the residents; and~~

~~(ii) Taking reasonable precautions with noisy services so as not to disturb residents, particularly during their sleeping time.~~

~~(9) Pets. Each resident shall have a reasonable opportunity to have regular contact with animals.~~

~~(a) The state veterans home shall consider the recommendations of residents, resident councils, and staff, and shall:~~

~~(i) Determine the method or methods of providing residents access to animals;~~

~~(ii) Determine the type and number of animals available in the state veterans home. Such animals may include those customarily considered domestic pets. Wild or exotic animals prohibited as pets under state law are not allowed;~~

~~(iii) Ensure the rights, preferences, and medical needs of the individual resident is not compromised by the presence of the animal; and~~

~~(iv) Ensure any animal visiting or living on the premises has a suitable temperament, is healthy, and otherwise poses no significant health or safety risks to residents, staff or visitors.~~

~~(b) Animals living on the state veterans home premises shall:~~

~~(i) Have regular examinations and immunizations, appropriate for the species, by a veterinarian licensed in Washington state; and~~

~~(ii) Be veterinarian certified to be free of diseases transmittable to humans.~~

~~(c) Pets shall be restricted from areas where food is prepared, treatments are being performed, or when residents object to the presence of pets~~)) and 38 C.F.R. § 51.100.

AMENDATORY SECTION (Amending WSR 01-23-001, filed 11/7/01, effective 12/8/01)

WAC 484-20-090 State veterans home rules. Residents of the state veterans homes are expected to comply with the following facility rules. Facility rules apply to all residents:

(1) Health and safety rules.

(a) Emergency evacuation. Any time a fire or alarm is sounded, domiciliary residents must immediately evacuate the building and report to the designated evacuation area. Residents may not enter the evacuated building until designated staff indicate all is clear. Nursing care unit residents must follow the instructions of the nursing staff.

(b) Community living skills. The condition of residents living quarters must meet existing fire, safety and health-sanitation codes. Residents shall accomplish and/or assist with maintaining their living quarters as defined in their comprehensive care plan. Vacated rooms shall be left in a clean condition.

(c) Electrical appliances. Only low wattage household type electrical appliances such as television sets, electric clocks, electric razors, fans of 150 watts or less with acceptable finger guards, small refrigerators rated at not more than 1.5 amps and approved by the facility ((~~electrician~~)), radios, audio and/or video recorders (VCRs), and disc playing machines may be used in resident's rooms. Use of any other electrical equipment requires the written approval of the superintendent or designated representative.

(d) Repair of rooms. Residents shall not alter or repair their living quarters or other common use areas. This includes but is not limited to walls (e.g., for hanging pictures), other flat surfaces, electrical systems, television/cable hook-ups, phone hook-ups, heating systems, and plumbing. State veterans home staff shall assist residents in personalizing their rooms, including but not limited to hanging personal pictures and checking electrical appliances as authorized in (c) of this subsection. Requests for alterations and/or repairs shall be made to the state veterans home ((~~plant~~)) facilities manager.

(e) ((~~Alcohol - Drugs. Possession or use of intoxicating beverages, narcotics, or controlled substances on the grounds of a state veterans home or during off-grounds activities sponsored by the state veterans home, without a physician's written prescription is prohibited. Drugs which were prescribed by a physician but which are no longer used by the resident to whom they were issued, shall be turned in to the state veterans home pharmacy.~~)) Alcohol, marijuana and illegal drugs are prohibited on the premises of any state veterans home. Neither medical nor recreational marijuana use is allowed at a state veterans home. According to the Washington state department of health, health care providers cannot write prescriptions for medical marijuana. They may provide a recommendation for use of medical marijuana; however, this is not considered a prescription for marijuana. This applies to all residents, family members, staff, visitors and volunteers in the home.

(f) Weapons, firearms and edged weapons. Possession of firearms, ammunition, explosives ((~~or~~)), dangerous or edged weapons is prohibited on the premises of any state veterans home.

(g) Animals. Unauthorized possession or feeding of animals on state veterans home property is prohibited except when specifically sanctioned by the superintendent or designated representative.

(h) ((~~Smoking. Residents may not smoke in bed or in any area in the state veterans home where no smoking signs are posted.~~)) Tobacco products and electronic smoking devices. Use of tobacco products or electronic smoking devices is allowed only in designated outdoor smoking areas.

(2) General facility rules.

(a) Visiting hours. Normal visiting hours for guests are 8:00 a.m. to 10:00 p.m.

(b) Program listening. Radios, TVs, and tape recording-playing devices such as video tape recorders (VCRs) and cassette players may be used in resident's rooms. Volume levels of such equipment must be kept at a level that does not disturb others. Between the hours of 10:00 p.m. and 7:00 a.m., volume on such equipment must be reduced to match reduced noise levels in the general surroundings so that others will not be disturbed. The use of headphones is strongly encouraged for those who wish to use such equipment after 10:00 p.m.

(c) Leave. Pursuant to U.S. Department of Veterans Affairs census reporting requirements, residents leaving the grounds for any purpose must sign out at designated locations. Upon returning, the resident must sign in again. After returning from overnight pass((~~, furlough~~)) or social leave, the resident must remain on the grounds overnight before permission to go on an additional overnight pass((~~, furlough~~)) or social leave can be granted, except in the case of emergency. Leaving the grounds without proper authorization, or failure to return from overnight pass((~~, furlough~~)) or social leave at the prescribed time without obtaining permission for an extension, may result in the resident being discharged in accordance with WAC 484-20-120. Residents being admitted to the facility must remain on the grounds overnight before overnight pass or leave privileges may be exercised unless an exception is granted by the superintendent or designated representative.

(d) Respect for property. No person may deface or destroy walls, buildings, trees, shrubbery, fences, grounds, or any other property or possessions belonging to the state of Washington or to any other person. Appropriation of the property of another person, corporate entity or the state of Washington without permission is also prohibited. Residents are required to reimburse the state veterans home for theft and intentional or negligent injury to state property.

(e) Vehicle registration. Vehicles kept on state veterans home property must be registered at least annually with the state veterans home administration. Residents who drive on the state veterans home property must: Possess a valid Washington state driver's license; provide proof of ownership and/or registration; and, show proof of at least minimal insurance as required by Washington state financial responsibility law. The requirement to register applies to vehicles owned by residents, owned by another and registered in the name of the resident, and/or any vehicle regardless of ownership that is regularly in the possession of the resident. Vehicles must have current license tags ((~~and they must display the state veterans home identification sticker~~)). All traffic and parking control signs must be obeyed.

(f) Personal conduct between residents and others. Residents are expected to refrain from obscene, sexually or racially demeaning, threatening language, or behavior, or physically assaultive behavior. Such behavior, directed at another person, whether on the grounds or off the grounds during a state veterans home-sponsored activity, will be considered a violation of this rule.

AMENDATORY SECTION (Amending WSR 04-19-026, filed 9/9/04, effective 10/10/04)

WAC 484-20-103 Administrative action, notice of. (1) The state veterans home must notify the resident and the resident's representative, and make a reasonable effort to notify, if known, an interested family member of any proposed administrative action, as defined in RCW 34.05.010(3) and this chapter. Exceptions are indicated in subsection (4) of this section.

(2) All notices of proposed administrative actions must be given in writing, in a manner which the resident understands at least thirty days before the proposed administrative action will occur. Except, notice may be given as soon as practical before a transfer or discharge when:

(a) The safety of individuals in the state veterans home would be endangered;

(b) The health of individuals in the state veterans home would be endangered;

(c) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(d) A resident has not resided in the facility for thirty days.

(3) All written notices must include:

(a) The reason for the proposed action;

(b) The effective date of the proposed action;

(c) If the proposed action is a transfer or discharge, the location to which the resident is to be transferred or discharged;

(d) The name, address and telephone number of the state long-term care ombudsman.

(4) For ((~~medicaid certified nursing~~)) facility residents notice of transfer or discharge is governed by ((~~WAC 388-97-042~~)) chapter 388-97 WAC.

(5) For all transfers or discharges, staff must give sufficient preparation and orientation to residents to ensure a safe transfer or discharge from the state veterans home.

AMENDATORY SECTION (Amending WSR 04-19-026, filed 9/9/04, effective 10/10/04)

WAC 484-20-105 Dispute settlement. Residents have two avenues to appeal an administrative action.

Exception: Transfer and/or discharge of a medicaid certified nursing facility resident is governed by WAC ((~~388-97-042~~)) 388-97-0120. Transfer and/or discharge appeals is governed by WAC ((~~388-97-043~~)) 388-97-0140.

(1) **Informal settlement.** Informal settlement of matters that may make more elaborate proceedings unnecessary under this chapter is strongly encouraged. Use of the informal settlement process does not preclude a resident from requesting an adjudicative proceeding at any time during the informal settlement process.

(a) An informal settlement to review an administrative action by the department may be requested by forwarding a written request to the superintendent, not later than twenty-one days following receipt of the written notice of an administrative action by the state veterans home.

(b) Within fourteen days of receipt of the request for review, the superintendent or his/her designee shall review the administrative action and shall inform the resident of

his/her decision to uphold, modify or reverse the administrative action. Notification of the superintendent's decision will be given in writing and in all cases the superintendent's decision shall be final except in the case of a request to continue the matter through an adjudicative proceeding.

(2) **Adjudicative proceeding.** An adjudicative proceeding is a formal appeal of an administrative action.

(a) An adjudicative proceeding may be requested by forwarding a written request to the superintendent not later than twenty-one days from the date the resident receives the notice of an administrative action or a final decision under the informal settlement provisions of this section.

(b) All such requests shall include a statement of whether the resident is represented and, if so, the name and address of the representative and be signed by the resident or his/her legal representative.

(c) The department shall immediately forward the request to the office of administrative hearings for scheduling of an administrative hearing pursuant to chapters 34.05 and 34.12 RCW and chapter 10-08 WAC.

(d) Any administrative action imposed pursuant to this chapter shall be deferred until the outcome of the administrative hearing except in cases of discharge under WAC 484-20-120 (1)(a), (b), and (c).

(e) Administrative hearings pursuant to this subsection shall be conducted in the state veterans home in which the client resides except that in cases of discharge under WAC 484-20-120 (1)(e), the hearing shall be conducted in a location which is jointly agreed upon by both parties.

(f) Initial orders issued by the administrative law judge shall become final twenty-one days following issuance, unless the complaining party or the state veterans home requests a review of the order. In the case of such a review, the director or his/her designee, serving as the department's reviewing officer, shall conduct a review pursuant to chapter 34.05 RCW and issue a final order in the matter under consideration.

AMENDATORY SECTION (Amending WSR 94-22-050, filed 10/31/94, effective 12/1/94)

WAC 484-20-111 Grievance procedure. (1) Department grievance procedures shall consist of an optional informal discussion process and a formal process.

(a) Any resident, his or her appointed representative, family member or advocate may file a grievance related in any way to the state veterans home, another resident or a state veterans home staff.

(i) Filing. Grievance may be filed either orally or in writing to designated social work staff. Any oral grievance shall be reduced to writing by the staff receiving the grievance.

(ii) Grievances must be filed within fourteen days of the event or discovery of the event being grieved. This deadline may be extended for good cause at the discretion of the designated social work staff.

(iii) Grievance forms are available and located in easily accessed locations throughout the state veterans home. Completed grievance forms must be signed by the resident or individual filing the grievance on behalf of the resident and forwarded to designated social work staff for investigation.

(b) A resident shall not be subject to discipline or retaliation for participating in any manner in the state veterans home's grievance process.

(c) Residents are not prohibited from requesting an adjudicative proceeding or from filing a grievance with any state client advocacy group such as the state survey and certifications agency or the state ombudsman program at any time during the grievance resolution process.

(2) Informal discussion process. Residents are encouraged to attempt to resolve grievances through an informal discussion with individuals who are involved. A grievance investigator shall facilitate such a discussion upon request.

(3) Formal grievance process.

(a) Investigation. Designated social work staff shall investigate all grievances received.

(i) In accordance with federal regulations at 42 C.F.R. § 483.13 and C.F.R. § 51.90, the medicaid certified nursing facility shall:

(A) Ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the superintendent and to other officials in accordance with federal and state law through established procedures (including the federal and state survey and certification ((~~agency~~)) agencies);

(B) Have evidence that all alleged violations are thoroughly investigated; and

(C) Prevent further potential abuse while the investigation is in progress.

(ii) The results of all investigations shall be reported to the superintendent or his/her designated representative and to other officials in accordance with federal and state law (including to the federal and state survey and certification ((~~agency~~)) agencies) within five working days of the incident, and if the alleged violation is verified, appropriate corrective action must be taken.

(b) At any point in the grievance process, a resident may choose to have another individual (including the resident council grievance committee, if one exists) to advocate on his/her behalf and/or accompany him/her to any investigative interviews.

(c) The grievance investigation shall be completed within seven days of receipt of the written grievance by the designated social work staff.

(d) The resident and/or person filing the grievance on behalf of the resident shall be informed in writing of the results of the investigation and the actions that will be taken to correct any identified problems.

(e) The grievance investigation shall be conducted in such a manner as to maintain the confidentiality of the resident. Should the resident request assistance of an outside resident advocate, access to the resident's clinical or personal files shall be granted only with the written authorization from the resident.

(4) Should the resident not be satisfied with the results of the investigation or the recommended actions, he/she may request a review by the superintendent.

(a) Such a request shall be made in writing and submitted within seven days of receipt of the notice of the results of the grievance investigation.

(b) The superintendent shall consider all available information related to the grievance and issue a written decision on the matter within fourteen days of receipt of the review request.

(c) The superintendent's decision is final except when the resident chooses to access the dispute settlement process allowed in WAC 484-20-105.

(5) Upon admission, each resident or his/her appointed representative shall receive oral and written information related to the state veterans home's grievance procedure. Posters informing residents of the state veterans home's grievance procedure and listing names and phone numbers of state veterans home staff and outside resident advocates who are available to assist with grievance resolution shall be placed in locations within each state veterans home where they are easily visible to residents.

AMENDATORY SECTION (Amending WSR 04-19-026, filed 9/9/04, effective 10/10/04)

WAC 484-20-116 Social leave((~~—Medicaid funded program residents~~)). (((~~(1) Medicaid certified nursing~~)) Facility residents and staff shall comply with state regulations related to social leave under WAC ((~~388-97-047.~~

~~(2) Medicaid certified nursing facility staff shall assist residents in obtaining CSO approval for social leave~~)) 388-97-0160.

AMENDATORY SECTION (Amending WSR 04-19-026, filed 9/9/04, effective 10/10/04)

WAC 484-20-120 Transfer and discharge of state veterans home residents. (((~~(1)~~))) Transfer and discharge of state veterans home residents shall be in accordance with ((~~RCW 70.129.110. The state veterans home must not transfer or discharge a resident unless:~~

~~(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;~~

~~(b) The safety of individuals in the facility is endangered;~~

~~(c) The health of individuals in the facility would otherwise be endangered;~~

~~(d) The resident has failed to make the required payment for his/her stay; or~~

~~(e) The facility ceases to operate.~~

~~(2) In addition, WAC 388-97-042 applies to the transfer and discharge of medicaid certified facility residents.~~

~~(3) Notice of any transfer or discharge given under the authority of this section must be given in accordance with WAC 484-20-103 and is subject to the provisions of WAC 484-20-105~~)) 42 C.F.R. § 483.12 and 38 C.F.R. § 51.80.

AMENDATORY SECTION (Amending WSR 01-23-001, filed 11/7/01, effective 12/8/01)

WAC 484-20-135 Transfer from one state veterans home to another. (1) A resident may apply for transfer to any state veterans home ((~~or the colony located at Orting~~)). Requests for transfer are to be forwarded to the admissions team.

(2) All such requests shall be reviewed by the admissions team, using the admissions criteria.

(3) In addition, the admission team shall contact the superintendent or designated representative of each state veterans home to obtain other information which may be pertinent to the transfer request.

(4) The admission team shall make a recommendation to approve or deny the transfer.

(5) The names of residents who are approved for transfer shall be placed on the waiting list for the program or service which the admission team has determined shall be most appropriate for their health care needs. The position on the waiting list shall be determined by the date on which the transfer was approved.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 484-20-040	Eligibility—Indigency.
WAC 484-20-062	Vocational rehabilitation programs—Eligibility, admission and discharge.
WAC 484-20-089	Washington Soldiers Home Colony—Rights and responsibilities.
WAC 484-20-115	Furlough—Residents other than medicaid certified nursing facility residents.
WAC 484-20-117	Rehabilitation leave.

WSR 16-17-123
PROPOSED RULES
BOARD FOR VOLUNTEER FIREFIGHTERS AND RESERVE OFFICERS

[Filed August 23, 2016, 9:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-09-061.

Title of Rule and Other Identifying Information: Actuarial tables, schedules, and factors.

Hearing Location(s): Yakima Convention Center, Room A, 10 North 8th Street, Yakima, WA 98901, on October 27, 2016, at 6:00 p.m.

Date of Intended Adoption: October 27, 2016.

Submit Written Comments to: Brigette K. Smith, P.O. Box 114, Olympia, WA 98507, e-mail brigettes@bvff.wa.gov, fax (360) 753-7318, by October 14, 2016.

Assistance for Persons with Disabilities: Contact Brigette K. Smith by October 14, 2016, TTY (360) 753-7318.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending WAC 491-02-095 to adopt new actuarial tables for use in calculating joint survivor pensions, survivor pensions, and lump sum settlements to reflect the latest actuarial study and the changes in mortality rates.

Reasons Supporting Proposal: New tables produced by the office of the state actuary based upon new mortality rates.

Statutory Authority for Adoption: RCW 41.24.290(2).

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

Name of Proponent: Board for volunteer firefighters and reserve officers, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brigette K. Smith, 605 11th Avenue S.E., Suite #112, Olympia, WA 98501, (360) 753-7318.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no impact to small business.

A cost-benefit analysis is not required under RCW 34.05.328. Relates only to internal governmental operations, RCW 34.05.328 (5)(b)(ii).

Brigette K. Smith
Executive Secretary

AMENDATORY SECTION (Amending WSR 09-24-026, filed 11/23/09, effective 12/24/09)

WAC 491-02-095 Actuarial tables, schedules, and factors. This chapter contains the tables, schedules, and factors adopted by the board for volunteer firefighters and reserve officers pursuant to the authority granted by RCW 41.24.185 for calculating optional retirement allowances of members of retirement systems administered by the board. These tables, schedules, and factors were adopted by the board upon the recommendation of and in light of the findings of the state actuary in his regular actuarial investigation into the mortality, service, compensation, and other experience of the members and beneficiaries of such retirement systems. The tables, schedules, and factors contained in this chapter shall govern the retirement allowances only of members retiring during the period from January 1, ((~~2010~~)) 2017, until such time as these tables, schedules, and factors are amended by the board following the next actuarial investigation conducted by the state actuary. The retirement allowances of members retiring before January 1, ((~~2010~~)) 2017, shall continue to be governed by the tables, schedules, and factors in effect at the time of each member's retirement. Any new tables, schedules, and factors adopted by the board in the future shall govern retirement allowances only of members retiring after the adoption of such new tables, schedules, and factors.

Board for Volunteer Firefighters and Reserve Officers
Table #1
Joint/Survivor Pension
Option 2 (Joint and 100% Survivor Pension with Pop-up)
(WAC 415-02-380)

Member Younger		Member Older	
Age Difference	Option 2 100%	Age Difference	Option 2 100%
((~~-20~~	~~0.937~~	~~0~~	~~0.835~~
~~-19~~	~~0.933~~	~~1~~	~~0.829~~
~~-18~~	~~0.929~~	~~2~~	~~0.823~~
~~-17~~	~~0.925~~	~~3~~	~~0.818~~
~~-16~~	~~0.921~~	~~4~~	~~0.812~~
~~-15~~	~~0.916~~	~~5~~	~~0.807~~
~~-14~~	~~0.912~~	~~6~~	~~0.801~~
~~-13~~	~~0.907~~	~~7~~	~~0.796~~
~~-12~~	~~0.902~~	~~8~~	~~0.791~~
~~-11~~	~~0.897~~	~~9~~	~~0.786~~
~~-10~~	~~0.892~~	~~10~~	~~0.781~~
~~-9~~	~~0.886~~	~~11~~	~~0.776~~
~~-8~~	~~0.881~~	~~12~~	~~0.771~~
~~-7~~	~~0.875~~	~~13~~	~~0.767~~
~~-6~~	~~0.870~~	~~14~~	~~.762~~
~~-5~~	~~0.864~~	~~15~~	~~0.758~~
~~-4~~	~~0.858~~	~~16~~	~~0.754~~
~~-3~~	~~0.852~~	~~17~~	~~0.750~~
~~-2~~	~~0.847~~	~~18~~	~~0.746~~
~~-1~~	~~0.841~~	~~19~~	~~0.743~~
		~~20~~	~~0.739~~
		~~21~~	~~0.736~~
		~~22~~	~~0.733~~
		~~23~~	~~0.730~~
		~~24~~	~~0.727~~
		~~25~~	~~0.725~~
		~~26~~	~~0.722~~
		~~27~~	~~0.720~~
		~~28~~	~~0.717~~
		~~29~~	~~0.715~~
		~~30~~	~~0.713~~
		~~31~~	~~0.711~~
		~~32~~	~~0.709~~
		~~33~~	~~0.708~~
		~~34~~	~~0.706~~
		~~35~~	~~0.705~~
		~~36~~	~~0.703~~
		~~37~~	~~0.702~~
		~~38~~	~~0.700~~
		~~39~~	~~0.699~~
		~~40~~	~~0.698~~))
-20	0.941	0	0.850
-19	0.938	1	0.844
-18	0.934	2	0.839

Member Younger		Member Older	
Age Difference	Option 2 100%	Age Difference	Option 2 100%
-17	0.930	3	0.834
-16	0.926	4	0.829
-15	0.922	5	0.825
-14	0.918	6	0.820
-13	0.913	7	0.815
-12	0.909	8	0.811
-11	0.904	9	0.806
-10	0.900	10	0.802
-9	0.895	11	0.798
-8	0.890	12	0.794
-7	0.885	13	0.790
-6	0.880	14	0.786
-5	0.875	15	0.783
-4	0.870	16	0.779
-3	0.865	17	0.776
-2	0.860	18	0.773
-1	0.855	19	0.770
		20	0.767
		21	0.764
		22	0.762
		23	0.759
		24	0.757
		25	0.755
		26	0.753
		27	0.751
		28	0.749
		29	0.747
		30	0.746
		31	0.744
		32	0.743
		33	0.742
		34	0.740
		35	0.739
		36	0.738
		37	0.737
		38	0.736
		39	0.735
		40	0.734

Table #2
Survivor Pension
Early Retirement Factors
(WAC 415-02-320)

Years Early	Month 0	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
((~~0~~	~~1.0000~~	~~0.9922~~	~~0.9844~~	~~0.9766~~	~~0.9688~~	~~0.9610~~	~~0.9532~~	~~0.9454~~	~~0.9376~~	~~0.9298~~	~~0.9220~~	~~0.9142~~
~~1~~	~~0.9060~~	~~0.8991~~	~~0.8922~~	~~0.8853~~	~~0.8784~~	~~0.8715~~	~~0.8646~~	~~0.8577~~	~~0.8508~~	~~0.8439~~	~~0.8370~~	~~0.8301~~
~~2~~	~~0.8230~~	~~0.8168~~	~~0.8106~~	~~0.8044~~	~~0.7982~~	~~0.7920~~	~~0.7858~~	~~0.7796~~	~~0.7734~~	~~0.7672~~	~~0.7610~~	~~0.7548~~
~~3~~	~~0.7490~~	~~0.7435~~	~~0.7380~~	~~0.7325~~	~~0.7270~~	~~0.7215~~	~~0.7160~~	~~0.7105~~	~~0.7050~~	~~0.6995~~	~~0.6940~~	~~0.6885~~
~~4~~	~~0.6830~~	~~0.6781~~	~~0.6732~~	~~0.6683~~	~~0.6634~~	~~0.6585~~	~~0.6536~~	~~0.6487~~	~~0.6438~~	~~0.6389~~	~~0.6340~~	~~0.6291~~
~~5~~	~~0.6240~~	~~0.6195~~	~~0.6150~~	~~0.6105~~	~~0.6060~~	~~0.6015~~	~~0.5970~~	~~0.5925~~	~~0.5880~~	~~0.5835~~	~~0.5790~~	~~0.5745~~
~~6~~	~~0.5700~~	~~0.5660~~	~~0.5620~~	~~0.5580~~	~~0.5540~~	~~0.5500~~	~~0.5460~~	~~0.5420~~	~~0.5380~~	~~0.5340~~	~~0.5300~~	~~0.5260~~
~~7~~	~~0.5220~~	~~0.5184~~	~~0.5148~~	~~0.5112~~	~~0.5076~~	~~0.5040~~	~~0.5004~~	~~0.4968~~	~~0.4932~~	~~0.4896~~	~~0.4860~~	~~0.4824~~
~~8~~	~~0.4790~~	~~0.4758~~	~~0.4726~~	~~0.4694~~	~~0.4662~~	~~0.4630~~	~~0.4598~~	~~0.4566~~	~~0.4534~~	~~0.4502~~	~~0.4470~~	~~0.4438~~
~~9~~	~~0.4400~~	~~0.4371~~	~~0.4342~~	~~0.4313~~	~~0.4284~~	~~0.4225~~	~~0.4226~~	~~0.4197~~	~~0.4168~~	~~0.4139~~	~~0.4110~~	~~0.4081~~
~~10~~	~~0.4050~~	~~0.4023~~	~~0.3996~~	~~0.3969~~	~~0.3942~~	~~0.3915~~	~~0.3888~~	~~0.3861~~	~~0.3834~~	~~0.3807~~	~~0.3780~~	~~0.3753~~
~~11~~	~~0.3730~~	~~0.3705~~	~~0.3680~~	~~0.3655~~	~~0.3630~~	~~0.3605~~	~~0.3580~~	~~0.3555~~	~~0.3530~~	~~0.3505~~	~~0.3480~~	~~0.3455~~
~~12~~	~~0.3430~~	~~0.3408~~	~~0.3386~~	~~0.3364~~	~~0.3342~~	~~0.3320~~	~~0.3298~~	~~0.3276~~	~~0.3254~~	~~0.3232~~	~~0.3210~~	~~0.3188~~
~~13~~	~~0.3170~~	~~0.3149~~	~~0.3128~~	~~0.3107~~	~~0.3086~~	~~0.3065~~	~~0.3044~~	~~0.3023~~	~~0.3002~~	~~0.2981~~	~~0.2960~~	~~0.2939~~
~~14~~	~~0.2920~~	~~0.2902~~	~~0.2884~~	~~0.2866~~	~~0.2848~~	~~0.2830~~	~~0.2812~~	~~0.2794~~	~~0.2276~~	~~0.2758~~	~~0.2740~~	~~0.2722~~
~~15~~	~~0.2700~~	~~0.2683~~	~~0.2666~~	~~0.2649~~	~~0.2632~~	~~0.2615~~	~~0.2598~~	~~0.2581~~	~~0.2564~~	~~0.2547~~	~~0.2530~~	~~0.2513~~
~~16~~	~~0.2500~~	~~0.2484~~	~~0.2468~~	~~0.2452~~	~~0.2436~~	~~0.2420~~	~~0.2404~~	~~0.2388~~	~~0.2372~~	~~0.2356~~	~~0.2340~~	~~0.2324~~
~~17~~	~~0.2310~~	~~0.2296~~	~~0.2282~~	~~0.2268~~	~~0.2254~~	~~0.2240~~	~~0.2226~~	~~0.2212~~	~~0.2198~~	~~0.2184~~	~~0.2170~~	~~0.2156~~
~~18~~	~~0.2140~~	~~0.2127~~	~~0.2114~~	~~0.2101~~	~~0.2088~~	~~0.2075~~	~~0.2062~~	~~0.2049~~	~~0.2036~~	~~0.2023~~	~~0.2010~~	~~0.1997~~
~~19~~	~~0.1980~~	~~0.1968~~	~~0.1956~~	~~0.1944~~	~~0.1932~~	~~0.1920~~	~~0.1908~~	~~0.1896~~	~~0.1884~~	~~0.1872~~	~~0.1860~~	~~0.1848~~
~~20~~	~~0.1840~~	~~0.1828~~	~~0.1816~~	~~0.1804~~	~~0.1792~~	~~0.1780~~	~~0.1768~~	~~0.1756~~	~~0.1744~~	~~0.1732~~	~~0.1720~~	~~0.1708~~
~~21~~	~~0.1700~~	~~0.1690~~	~~0.1680~~	~~0.1670~~	~~0.1660~~	~~0.1650~~	~~0.1640~~	~~0.1630~~	~~0.1620~~	~~0.1610~~	~~0.1600~~	~~0.1590~~
~~22~~	~~0.1580~~	~~0.1571~~	~~0.1562~~	~~0.1553~~	~~0.1544~~	~~0.1535~~	~~0.1526~~	~~0.1517~~	~~0.1508~~	~~0.1499~~	~~0.1490~~	~~0.1481~~
~~23~~	~~0.1470~~	~~0.1461~~	~~0.1452~~	~~0.1443~~	~~0.1434~~	~~0.1425~~	~~0.1416~~	~~0.1407~~	~~0.1398~~	~~0.1389~~	~~0.1380~~	~~0.1371~~
~~24~~	~~0.1360~~	~~0.1352~~	~~0.1344~~	~~0.1336~~	~~0.1328~~	~~0.1320~~	~~0.1312~~	~~0.1304~~	~~0.1296~~	~~0.1288~~	~~0.1280~~	~~0.1272~~
~~25~~	~~0.1260~~	~~0.1253~~	~~0.1246~~	~~0.1239~~	~~0.1232~~	~~0.1225~~	~~0.1218~~	~~0.1211~~	~~0.1204~~	~~0.1197~~	~~0.1190~~	~~0.1183~~
~~26~~	~~0.1180~~	~~0.1173~~	~~0.1166~~	~~0.1159~~	~~0.1152~~	~~0.1145~~	~~0.1138~~	~~0.1131~~	~~0.1124~~	~~0.1117~~	~~0.1110~~	~~0.1103~~
~~27~~	~~0.1090~~	~~0.1084~~	~~0.1078~~	~~0.1072~~	~~0.1066~~	~~0.1060~~	~~0.1054~~	~~0.1048~~	~~0.1042~~	~~0.1036~~	~~0.1030~~	~~0.1024~~
~~28~~	~~0.1020~~	~~0.1018~~	~~0.1016~~	~~0.1014~~	~~0.1012~~	~~0.1010~~	~~0.1008~~	~~0.1006~~	~~0.1004~~	~~0.1002~~	~~0.1000~~	~~0.1000~~
~~29+~~	~~0.1000~~	~~0.1000~~	~~0.1000~~	~~0.1000~~	~~0.1000~~	~~0.1000~~	~~0.1000~~	~~0.1000~~	~~0.1000~~	~~0.1000~~	~~0.1000~~	~~0.1000~~))
0	1.0000	.9926	.9852	.9778	.9704	.9630	.9557	.9483	.9409	.9335	.9261	.9187
1	.9113	.9047	.8981	.8915	.8849	.8783	.8717	.8651	.8585	.8519	.8453	.8387
2	.8321	.8262	.8203	.8144	.8085	.8026	.7967	.7908	.7849	.7789	.7730	.7671
3	.7612	.7559	.7506	.7453	.7400	.7347	.7294	.7241	.7188	.7135	.7082	.7028
4	.6975	.6928	.6880	.6832	.6784	.6736	.6689	.6641	.6593	.6545	.6497	.6450
5	.6402	.6359	.6316	.6272	.6229	.6186	.6143	.6100	.6057	.6014	.5970	.5927
6	.5884	.5845	.5806	.5767	.5728	.5689	.5650	.5611	.5572	.5533	.5493	.5454
7	.5415	.5380	.5345	.5309	.5274	.5238	.5203	.5167	.5132	.5096	.5061	.5026
8	.4990	.4958	.4926	.4894	.4861	.4829	.4797	.4765	.4733	.4700	.4668	.4636
9	.4604	.4574	.4545	.4516	.4486	.4457	.4428	.4398	.4369	.4340	.4310	.4281
10	.4252	.4225	.4198	.4171	.4145	.4118	.4091	.4064	.4037	.4011	.3984	.3957
11	.3930	.3906	.3881	.3857	.3832	.3808	.3783	.3759	.3735	.3710	.3686	.3661
12	.3637	.3614	.3592	.3569	.3547	.3525	.3502	.3480	.3457	.3435	.3413	.3390
13	.3368	.3347	.3327	.3306	.3286	.3265	.3244	.3224	.3203	.3183	.3162	.3142
14	.3121	.3102	.3083	.3065	.3046	.3027	.3008	.2989	.2970	.2951	.2932	.2914
15	.2895	.2877	.2860	.2843	.2825	.2808	.2791	.2773	.2756	.2738	.2721	.2704

Years Early	Month 0	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11
16	.2686	.2670	.2654	.2639	.2623	.2607	.2591	.2575	.2559	.2543	.2527	.2511
17	.2495	.2480	.2465	.2451	.2436	.2421	.2406	.2392	.2377	.2362	.2347	.2333
18	.2318	.2304	.2291	.2277	.2264	.2250	.2236	.2223	.2209	.2196	.2182	.2169
19	.2155	.2142	.2130	.2117	.2105	.2092	.2080	.2067	.2055	.2042	.2029	.2017
20	.2004	.1993	.1981	.1969	.1958	.1946	.1935	.1923	.1911	.1900	.1888	.1877
21	.1865	.1854	.1844	.1833	.1822	.1811	.1801	.1790	.1779	.1768	.1758	.1747
22	.1736	.1726	.1716	.1706	.1696	.1686	.1677	.1667	.1657	.1647	.1637	.1627
23	.1617	.1608	.1598	.1589	.1580	.1571	.1562	.1552	.1543	.1534	.1525	.1516
24	.1506	.1498	.1489	.1481	.1472	.1464	.1455	.1446	.1438	.1429	.1421	.1412
25	.1404	.1396	.1388	.1380	.1372	.1364	.1356	.1348	.1340	.1332	.1324	.1317
26	.1309	.1301	.1294	.1287	.1279	.1272	.1264	.1257	.1250	.1242	.1235	.1228
27	.1220	.1213	.1207	.1200	.1193	.1186	.1179	.1172	.1166	.1159	.1152	.1145
28	.1138	.1132	.1125	.1119	.1113	.1106	.1100	.1094	.1087	.1081	.1075	.1068
29	.1062	.1057	.1052	.1046	.1041	.1036	.1031	.1026	.1021	.1015	.1010	.1005
30+	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000	.1000

Table #3
Lump-Sum Settlements

Age	Factor	Age	Factor
((~~20~~	~~14.3791~~	~~60~~	~~11.0834~~
~~21~~	~~14.3576~~	~~61~~	~~10.8849~~
~~22~~	~~14.3347~~	~~62~~	~~10.6795~~
~~23~~	~~14.3104~~	~~63~~	~~10.4675~~
~~24~~	~~14.2845~~	~~64~~	~~10.2498~~
~~25~~	~~14.2570~~	~~65~~	~~10.0267~~
~~26~~	~~14.2277~~	~~66~~	~~9.7975~~
~~27~~	~~14.1965~~	~~67~~	~~9.5633~~
~~28~~	~~14.1633~~	~~68~~	~~9.3247~~
~~29~~	~~14.1277~~	~~69~~	~~9.0792~~
~~30~~	~~14.0898~~	~~70~~	~~8.8273~~
~~31~~	~~14.0495~~	~~71~~	~~8.5679~~
~~32~~	~~14.0068~~	~~72~~	~~8.3037~~
~~33~~	~~13.9619~~	~~73~~	~~8.0334~~
~~34~~	~~13.9146~~	~~74~~	~~7.7574~~
~~35~~	~~13.8648~~	~~75~~	~~7.4768~~
~~36~~	~~13.8125~~	~~76~~	~~7.1936~~
~~37~~	~~13.7574~~	~~77~~	~~6.9075~~
~~38~~	~~13.6993~~	~~78~~	~~6.6205~~
~~39~~	~~13.6378~~	~~79~~	~~6.3331~~
~~40~~	~~13.5726~~	~~80~~	~~6.0460~~
~~41~~	~~13.5034~~	~~81~~	~~5.7603~~
~~42~~	~~13.4300~~	~~82~~	~~5.4770~~
~~43~~	~~13.3520~~	~~83~~	~~5.2000~~
~~44~~	~~13.2693~~	~~84~~	~~4.9276~~
~~45~~	~~13.1816~~	~~85~~	~~4.6629~~
~~46~~	~~13.0887~~	~~86~~	~~4.4045~~
~~47~~	~~12.9903~~	~~87~~	~~4.1524~~
~~48~~	~~12.8860~~	~~88~~	~~3.9110~~
~~49~~	~~12.7754~~	~~89~~	~~3.6829~~
~~50~~	~~12.6582~~	~~90~~	~~3.4668~~
~~51~~	~~12.5339~~	~~91~~	~~3.2679~~
~~52~~	~~12.4021~~	~~92~~	~~3.0850~~
~~53~~	~~12.2638~~	~~93~~	~~2.9184~~
~~54~~	~~12.1178~~	~~94~~	~~2.7652~~
~~55~~	~~11.9639~~	~~95~~	~~2.6233~~
~~56~~	~~11.8019~~	~~96~~	~~2.4971~~
~~57~~	~~11.6327~~	~~97~~	~~2.3819~~
~~58~~	~~11.4573~~	~~98~~	~~2.2755~~
~~59~~	~~11.2742~~	~~99~~	~~2.1823~~))
20	14.4584	66	10.4052
21	14.4415	67	10.1797
22	14.4235	68	9.9469
23	14.4043	69	9.7055
24	14.3837	70	9.4569
25	14.3616	71	9.2012
26	14.3379	72	8.9402
27	14.3124	73	8.6725
28	14.2850	74	8.3989
29	14.2556	75	8.1204
30	14.2241	76	7.8378
31	14.1905	77	7.5519
32	14.1547	78	7.2629
33	14.1169	79	6.9712

Age	Factor	Age	Factor
34	14.0771	80	6.6771
35	14.0351	81	6.3812
36	13.9909	82	6.0844
37	13.9441	83	5.7894
38	13.8947	84	5.4967
39	13.8423	85	5.2068
40	13.7866	86	4.9196
41	13.7273	87	4.6359
42	13.6642	88	4.3627
43	13.5971	89	4.1017
44	13.5257	90	3.8552
45	13.4499	91	3.6261
46	13.3694	92	3.4160
47	13.2840	93	3.2225
48	13.1934	94	3.0459
49	13.0971	95	2.8863
50	12.9948	96	2.7439
51	12.8861	97	2.6189
52	12.7706	98	2.5100
53	12.6497	99	2.4068
54	12.5217	100	2.3177
55	12.3863	101	2.2325
56	12.2433	102	2.1606
57	12.0937	103	2.0940
58	11.9376	104	2.0445
59	11.7734	105	2.0036
60	11.6011	106	1.9836
61	11.4206	107	1.9718
61	11.2323	108	1.9636
62	11.0364	109	1.9558
64	10.8332	110	1.9481
65	10.6232		

WSR 16-17-124
PROPOSED RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2016-18—Filed August 23, 2016, 9:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-13-102.

Title of Rule and Other Identifying Information: Amend existing motorist underinsured rejection form.

Hearing Location(s): Office of the Insurance Commissioner, 5000 Capitol Boulevard S.E., Training Room (TR-120), Tumwater, WA 98504-0255, on September 28, 2016, at 1:00 p.m.

Date of Intended Adoption: September 30, 2016.

Submit Written Comments to: Stacy Middleton, P.O. Box 40260, Olympia, WA 98504, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by September 27, 2016.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by September 27, 2016, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A legislative task force on underinsured motorists (UIM) met in summer 2015 to discuss whether consumers understand consequences of declining UIM insurance. One of the outcomes was a request for rule making that would amend the requirements for rejection of UIM insurance coverage required by RCW 48.22.030 (4) to require that the motorist be made aware in writing of the risk involved when they decline UIM insurance.

This rule-making goal is to be achieved by amending language and adding a section in WAC 284-20-300 to require that the following statement is included in any rejection form when a motorist is rejecting UIM coverage, "In order to provide for an informed decision of the potential consequences of rejecting underinsured motorist coverage; the undersigned acknowledges they understand that without underinsured motorist coverage there is exposure to the risk of not being fully compensated for injury and/or damages when involved in an accident with a driver of an underinsured vehicle."

Reasons Supporting Proposal: Ensure consumers are informed of the risk involved when declining UIM insurance.

Statutory Authority for Adoption: RCW 48.02.060 (3)(a), 48.22.030(4).

Statute Being Implemented: RCW 48.22.030(4).

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Stacy Middleton, 302 Sid Snyder Avenue, Olympia, WA 98504-0260, (360) 725-9651; Implementation and Enforcement: AnnaLisa Gellermann, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The domestic insurance issuers that must comply with the rule are not small businesses, pursuant to chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Stacy Middleton, P.O. Box 40260, Olympia, WA 98504-0260, phone (360) 725-9651, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

August 23, 2016
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 10-10-058, filed 4/29/10, effective 5/30/10)

WAC 284-20-300 Mandatory offering of personal injury protection and required language when underinsured motorist coverage is rejected. (1) Insurers issuing an automobile liability insurance policy must offer the minimum personal injury protection coverage limits required in RCW 48.22.095, and must make available, if requested, additional personal injury protection limits as defined in RCW 48.22.100. Insurers may also offer other personal injury protection limits, in addition to these required offerings.

(2) If the named insured rejects personal injury protection coverage, the insurer must promptly delete the coverage after the insurer receives the rejection notice from the named insured. The insurer must retain a copy of the rejection notice or request to delete coverage with the policy record.

(3) The written rejection of underinsured motorist coverage, as allowed by RCW 48.22.030(4), must include the following statement, "In order to provide for an informed decision of the potential consequences of rejecting underinsured motorist coverage; the undersigned acknowledges they understand that without underinsured motorist coverage there is exposure to the risk of not being fully compensated for injury and/or damages when involved in an accident with a driver of an underinsured vehicle." Such notice shall be prominently placed above the signature area and be bold.

(4) Insurers may use electronic forms, electronic signatures and electronic attestations, in accordance with 15 U.S.C. Sec. 7001, to comply with this rule. The insurer must maintain an auditable compliance record and provide this information to the commissioner upon request.

((~~(4)~~)) (5) This section does not apply to corporations, partnerships, or any other nonhuman entity named as the insured.

WSR 16-17-125
PROPOSED RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2016-12—Filed August 23, 2016, 9:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-11-062.

Title of Rule and Other Identifying Information: Amendment of WAC 284-30-330(16) to allow insurers to implement procedures for electronic payment of claims.

Hearing Location(s): Insurance Commissioner's Office, 5000 Capitol Boulevard, TR 120, Tumwater, WA 98504-0255, on September 27, 2016, at 10:00 a.m.

Date of Intended Adoption: September 28, 2016.

Submit Written Comments to: Jim Tompkins, P.O. Box 40260, Olympia, WA 98504-0260, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by September 26, 2016.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by September 26, 2016, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will consider amending WAC 284-30-330(16) to allow insurance companies to implement procedures for the processing and payment of claims to include other forms of payment, including but not limited to, electronic funds transfer or a prepaid card.

Reasons Supporting Proposal: When WAC 284-30-330(16) was adopted in 1987, electronic banking and transfer of funds did not exist to the extent that is available currently. With the availability of new methods of making payments that now exist, insurers could make payments of claims quicker and more efficiently if permitted to establish procedures to make payments in other forms rather than being restricted to just either check or drafts as currently required in WAC 284-30-330(16).

Statutory Authority for Adoption: RCW 48.02.060 and 48.30.010.

Statute Being Implemented: RCW 48.30.010.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 98504-0260 [40260], Olympia, WA 98504-0260, (360) 725-7036; Implementation and Enforcement: Doug Hartz, P.O. Box 98504-0255 [40255], Olympia, WA 98504-0255, (360) 725-7214.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule change allows, but does not require, an insurer to deliver payment by electronic funds transfer, prepaid card or other methods of electronic payment. These options would be in addition to the already allowed options of check or draft. Because this proposed rule is permissive in nature it does not impose any new costs on insurers regulated by this section of the administrative code.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40260, Olympia, WA 98504-0260, phone (360) 725-7036, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

August 23, 2016
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 09-11-129, filed 5/20/09, effective 8/21/09)

WAC 284-30-330 Specific unfair claims settlement practices defined. The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices of the insurer in the business of insurance, specifically applicable to the settlement of claims:

(1) Misrepresenting pertinent facts or insurance policy provisions.

(2) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

(3) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

(4) Refusing to pay claims without conducting a reasonable investigation.

(5) Failing to affirm or deny coverage of claims within a reasonable time after fully completed proof of loss documentation has been submitted.

(6) Not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. In particular, this includes an obligation to promptly pay property damage claims to innocent third parties in clear liability situations. If two or more insurers share liability, they should arrange to make appropriate payment, leaving to themselves the burden of apportioning liability.

(7) Compelling a first party claimant to initiate or submit to litigation, arbitration, or appraisal to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in such actions or proceedings.

(8) Attempting to settle a claim for less than the amount to which a reasonable person would have believed he or she was entitled by reference to written or printed advertising material accompanying or made part of an application.

(9) Making a claim payment to a first party claimant or beneficiary not accompanied by a statement setting forth the coverage under which the payment is made.

(10) Asserting to a first party claimant a policy of appealing arbitration awards in favor of insureds or first party claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

(11) Delaying the investigation or payment of claims by requiring a first party claimant or his or her physician to submit a preliminary claim report and then requiring subsequent submissions which contain substantially the same information.

(12) Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

(13) Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

(14) Unfairly discriminating against claimants because they are represented by a public adjuster.

(15) Failing to expeditiously honor drafts given in settlement of claims. A failure to honor a draft within three working days after notice of receipt by the payor bank will constitute a violation of this provision. Dishonor of a draft for valid reasons related to the settlement of the claim will not constitute a violation of this provision.

(16) Failing to adopt and implement reasonable standards for the processing and payment of claims after the obligation to pay has been established. Except as to those instances where the time for payment is governed by statute or rule or is set forth in an applicable contract, procedures which are not designed to deliver ((~~a~~)) payment, whether by check ((~~or~~)), draft, electronic funds transfer, prepaid card, or other method of electronic payment to the payee in payment of a settled claim within fifteen business days after receipt by the insurer or its attorney of properly executed releases or other settlement documents are not acceptable. Where the insurer is obligated to furnish an appropriate release or settlement document to a claimant, it must do so within twenty working days after a settlement has been reached.

(17) Delaying appraisals or adding to their cost under insurance policy appraisal provisions through the use of appraisers from outside of the loss area. The use of appraisers from outside the loss area is appropriate only where the unique nature of the loss or a lack of competent local appraisers make the use of out-of-area appraisers necessary.

(18) Failing to make a good faith effort to settle a claim before exercising a contract right to an appraisal.

(19) Negotiating or settling a claim directly with any claimant known to be represented by an attorney without the attorney's knowledge and consent. This does not prohibit routine inquiries to a first party claimant to identify the claimant or to obtain details concerning the claim.

WSR 16-17-126
PROPOSED RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2015-17—Filed August 23, 2016, 9:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-01-051.

Title of Rule and Other Identifying Information: Addressing the insurance commissioner's powers during a state of emergency.

Hearing Location(s): Office of the Insurance Commissioner, 5000 Capitol Boulevard S.E., Training Room (TR-120), Tumwater, WA 98504-0255, on September 29, 2016, at 11:00 a.m.

Date of Intended Adoption: September 30, 2016.

Submit Written Comments to: Stacy Middleton, P.O. Box 40260, Olympia, WA 98504, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by September 28, 2016.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by September 28, 2016, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The legislature passed RCW 48.02.060(4) in 2009, giving the insurance commissioner authority to issue orders regarding matters related to insurance policies following a proclamation by the governor declaring a state of emergency. RCW 48.02.060(6) gives the commissioner authority to adopt rules that establish general criteria for these orders. To date, the commissioner has not adopted rules. Recently, property and casualty insurers have requested clarifying rules. These proposed rules would add one or more new sections to chapter 284-02 WAC, Insurance commissioner's office—Generally. The rules would establish the general criteria for orders the commis-

sioner issues following a proclamation by the governor declaring a state of emergency. The rules would address definitions of terms relevant to emergency orders and criteria related to issuing emergency orders, reporting requirements for claims, grace periods for payment of insurance premiums and performance of other duties by insureds, temporary postponement of cancellations and nonrenewals, and medical coverage to ensure access to care.

Reasons Supporting Proposal: In light of recent weather and seismic disaster events here and in other states and the fact that other states are considering similar actions or have already adopted rules, the commissioner wants insurers to know what to expect when the governor has proclaimed a state of emergency. The commissioner wants to create rules that protect insurers and insureds during a state of emergency and other emergencies or catastrophes.

Statutory Authority for Adoption: RCW 48.02.060, 48.17.005, 48.17.420, 48.07.205.

Statute Being Implemented: RCW 48.02.060.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Stacy Middleton, 302 Sid Snyder Avenue, Olympia, WA 98504-0260, (360) 725-9651; Implementation: John Hamje, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, (360) 725-7262; and Enforcement: AnnaLisa Gellermann, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The domestic insurance issuers that must comply with the rule are not small businesses, pursuant to chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Stacy Middleton, P.O. Box 40260, Olympia, WA 98504-0260, phone (360) 725-9651, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

August 23, 2016
Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-02-110 Purpose and scope. An order issued under RCW 48.02.060 (4) and (5) must refer to the specific proclamation of a state of emergency upon which the order is based, provide the effective date and termination date of the order, and describe the geographic area to which the order applies, by line of insurance. Such an order may include a statement of general findings that describe the need for the order, and declare the harm to be prevented or mitigated by the order.

NEW SECTION

WAC 284-02-120 General considerations for orders. Before the commissioner issues an order under RCW 48.02.060(4), the commissioner may, to the extent feasible, consider any of the following:

(1) The extent to which the circumstances of the proclaimed state of emergency prevents policyholders, providers or facilities, from using normal methods of reporting claims;

(2) What methods of reporting remain available to consumers in the affected areas;

(3) The extent to which the circumstances of the proclaimed state of emergency prevent the payment of insurance premiums;

(4) The extent to which the circumstances of the proclaimed state of emergency prevent the performance of other statutory or contractual duties imposed on policyholders; and

(5) The extent to which the proclaimed state of emergency prevents communication of notices of cancellation or nonrenewal from policyholders to their insurers and the extent to which communication is prevented from insurers to their policyholders.

NEW SECTION

WAC 284-02-130 Criteria considerations for orders. The commissioner may issue an order that does one or more of the following:

(1) Directs insurers to accept alternative methods of reporting claims;

(2) Directs insurers to extend claim reporting periods;

(3) Directs insurers to extend or offer grace periods for payment of insurance premiums;

(4) Directs insurers to temporarily postpone cancellation or nonrenewal of policies;

(5) Directs insurers to reissue required notices that may not have been received;

(6) Directs insurers to excuse policyholders from performing other statutory or contractual duties;

(7) Directs insurers to take any other steps authorized by RCW 48.02.060(4); and

(8) Prohibits an insurer from canceling or refusing to renew a policy solely because of a claim resulting from the circumstances of the proclaimed state of emergency.

NEW SECTION

WAC 284-02-140 Additional criteria considerations for orders. An order of the commissioner under RCW 48.02.060(4) may also address the following matters:

(1) Whether the order applies to authorized insurers only;

(2) The classes and categories of insurance policies to which the order applies, whether by specific inclusion or exclusion;

(3) The categories of insureds and insured property to which the order applies;

(4) Whether an insurer that receives a claim from an insured owing premium may offset the premium due from any claim payment made under the policy;

(5) Whether a free look period in a variable life insurance policy or variable annuity contract is extended by the order;

(6) Procedures to be followed by premium finance companies with respect to cancellation of policies, including notice, proof of notice, and treatment of refunds;

(7) Procedures to be followed by insurers to extend the length of time to allow for the reporting of claims, if a policy requires a covered person to submit a claim within a specific amount of time;

(8) The period for which an extension of policy coverage will apply;

(9) The method for determining premium for the extended term of coverage;

(10) Whether notices of cancellation or nonrenewals must be withdrawn and reissued;

(11) When and how an insurer that was unable to cancel or nonrenew a policy owing to an order may cancel or nonrenew the policy following the period to which the order applies;

(12) The date on which a delayed cancellation or nonrenewal may become effective; and

(13) Cancellation or nonrenewal of a policy under specific factual circumstances including, but not limited to, fraud or material misrepresentation.

NEW SECTION

WAC 284-02-150 Actions by the commissioner. The commissioner may extend, modify, or rescind an order issued under RCW 48.02.060(4).

NEW SECTION

WAC 284-02-160 Authority of the commissioner. WAC 284-02-110 through 284-02-150 do not in any way limit the commissioner's authority and discretion to issue orders to the extent authorized under RCW 48.02.060(4).

WSR 16-17-129
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed August 23, 2016, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-11-083.

Title of Rule and Other Identifying Information: Retail store rule making, WAC 296-17A-6309 Classification 6309 (hardware type stores, retail and wholesale), 296-17A-6406 Classification 6406 (retail only variety stores), 296-17A-6407 Classification 6407 (wholesale stores), and 296-17A-6411 Classification 6411 (lower hazard retail stores).

Hearing Location(s): Marshal Community Center, Oak Room, 1009 East McLoughlin Boulevard, Vancouver, WA 98663, on October 26, 2016 (Wednesday), at 11:00 a.m.; at the Department of Labor and Industries, Tukwila Service Location, Room C30, 12806 Gateway Drive South, Tukwila, WA 98168, on October 27, 2016 (Thursday), at 11:00 a.m.; at the Everett Community College Corporate and Continuing Education Center, 2333 Seaway Boulevard, Everett, WA 98203, on November 1, 2016 (Tuesday), at 11:00 a.m.; at the Spokane CenterPlace, 2426 North Discovery Place, Spokane Valley, WA 99216, on November 2, 2016 (Wednesday), at 11:00 a.m.; at the Richland Community Center, Activity Room, 500 Amon Park Drive, Richland, WA 99352, on November 3, 2016 (Thursday), at 11:00 a.m.; and at the Department of Labor and Industries, Auditorium, 7273 Linderson Way S.W., Tumwater, WA 98501, on November 4, 2016 (Friday), at 11:00 a.m.

Date of Intended Adoption: February 14, 2017.

Submit Written Comments to: Richard Bredeson, Department of Labor and Industries, P.O. Box 44148, Tumwater, WA 98504, e-mail Richard.Bredeson@Lni.wa.gov, fax (360) 902-5830, by November 15, 2016.

Assistance for Persons with Disabilities: Contact office of information and assistance by October 17, 2016, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing changes for chapter 296-17A WAC, Classifications for Washington workers' compensation insurance that will:

- Reclassify lower hazard stores currently assigned classification 6406 (retail only variety stores) to a new, lower-rated retail store classification 6411.
- Reclassify warehouse distribution centers without retail store exposure into classification 6407 (wholesale stores).
- Reclassify some lower hazard stores currently assigned classification 6309 (hardware type stores) to the lower-rated classification 6406 (retail only variety stores).
- Clarify the store classifications to better distinguish them from each other.

	WAC Numbers and descriptions	Proposed change	Reason for change
1.	WAC 296-17A-6309 (hardware type stores, retail and wholesale) and 296-17A-6406 (retail only variety stores)	Reclassify the following subclassifications from classification 6309 to classification 6406: · 6309-09, Architect and surveyor supplies · 6309-11, Stained glass supply · 6309-17, Sporting goods · 6309-21, Hobbies and crafts.	· The cost per hour for these subclassifications is significantly less than for classification 6309 overall. · Merchandise and operations for these stores often includes similar merchandise and operations found in fabric and variety stores, classified in 6406.

	WAC Numbers and descriptions	Proposed change	Reason for change
2.	WAC 296-17A-6309 (hardware type stores, retail and wholesale) and 296-17A-2009 (building supply stores)	Exclude the selling of building supplies from classification 6309.	· Removing building supplies sales from classification 6309 creates a clear distinction between classifications 6309 and 2009.
3.	WAC 296-17A-6406 (retail only variety stores) and 296-17A-6411 (retail only stores selling smaller goods)	Reclassify the following subclassifications from classification 6309 to classification 6406: · 6406-01, Cameras · 6406-03, News and magazines · 6406-14, Wind and string musical instruments · 6406-19, Coins, stamps, and collector cards · 6406-20, Books, records, and videos · 6406-24, Smoke shops · 6406-25, Telephone · 6406-27, Stereo components.	· There is too much disparity in loss rates between stores currently assigned classification 6406. Reclassifying these subclassifications to a new lower rated classification makes our classification plan more equitable and is consistent with best practices for workers' compensation rating.
4.	WAC 296-17A-6407 (wholesale stores)	Include large stand-alone distribution centers operated by retail stores (classifications 6406 and 6411) in the wholesale store classification 6407.	· This activity is outside the scopes of classification 6406, and there would be more clarity to include it in a rule.

Reasons Supporting Proposal: Workers' compensation best practices for rating employers require classifications clearly distinguish between different types of work exposures to ensure employers' premiums are fair and reflect the actual degree of hazard.

Statutory Authority for Adoption: RCW 51.16.035.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Bredeson, Tumwater, Washington, (360) 902-4985; Implementation: Chris Bowe, Tuwmater, Washington, (360) 902-4826; and Enforcement: Victoria Kennedy, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Since the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.310 (4)(f) and do not change current coverage options for employers and workers, they are exempted from a small business economic impact statement.

A cost-benefit analysis is not required under RCW 34.05.328. Since the proposed rules do not change any existing coverage options for employers or workers, and adjust fees pursuant to legislative standards, they are exempted by RCW 34.05.328 (5)(b)(vi) from the requirement for a cost-benefit analysis.

August 23, 2016
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6309 Classification 6309. ((~~**6309-02 Stores: Gun—Wholesale or retail**~~

~~Applies to establishments engaged in the wholesale or retail sale of hand guns and rifles. Gun stores subject to this classification will routinely sell related goods such as, but not limited to, knives, archery supplies, ammunition, cleaning kits, targets, target launchers, ammunition belts and specialty clothing. It is common for gun stores to repair guns for their customers. This generally consists of replacing worn or malfunctioning parts that they have in inventory, or that are special ordered from the manufacturer. Gun stores are not generally involved in machining operations although some light machine work is contemplated by this classification. Gun stores in this classification can also make custom ordered guns. This term may be misleading in that a custom gun made by a gun store is simply the assembly of various components to produce the desired gun. Depending on the size and location of the store a related shooting range may be found on the premise. Whether the shooting range is operated in connection with the store operation or by an independent business unrelated to the gun store, it is to be reported separately in classification 6208. Establishments in classification 6309-02 are distinguishable from operations covered in classification 3402, in that gun stores subject to classification 6309 are not engaged in the manufacture of guns, which includes such operations as machining barrels, fabricating triggers, springs, bolts, levers, clips and handles, or in the mass assembly of gun components into finished goods.~~

~~***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.~~

6309-03 Stores: Bicycle—Wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of all types of bicycles. Bicycle stores subject to this classification will sell related goods such as, but not limited to, helmets, pumps, carrier racks, water bottles, shoes, trailers, child carriers, and specialty clothing. It is common for bicycle stores to assemble new bicycles as well as tune and repair bicycles for their customers. This generally consists of replacing worn or malfunctioning parts that they have in inventory or that are special ordered from the manufacturer. Bicycle stores subject to this classification will occasionally make a custom bicycle. This term may be misleading in that a custom bicycle may be nothing more than the assembly of various components to produce the desired bicycle, *or* it could be the actual cutting, bending, and welding of tube metal, or the cutting, rolling and heating of graphite reinforced plastic material. *Only* those custom bicycles that are assembled from components *manufactured by others* are to be reported in classification 6309 and *only* if such custom work is incidental to the primary sales of off the rack bicycles manufactured by others.

This classification excludes machining operations, frame welding, and establishments engaged in custom manufacturing or mass producing bicycles from nonfinished goods which are to be reported separately in the classification applicable to the bicycle frame material and process used to manufacture the finished units.

***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6309-06 Stores: Garden supply—Wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of homeowner type yard and garden tools, equipment, and supplies. Establishments subject to this classification will carry in their inventory and have available for immediate sale various garden tools and gloves, equipment, and supplies such as, but not limited to, rakes, shovels, post hole diggers (nonpower), hoes, wheel barrows, garden carts, edgers, weed wackers, lawn sprinklers, garden hose, lawn mowers, and chain saws. On a seasonal basis these establishments will routinely stock bags of various types of lawn, shrub and plant fertilizer, lawn seed, bags of potting soil, bags of beauty bark, flower bulbs, vegetable and flower seeds, and some bedding plants and small shrubs. This classification is distinguishable from nurseries in that nurseries sell plants, shrubs and trees that they have purchased from others or raised from seeds or cuttings, most of which are available for sale all year round. Nurseries typically sell soils and bark in bulk, but seldom sell lawn mowers, lawn tractors, edgers and similar items. Nurseries are further distinguishable from garden supply stores in that garden supply stores have a limited outside yard and are primarily composed of a store operation. Nurseries, on the other hand, have limited store operations and extensive yards where plants, shrubs, and trees are displayed and cared for, as well as extensive greenhouse operations. This classification also includes merchants who are engaged in the sale and/or hand packaging of agricultural seeds that have been processed by others.

This classification excludes the repair of tools and equipment sold which is to be reported separately in the classification applicable to the work being performed.

***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6309-07 Locksmiths

Applies to establishments engaged in servicing or repairing locksets. Establishments subject to this classification will have a small retail store where they sell new door locksets, repair customer locksets, rekey locksets, make duplicate keys, and sell home security items such as safes and alarm systems. In addition to store operations, this classification includes locksmith field work such as unlocking a car, removing a broken key from an ignition or door, and installing a replacement lockset in a door.

This classification excludes the installation of safes, new locksets, or dead bolt locks which is to be reported separately in classification 0607 and the installation of home security systems which is to be reported separately in classification 0608.

***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6309-08 Stores: Automobile, truck, motorcycle, or aircraft accessories or replacement parts—Wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of automobile, truck, motorcycle, or aircraft accessories or replacement parts. Most establishments subject to this classification carry a full line of parts ranging from batteries, wiper blades, ignition components, to engines, tires, and transmissions. However, this classification also applies to establishments that sell specialized product lines such as, but not limited to, batteries, electrical systems, or transmission parts. This classification covers only the store operation. Any vehicle, tire, or machine shop service is to be reported separately in the applicable repair or service classification. Care should be exercised when considering the assignment of this classification to an establishment engaged in vehicle service or repair as parts departments may be included in the service or repair classification. *Only* those vehicle service or repair establishments that have "full line" replacement parts stores are to be assigned to this classification and *only* when the classification that governs the repair or service permits, the parts department to be reported separately.

***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6309-09 Stores: Architectural and surveyor supplies—Wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of professional and technical measurement equipment used primarily by architects and surveyors. Products sold by establishments subject to this classification include, but are not limited to, plan holders, plotters, lettering sys-

tems, engineering software, CAD supplies, copiers and computer paper and films. This classification includes the *in-shop* servicing or repair of products sold, such as replacing or adjusting parts.

***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6309-11 Stores: Stained art glass - Wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of stained art glass supplies. Operations contemplated by this classification include the receipt of merchandise purchased from unrelated businesses, dealers, or manufacturers, warehousing, stocking of shelves, cashiering, offering craft classes to customers, and delivery of merchandise to customers. Items sold by establishments subject to this classification include, but are not limited to, lead and leaded glass, crafts, light fixtures, terrarium parts, lamp shade parts, kits for picture frames, mirrors, books on stained glass, small grinders, glass cutters and other tools for making stained glass items.

This classification excludes the manufacture of stained glass and the fabrication and assembly of stained art goods which is to be reported separately in classification 3503 and stores that sell craft-making goods or hobby supplies which are to be reported separately in classification 6309-21.

***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6309-12 Stores: Wood stove and accessories - Wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of wood stoves, pellet stoves, fireplace inserts, and accessories. The majority of stoves today are produced from cast iron or steel plate and may be finished with enamel or paint. Stove stores subject to this classification will sell related accessories such as, but not limited to, noncombustible hearths and irons, wood holders, pellet scoops, stovepipes, metal chimneys, decorative brass legs and brass handles and bags of pellets. Some wood stove dealers may sell both stoves and spas as their main product lines. Stores that sell both are to be reported separately in classification 6309-14. This classification includes the set-up of wood stoves and heaters which can be operated as part of a display area or showroom in the store when performed by employees of this business.

This classification excludes the installation and repair of wood stoves, furnaces, air conditioning units and vacuum cleaner systems which is to be reported separately in classification 0307; masonry work which is to be reported separately in classification 0302; and chimney cleaning which is to be reported separately in classification 4910.

***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6309-13 Stores: Hardware variety, N.O.C., specialty hardware or marine hardware - Wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of hardware related items. Operations contemplated by this classification include the receipt of merchandise purchased from unrelated business dealers or manufacturers, warehousing of inventory, stocking of shelves, cashiering, customer load out, assistance and delivery. Establishments subject to this classification cater to homeowners and, therefore, do not carry contractor quantities of products for sale. Hardware variety stores applicable to this classification are generally small retail stores (3,000 square feet or less). Hardware variety stores will have a wide assortment of products for sale ranging from paint and painting supplies, electrical and plumbing supplies, to hand or power tools, garden supplies, housewares, and hardware. For purposes of this classification the term "hardware" applies to nails, screws, bolts, hinges, staples, chain, and similar items. Classification 6309-13 is distinguishable from classification 2009 in that the quantity of products sold by hardware variety stores subject to classification 6309-13 is limited to homeowner quantities, the selection of product is limited, and they carry only a limited selection of lumber, if at all. Hardware variety stores may also carry seasonal plants. This classification also applies to specialty hardware or marine hardware stores.

This classification excludes hardware stores that sell lumber or building materials which are to be reported separately in classification 2009.

***Special notes*:** Care should be exercised when assigning classification 6309-13 to a business. All other store and nursery classifications are to be considered before this classification is assigned. It is common for a nursery to have a substantial inventory of hardware and tools, just as it is common for farm supply stores to sell similar products, yet these types of businesses are covered in alternative classifications.

***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6309-14 Stores: Hot tub or spa - Wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of hot tubs and spas. Most dealers subject to this classification have small store operations where a limited supply of spas and hot tubs are displayed. Some may have distribution centers where spas are shipped from the manufacturer and stored until delivered to a showroom or directly to a customer. The majority of spa units are portable and self-contained, which means the plumbing, pump, wiring, and controls are already in place and enclosed in the siding surrounding the tub. They are ready to use once the electricity is hooked up at the customer's site. The other type of spas are referred to as "shells," which are usually set in place in the ground, then the pump, plumbing, electrical wiring, and any surrounding rockery or structures built around it. Stores that sell spas and hot tubs also stock related items such as, but not limited to, spa or swimming pool chemicals and cleaners, brushes, replacement pumps and parts, filters, and spa accessories such as fragrances. Some may also sell other product lines such as swimming pool shells, wood or pellet stoves and related items such as, but not limited to, lawn furniture, bar-

~~becues, or water sports equipment. Operations contemplated by this classification include the receipt of tubs, spas, pools, pool liners, chemicals and other products from manufacturers or unrelated companies, stocking shelves, setting up displays, cashiering, delivery of products to customer locations, instruction on testing and maintaining pool waters, and incidental pump repair in the store; it does not contemplate the repair or service of pumps or pools at customer's location. Establishments that sell both wood stoves and spas are to be reported in this classification. This classification also applies to establishments that rent hot tubs and deliver them to, and pick them up from, the customer's location.~~

~~This classification excludes establishments that sell only accessories for tubs or pools which are to be reported separately in classification 6406; establishments engaged in the sale of wood or pellet stoves, but do not sell spas, which are to be reported separately in classification 6309-12; and establishments engaged in the manufacture or installation of hot tubs which are to be reported separately in the classification applicable to the work being performed.~~

~~***Special notes*:** Spa and hot tub dealers may be licensed contractors who build swimming or wading pools, in addition to the spas and hot tubs sold. Except for the in-store pump repair, all other electrical or plumbing installation or repair work, pump repair, landscaping, building of structures, pouring of concrete, and servicing of the pool waters are excluded from this classification and are to be reported separately in the classification applicable to the work being performed.~~

~~***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.~~

~~6309-15 Stores: Floor covering - Wholesale or retail~~

~~Applies to establishments engaged in the wholesale or retail sale of floor coverings. Establishments subject to this classification sell a variety of floor coverings and related items such as, but not limited to, sheet vinyl, floor tile, ceramic wall or countertop tile, wood parquet, floor or area rugs, carpeting, window coverings, bathroom and kitchen accessories, and supplies to install products. Other stores may specialize in only one or a few of these products. Floor covering stores generally consist of a store operation where samples of all product types are displayed. Merchandise is usually ordered from the factory or distributor per customer specifications; however some goods are kept in stock and are available for immediate sale. Operations contemplated by this classification include the receipt of merchandise purchased from unrelated businesses and manufacturers, stocking shelves, cashiering, estimating floor covering needs from plans, blue prints and customer measurements, ordering special floor coverings from distributors or manufacturers, and delivering the product to customers.~~

~~This classification excludes all installation work and the manufacture of any product sold by floor covering stores, which is to be reported separately in the applicable construction, installation, or manufacturing classification.~~

~~***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.~~

~~6309-16 Pawn shops~~

~~Applies to establishments engaged in loaning money to others in exchange for collateral of new or used merchandise such as, but not limited to, jewelry, video equipment, and computers. It is common for pawn shops to sell new and used merchandise they have taken as collateral for defaulted loans. Operations contemplated by this classification include receiving merchandise from others, stocking of shelves, and cashiering.~~

~~***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.~~

~~6309-17 Stores: Sporting goods - Wholesale or retail~~

~~Applies to establishments engaged in the wholesale or retail sale of a variety of sporting goods. Operations contemplated by this classification include the receipt of merchandise purchased from other unrelated businesses, dealers, or manufacturers, warehousing, stocking of shelves, cashiering, and delivery. For purposes of this classification the term "sporting goods" includes, but is not limited to, baseball gloves, bats, balls, fishing poles, tackle, reels, tennis racquets, bicycle helmets, exercise equipment, and specialty clothing and shoes. A store may carry equipment and related items for a number of sports, or specialize in a particular sport such as skiing or fishing.~~

~~This classification excludes *stores that specialize in selling bicycles* and related items such as tire pumps, water bottles, locks, shoes and clothing, which are to be reported separately in classification 6309-03, *and stores that specialize in selling guns* and related items such as ammunition, hunting supplies, archery equipment, targets, knives, and clothing which are to be reported separately in classification 6309-02.~~

~~***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.~~

~~6309-18 Stores: Paint and wallpaper - Wholesale or retail~~

~~Applies to establishments engaged in the wholesale or retail sale of paint and wallpaper supplies. Operations contemplated by this classification include the receipt of merchandise purchased from other unrelated businesses, dealers, or manufacturers, mixing paints and stains, warehousing, stocking of shelves, cashiering, and delivery of merchandise to customers. Establishments subject to this classification routinely offer pressure washer and spray units, and ladders for rent or sale which is included in this classification when such sales and rentals are conducted in connection with a paint and wallpaper store. This classification excludes establishments engaged in the rental of spray paint and pressure washer units which are to be reported separately in classification 1106.~~

~~***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.~~

6309-19 Stores: Sewing machines or vacuum cleaners - Wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of new or reconditioned sewing machines or vacuum cleaners. Operations contemplated by this classification include the receipt of merchandise purchased from other unrelated businesses, dealers, or manufacturers, warehousing, stocking of shelves, cashiering, demonstrating merchandise, providing instructions or sewing classes to customers, and in-store repair. This classification includes delivery of merchandise to customers and door-to-door sales personnel employed by the store. Sewing machine repair is generally limited and consists mainly of adjusting thread and stitch tensioners, aligning components (needle and foot), replacing electrical motor, lights and belts. Types of sewing machines include sergers, button holers, embroidery machines, and commercial machines such as those used by a tailor or an upholstery shop, but does not include industrial machines such as those used in feed and carpet mills.

This classification excludes fabric stores that may also sell sewing machines which are to be reported separately in classification 6406; and establishments engaged in the repair of industrial sewing machines which are to be reported separately in classification 3402 for shop operations and classification 0603 for field repairs. This classification excludes firms who employ only door-to-door sales personnel in this state which are to be reported in classification 6309-22.

***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6309-20 Stores: Custom framed art or U-frame - Wholesale or retail; Art galleries

Applies to establishments engaged in the wholesale or retail sale of custom framed art such as, but not limited to, posters and pictures. Operations contemplated by this classification include the receipt of merchandise purchased from other unrelated businesses, dealers, or manufacturers, warehousing, stocking of shelves, cashiering, cutting matte board, glass and frame material, assembling frames, mounting art, posters or pictures into custom made or premade frames and delivery of merchandise to customers. Custom frame manufacturing covered by this classification is distinguishable from other frame manufacturing covered in classifications 3404, 2909, and 3512 in that custom frame making contemplated in classification 6309-20 consists of cutting frame material purchased from others with a specialized saw and fastening the pieces together with a small air nailer or finish screws. Frame manufacturing operations in other classifications consist of extruding metal or plastic through dies to produce the desired frame material, or planing and molding the dimensional lumber to the desired appearance, cutting material in mass quantities, fastening frames together (mass production oriented) and boxing for shipment. U-frame operations consist of selling the various components such as, but not limited to, premade frames or precut unassembled frame kits, matte board, glass and prints to customers for customer assembly. This classification also includes establishments that operate art galleries, as the framing activities are similar.

***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6309-21 Stores: Hobby and craft - Wholesale or retail

Applies to establishments engaged in the wholesale or retail sale of hobby and craft supplies. Operations contemplated by this classification include the receipt of merchandise purchased from other unrelated businesses, dealers, or manufacturers, warehousing, stocking of shelves, cashiering, offering craft classes to customers, and delivery of merchandise to customers. Items sold by establishments subject to this classification include, but are not limited to, floral arrangement supplies, pottery supplies, art glass supplies, doll making supplies, jewelry components such as beads and wire, and artist supplies. It is common for establishments subject to this classification to also be involved in custom picture framing in connection with hobby or craft store operation.

This classification excludes the manufacture of hobby and craft goods which is to be reported separately in the classification applicable to the materials and processes and stores that specialize in the sale of stained art goods which are to be reported separately in classification 6309-11.

***Special note*:** Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6309-22 Sales personnel: Door-to-door

Applies to sales personnel engaged in door-to-door sales of merchandise. Typically these sales are done in the homes of the customer, often by individual appointment or at a party given by the host in the home. Types of merchandise include, but are not limited to, coffee, tea, or other grocery items, mops, brushes, carpets or other household furnishings, candles, vacuum cleaners, books and magazines. Duties contemplated by this classification include showing samples or brochures describing items for sale, demonstrating merchandise, completing paperwork for orders, and driving. Sales persons usually have the products shipped directly from a distributor to the consumer. This classification also contemplates door-to-door sales employees who may deliver the sold products or who sell directly from stock kept in their vehicle. Door-to-door sales personnel are considered workers of the company employing them unless they meet the criteria as specified in RCW 51.08.195.

This classification excludes establishments engaged in motor route distribution of telephone books, periodicals, or newspapers which are to be reported separately in classification 1101-14.

***Special note*:** Clerical and office employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.)) Wholesale or retail store operations primarily providing any combination of the following merchandise, supplies, or services:

- Art galleries;
- Bicycles;
- Door to door sales;
- Floor and countertop covering materials;

• Furniture kits, boxed;
• Guns;
• Hardware stores;
• Hot tubs and spas;
• Lawn and garden supplies, such as:
- Bags of potting soil, bark, compost;
- Hand tools;
- Powered and nonpowered mowers, edgers, aerators, weeders, and tillers;
- Seeds, bulbs, bedding plants, and small shrubs and trees;
- Specialized clothing;
- Hoses and sprinkler attachments;
- Wheelbarrows.
• Locksmiths dealing in products and services such as:
- Alarm systems;
- Duplicating keys;
- Field work such as unlocking cars, removing broken keys, and replacing lock sets;
- Locksets;
- Safes.
• Paint and wallpaper supplies;
• Parts for automobiles, trucks, motorcycles, and aircraft;
• Pawnshops (loan money in exchange for collateral; if loans are defaulted on, the collateral is stores' merchandise);
• Picture framing and u-frame shops;
• Sewing machines;
• Vacuum cleaners;
• Woodstoves;
• Stores primarily selling merchandise described by a store classification rated lower than **6309**, but also sell merchandise described by a store classification higher rated than **6309**;
• Stores otherwise entitled to classifications **6411** or **6406** that cannot, or do not, track and report worker hours for delivery, assembling merchandise, or in-store repair work separately.

Store operations include:
• Assembly of store merchandise at store location;
• Cashiering;
• Delivery;
• In store repair and adjustment of items sold in classification **6309**, except for power tools and machinery specific to lawn and shop work, or motorized vehicles;
• Instructional classes;
• Inventory work by store employees;
• Merchandising and stocking of store;
• Parts and batteries for products included in class **6309**;
• Receiving and returning merchandise at store's loading ramp;
• Renting items normally sold in classification **6309**;
• All sales work inside store;
• Store security and surveillance.

Classification 6309 excludes:
• Manufacturing, fabrication, welding, and machining operations;
• Repair of powered tools, machinery, or equipment;
• Stores primarily selling merchandise described by a classification higher rated than **6309,** which are assigned the classification that best represents their inventory;
• Outside repair work, other than by locksmiths;
• Outside installation work, other than replacement lock kits;
• Target or shooting ranges which are to be reported separately in classification **6208**;
• Stores that also sell lumber and other building structure materials such as sheet rock, sheet metal, roofing material, insulation, or concrete, which are to be reported in classification **2009**;
• Stores primarily selling:
- Electrical supplies;
- Farm supplies;
- Plumbing, irrigation, HVAC, or piping supplies
which are classified in **2009.**
• Stores primarily selling plants, shrubs, and trees - See classifications **4805-00**, *Nurseries*, N.O.C., and **4809**, Greenhouses;
• Stores primarily selling glass or window products, which are classified in **1108**.

For administrative purposes, classification **6309** is divided into the following subclassification(s):

6309-03 Bicycle or gun stores
6309-06 Yard and garden supply stores
6309-07 Locksmiths
6309-08 Parts stores for automobiles, trucks, motorcycles, or aircraft
6309-13 Hardware stores
6309-14 Hot tubs, spas, and woodstove stores
6309-15 Floor covering materials and supplies stores
6309-16 Pawn shops
6309-18 Paint and wallpaper and supplies stores
6309-19 Sewing machine and vacuum cleaner stores
6309-20 Art galleries, custom picture framing, and u-frame shops
6309-22 Door to door sales
6309-23 Stores included in 6309, but not described by another subclassification (N.O.C)

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 13-08-063, filed 4/1/13, effective 1/1/14)

WAC 296-17A-6406 Classification 6406. ((~~This classification applies to specialty retail store operations engaged primarily in the sale of a wide variety of products ranging from collectibles such as stamps, coins, sports cards, and dolls to table top appliances such as portable televisions, blenders, mixers and toasters. This classification is comprised of subclassifications that cover a specific type of retail store operation. One of the subclassifications applies to the sale of products which are not covered by another classification. Although the products sold by establishments subject to this classification will vary by each subclassification, the overall operational activities are similar. Each business covered by this classification will generally employ cashiers and~~

merchandise stockers, as well as other occupations of workers.

***Special note*:** This classification excludes all repair operations unless it is specifically included in the classification, delivery service, outside installation work, and lunch counters and restaurants which are to be reported separately in the classification applicable to the work or service being performed.

Clerical office and outside sales employees may be reported separately provided all the conditions of the general reporting rules covering standard exception employees have been met.

6406-00 Retail stores, N.O.C.

Applies to establishments engaged in the retail sale of merchandise or services not covered by another classification (N.O.C.). Merchandise includes, but is not limited to, greeting cards, costume jewelry, scarves, tropical fish and birds and related fish or bird supplies, table top appliances such as mixers, blenders, microwave ovens, or table top satellite receiving units, copy or fax services and related specialty items or services. This classification also applies to establishments that provide inventory services for other businesses.

This classification excludes pet stores that sell dogs or cats and establishments engaged in pet grooming services which are to be reported separately in classification 7308; pet food stores which are to be reported separately in classification 6403; and offset, cold press and similar printing operations which are to be reported separately in classification 4101.

***Special note*:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-01 Stores: Camera or photography supply - Retail

Applies to establishments engaged in the retail sale of cameras and photography and dark room supplies such as, but not limited to, batteries, film, processing trays, chemicals, print paper, enlargers, and timers. It is common for these establishments to offer film developing services which may be either a one-hour service or an overnight process. Both types of film developing services are included in this classification when conducted in connection with a camera and photography supply store. This classification is distinguishable from classification 6506 in that establishments covered in classification 6506 are not engaged in the sale of cameras or photo developing equipment.

***Special note*:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-03 News and magazine stands - Retail

Applies to establishments engaged in the retail sale of newspapers and magazines. Establishments subject to this classification may sell newspapers or magazines from various locations such as, but not limited to, stands at public markets, store operations in malls, or from a street corner.

***Special note*:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-09 Arcades: Coin or token operated

Applies to establishments engaged in operating coin- or token-operated arcades. This classification covers attendants, change makers, and security personnel who monitor the game rooms and make change. Attendants may remove tokens and money from machines and may perform minor adjustments such as resetting a jarred machine.

This classification excludes the installation, removal or repair of machines which is to be reported separately in classification 0606.

***Special note*:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-11 Stores: Office stationery and machinery - Retail

Applies to establishments engaged in the retail sale of office stationery, supplies, and/or machinery. For purposes of this classification "office stationery and supplies" includes, but is not limited to, paper, writing tablets, computer software, pens, pencils, markers, staples, staplers, scissors, paper clips, and binders. "Office machinery or business machinery" includes, but is not limited to, calculators, typewriters, various types of copy machines, fax machines, and desk top and lap top computers.

This classification excludes service and repair of office/business machines which is to be reported separately in classification 4107 and establishments engaged in sale of office furniture which are to be reported separately in classification 6306.

***Special note*:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-12 Stores: Fabric, yardage, yarn and needlework supplies - Retail

Applies to establishments engaged in the retail sale of fabric, yardage, yarn and needlework supplies. It is common for establishments subject to this classification to have a small inventory of noncommercial/industrial sewing machines and sergers for sale in addition to fabric, sewing notions, patterns, and related supplies. Fabric and yarn stores may also offer sewing and craft classes which are included in this classification when taught by employees of an employer subject to this classification. This classification is distinguishable from sewing machine stores in classification 6309 in that the principle products sold in classification 6406 are fabric and sewing notions while sewing machine stores are not engaged in the sale of fabric or yardage.

***Special note*:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-14 Stores: Wind or string musical instruments - Retail

Applies to establishments engaged in the retail sale of musical instruments such as, but not limited to, drums, wind instruments, guitars, and banjos. This classification includes music lessons when provided by employees of an employer subject to this classification and includes minor adjustment services such as replacing a drum skin or a broken string on a guitar.

This classification excludes the repair of wind and string musical instruments which is to be reported separately in the applicable repair classification; establishments engaged in the repair of pianos which are to be reported separately in classification 2906; and establishments engaged in the sale of pianos and organs which are to be reported separately in classification 6306.

***Special notes*:** Classification 6406 does not apply to any establishments that sell pianos or organs in addition to wind or string instruments. Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-16 Stores: Drug - Retail

Applies to establishments engaged in the retail sale of prescription and nonprescription drugs and/or nutritional supplements such as, but not limited to, vitamins, herbal compounds, and energy bars. Drug stores subject to this classification may also carry a variety of personal care and grooming products and may rent crutches, canes, wheel chairs, and walkers.

This classification excludes establishments engaged in the sale and/or rental of hospital beds, motorized wheel chairs, and other patient appliances which are to be reported separately in classification 6306, and establishments engaged in the sale/rental and service (repair) of motorized mobility aids such as wheelchairs and 3-wheel scooters which are to be reported separately in classification 3309.

***Special note*:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-17 Stores: Variety - Retail

Applies to establishments engaged in the retail sale of a variety of consumer goods such as, but not limited to, housewares, linens, clothing, toys, and candy. In earlier years establishments subject to this classification were often referred to as "5 and 10 cent stores." Although these stores carry much of the same merchandise as a department store, they are distinguishable in that variety stores are not comprised of specialized departments and do not generally carry the quantity/assortment of products that department stores do.

***Special note*:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-18 Private mail box; safety deposit box; computer tape storage facilities - Rent or lease

Applies to establishments engaged in renting or leasing private mail boxes, safety deposit boxes, or computer and financial record storage facilities. Establishments subject to this classification will operate a secured facility where they receive and sort their customers' mail, parcels and packages from the U.S. Post Office or other parcel/package delivery companies, and package articles for shipment for their customers. They also provide a secured storage facility equipped with safety deposit boxes which they rent out on a short or long term basis. It is common for these establishments to offer additional services such as fax, and copying services.

***Special note*:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-19 Stores: Coins, stamps, baseball cards, and comic books - Retail

Applies to establishments engaged in the retail sale of coins, stamps, baseball cards, comic books, and similar collectibles. Establishments subject to this classification may be engaged exclusively in mail order sales, sell from browse tables at collectible or trade shows, through specialty auctions, or may sell from a store location. Coin and stamp stores routinely sell magazines, periodicals, and supplies that cater to collections or hobbies. Card shops routinely sell other sports memorabilia such as autographed baseballs, footballs and basketballs, framed pictures, POGS and buttons.

***Special note*:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-20 Stores: Book, record, cassette, compact disc, and video - Retail

Applies to establishments engaged in the retail sale or rental of new or used books, records, cassettes, compact discs or videos. Establishments subject to this classification may be engaged exclusively in mail order sales, sell from browse tables or trade shows, through specialty auctions or may sell from a store location.

***Special note*:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-23 Stores: Candy - Retail

Applies to establishments engaged in the retail sale of packaged and unpackaged candy they have purchased from others.

This classification excludes establishments engaged in the on-premise manufacture of candy and the subsequent retail sale of these products which are to be reported separately in classification 3905; and establishments engaged in the manufacture of candy or confections for wholesale to retail establishments or distributors which are to be reported separately in classification 3906.

***Special note*:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-24 Stores: Cigarette and tobacco - Retail

Applies to establishments engaged in the retail sale of cigarettes, tobacco, and related products such as, but not limited to, pipes, pipe cleaning supplies, rolling machines, cigarette papers, lighters, lighter fluid, and cigarette cases.

***Special note*:** Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-25 Stores: Telephones - Retail

Applies to establishments engaged in the retail sale of telephones, pagers, and cell phones. Establishments subject to this classification are not a utility company in that they do not operate telephone exchanges and are not regulated by the utilities and transportation commission of Washington. Their

operations are limited to the sale of communication hardware. Stores subject to this classification may arrange activation and service for their customer, or the customer may contact the service provider directly.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-27 Stores: Stereo components - Retail

Applies to establishments engaged in the retail sale of stereo components. Establishments subject to this classification will sell a variety of audio and video appliances such as, but not limited to, video players, stereos and portable televisions. These establishments may also sell and install automobile stereo speaker systems and car phone systems; however, the installation is not covered in classification 6406-27.

This classification excludes the installation, service or repair of home or car stereos and car phone systems which are to be reported separately in classification 0607, and establishments engaged in the sale of stereo and television console sets, big screen televisions, or other major appliances which are to be reported separately in classification 6306.

Special note: Classification 6306 applies to any establishment that sells TV console sets or big screen TVs, even if the majority of their inventory is stereo components and/or portable TVs. Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-29 Stores: Toys - Retail

Applies to establishments engaged in the retail sale of a variety of toys, games, and related items for persons of all ages. Merchandise includes, but is not limited to, video games, tricycles or bicycles, books, dolls and stuffed animals, outdoor play equipment, and specialty clothing.

This classification excludes establishments engaged in the retail sale of sporting goods and bicycles which are to be reported separately in classification 6309. This classification is distinguishable from businesses in classification 6309 in that the principle products of stores subject to classification 6406 are toys and games, as compared to stores in classification 6309 which are primarily engaged in the sales of sporting goods and bicycles.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-30 Stores: Cosmetics - Retail

Applies to establishments engaged in the retail sale of cosmetics and fragrances. Related services usually offered by these types of stores include consultations with clients regarding make-up techniques, styles, and colors.

This classification excludes hair and nail salons which are to be reported separately in classification 6501.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-31 Stores: Housewares - Retail

Applies to establishments engaged in the retail sale of housewares such as, but not limited to, pots and pans, flatware, dishes, towels, canister sets, soap dishes, towel bars, waste baskets, plant stands, and curtains or draperies.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-33 Stores: Gift shops, N.O.C. - Retail

Applies to establishments engaged in the retail sale of gift items not covered by another classification (N.O.C.) such as, but not limited to, crystal and silver serving pieces, china, cut glass, picture frames, wedding and shower books and invitations, special occasion cards, decorative statues, boxed candy, and ornaments. This merchandise tends to be of a finer selection than the everyday wares common in variety shops.

Special note: Refer to classification 6406 general description at the beginning of this rule for operations excluded from this classification.

6406-40 Retail product demonstrators

Applies to workers who show and explain, but do not sell, specific products in a retail setting. Product demonstrators can work in a variety of locations, such as stores, fairs, and exhibition sites. The classification includes associated administrative duties, set up and break down of a demonstration display space, preparing and setting out products to demonstrate, providing samples without charge, and cleaning up. This classification allows the use of kitchen appliances and utensils to prepare food samples, and the use of nonpowered hand tools and battery-powered screwdrivers to assemble and disassemble displays and products packaged for end-user assembly. Workers reported in this classification can have no duties during their work shift other than those permitted for product demonstrators.

This classification excludes:

• Stocking shelves;

• Selling;

• Setting up product displays intended to remain after the product demonstration;

• Delivery;

• Demonstrating machinery or equipment;

Special note: This is a special exception classification that is only applicable to manufacturers, wholesalers, and businesses specializing in providing product demonstrators and their services to others.

• Product demonstrators employed by a retail store, are to be reported under the store's basic classification;

• Product demonstrators employed by a temporary help service, are to be reported in classification 7106.)) Retail store operations primarily providing any combination of the following merchandise, supplies, or services:

• Architect and surveyor supplies;

• Athletic outfits, team uniforms and other specialty clothing;

• Blenders, food processors, juicers, microwaves, toasters, portable ovens, and other countertop appliances;

• Candy stores;

• Cleaning supplies;

• Copy services;

• Desktop computers;

• Game arcades;

• Hobby and craft supplies;

• Inventory services;
• Luggage;
• Mail and safety deposit box services;
• Office and school supplies;
• Office equipment, including:
- Copy machines;
- Fax machines;
- Printers.
• Pets (other than cats and dogs) and pet supplies;
• Picture frames;
• Pots, pans, bowls, dishes, eating utensils, and all other kitchenware products;
• Prescription and nonprescription drugs;
• Souvenirs, knickknacks, candles, ornaments, and novelties;
• Sporting goods, including:
- All types of sports equipment;
- Archery supplies;
- Bicycles and accessories;
- Camping supplies;
- Children's pools;
- Fishing gear;
- Guns, ammunition, and accessories;
- Knives;
• Motorized toy vehicles meant to carry a child.
• Stained glass supplies;
• Unfinished fabric, thread, and yarn, and other sewing supplies;
• Store demonstrator services.

***Notes*:** Stores selling a combination of merchandise and/or services found in store classifications **6406** and **6411** are classified **6406**. Stores primarily selling merchandise included in classifications **6406** and **6411**, but also selling groceries and/or merchandise normally found in classification **6309**, are classified **6406**. Stores primarily selling merchandise included in classification **6406**, but also selling goods described by a store classification rated higher than classification **6309**, are classified **6309.**

Classification 6406 includes:
• Assembling merchandise from prepackaged kits for display and/or sale;
• Cashiering;
• Classes for customers;
• Cleaning and maintenance of store, storage areas, and associated business offices;
• Inventory work by store employees;
• Parts and batteries for products included in classification **6406**;
• Packaging, addressing, and mailing articles for shipment;
• Receiving and returning merchandise at store's loading ramp;
• Renting items normally sold in classification **6406**;
• Sales work inside store;
• Store security and surveillance;
• Stocking.

Classification 6406 excludes:
• Workers assembling products for sale, when these products are not purchased and sold as a kit. Assembling goods from component parts that do not come as a kit, is reported separately in the applicable manufacturing classification;
• Delivery drivers who are to be reported separately in classification **1101**;
• Door to door sales, reported separately in subclassification **6309-22**;
• Stores primarily selling merchandise described by a higher rated store classification, which are assigned the classification that best represents their inventory;
• Stores primarily selling merchandise included in classification **6406**, but also merchandise described by a store classification higher rated than **6309**, such as:
- Large appliances;
- Automobiles or boats;
- Antique variety;
- Furniture;
- Tires;
- Motorized exercise equipment or machines;
- Meat cutting/packaging;
- Pianos and/or organs;
- Large entertainment systems and televisions;
- Secondhand or used variety store type merchandise.

***Note*:** Stores primarily selling merchandise included in classification **6406**, but also selling goods described by a classification rated higher than classification **6309** are classified **6309**.
• Stand-alone distribution centers or warehouses which are reported in classification **6407**;
• Any repair or installation work;
• Workers installing, servicing, and/or stocking vending equipment, which are reported separately in **0606**;
• Coffee, snack, lunch counters or any on-site food preparation which are reported separately in classification **3905**;
• Stores with wholesale operations, reported in classification **6407**.
High volume warehouse and distribution facilities which are reported separately in classification **6407**.
For administrative purposes, classification **6406** is divided into the following subclassification(s):

6406-00 Retail sales and inventory services, N.O.C
This subclassification differs from **6406-17** in that the stores in this subclassification will be specialized and have inventories around themes such as "pet supplies," "sporting goods," or "gifts."
Excludes:
• Stores selling cats or dogs, reported in classification **7308**;
• Stores that *specialize* in selling bicycles or guns, which are reported in classification **6309**;
• Pet grooming, reported separately in classification **7308**;
• Pet food stores, which are reported in classification **6403**;
• Installation, removal, or repair of arcade equipment, reported separately in classification **0606**.

6406-11 Desktop computers, school and office supplies and equipment stores

Excludes:

• Worker hours repairing computers and other office equipment, which is to be reported separately in classification **4107**;

• Stores selling office furniture, which are reported separately in classification **6306**.

6406-12 Crafts, hobbies, fabric, yarn, and sewing supplies stores

Excludes:

• Worker hours for custom framing, which are reported separately in subclassification **6309-20**;

• Stores primarily selling sewing machines and vacuum cleaners, which are reported in **6309-19**.

6406-16 Pharmacies, supplements and drug stores

Excludes:

Sale and/or rental of hospital beds, motorized wheel chairs or mobility aids, and other patient appliances, which are reported separately in classification **6306**.

6406-17 Variety and general stores

This subclassification differs from **6406-00** in that the stores in this subclassification tend to be larger and less specialized.

6406-18 Private mail, safe deposit box, and copy services

6406-23 Candy stores

Excludes:

• Manufacturing and retail sales of candy or confection at store site, which is classified in **3905**;

• Manufacturing candy or confection away from the store site, which is reported separately in classification **3906**.

6406-29 Toy stores

Excludes:

Small specialty toy stores with inventory limited to smaller items, such as playing cards, puzzles, games, blocks, small dolls, and other hand toys, which is classified **6411**.

6406-40 Retail product demonstrator services

This special exception classification applies only to manufacturers, wholesalers, and businesses specializing in providing product demonstrators and their services to others. Workers reported in this classification can have no duties during their work shift other than those permitted for product demonstrators.

The classification includes:

• Set up and break down of a demonstration display space;

• Providing samples without charge;

• Use of kitchen appliances and utensils to prepare food samples;

• Use of nonpowered hand tools and battery-powered screwdrivers to assemble and disassemble displays.

This classification excludes:

• Stocking shelves;

• Selling;

• Setting up product displays intended to remain after the product demonstration;

• Delivery;

• Demonstrating machinery or equipment.

Product demonstrators employed by a retail store are to be reported under the store's basic classification; product demonstrators employed by a temporary help service are to be reported in classification **7106**.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6407 Classification 6407.

6407-00 Wholesale stores, N.O.C. - Including combined wholesale and retail store operations

Applies to establishments engaged in the wholesale, or combined wholesale and retail sales of merchandise that is not covered by another classification (N.O.C.). Establishments subject to classification 6407 usually own the merchandise they sell, but may also be marketing goods on consignment, in which case classification 6407 still applies because the exposure and processes are the same. This classification is primarily the wholesale counterpart (supplier) for establishments assigned to retail store classification 6304, 6305 ((~~and~~)), 6406, and 6411.

Classification 6407 also applies to retail stores with high volume warehouse and distribution facilities without the normal exposures associated with a retail store.

Work contemplated by classification 6407 includes, but is not limited to, maintaining warehouse inventories, sorting and grading goods, and breaking down bulk quantities to repackage into smaller lots. Equipment typically used includes, but is not limited to((~~,~~)):

• Balers to bind merchandise into bundles((~~,~~));

• Strapping equipment to secure palletized goods((~~,~~));

• Forklifts((~~,~~)); and

• Hand tools.

This classification excludes:

• Delivery which is to be reported separately in classification 1101;

• Large high volume sales operations where retail customers select and carry out the goods they purchase, which are reported in the classification applicable to the merchandise sold.

***Special notes*:** When assigning classification 6407, care must be exercised to look beyond the words "wholesale" or "retail." The manufacturer of a product will also "wholesale" their merchandise (or a combination of their own merchandise and finished products bought from other manufacturers) to a customer. These sales are an integral part of the manufacturing/marketing process and is an inclusion in the manufacturing classification. Establishments that buy goods, such as clothing or cloth goods, in wholesale quantities, then screen print or embroider them for resale are performing manufacturing operations and are to be reported separately in the appropriate manufacturing classification.

Warehouse operations in classification 2102, with the exception of grocery dealers, do not own the product they are warehousing and are not in the business of selling the goods

they store. Businesses in classification 6407 may operate a warehouse, but only as an integral part of the wholesaling/distribution process, which is included in classification 6407.

NEW SECTION

WAC 296-17A-6411 Classification 6411. Retail store operations limited to providing any combination of the following merchandise, supplies, or services:

• All types of phones;
• Beads;
• Books, newspapers, magazines, and comic books;
• Cameras;
• Cards (greeting, post, and sports);
• Cosmetics and fragrances;
• Laptops, electronic notebooks and pads, and other small electronic devices;
• Musical instruments (string, wood, brass, wind, and percussion);
• Photography and darkroom supplies;
• Records, music discs, tapes, videos, video games, and software disks;
• Small or portable entertainment players (or parts of player), radios, for homes, offices, or automobiles;
• Smoking accessories and tobacco products;
• Vaporizers and e-liquids;
• Other smaller items, such as playing cards, cups, calendars, puzzles, games, costume jewelry, cosmetics, pencils, pens, notebooks, etc.

***Note*:** Stores in classification **6411** may also carry inventory listed in the scopes language of lower rated store risk classifications, along with the goods listed below, as long as the majority of the merchandise is described by the above list.

Classification 6411 includes:

• Cashiering;
• Cleaning and maintenance of store, storage areas, and associated business offices when performed by store employees;
• Inventory work by store employees;
• Sales of already-prepared snacks, and beverages (for off-site consumption), and/or promotional clothing;
• Parts and batteries for products included in classification **6411**;
• Receiving and returning merchandise at store's loading area;
• Renting items normally sold in classification **6411**;
• Sales work inside store;
• Store security and surveillance;
• Stocking.

Classification 6411 excludes:

• Stores selling merchandise described by a higher rated store classification;
• Delivery drivers who are reported separately in classification **1101**;
• Door to door sales, which are reported separately in subclassification **6309-22**;
• Stores using pallet jacks, fork lifts, conveyors, or other mechanized means of moving merchandise into and within store premises, which are classified in **6406** when merchandise is described by classification **6411** and/or classification **6406**;
• Stand-alone distribution centers or warehouses which are to be reported separately in classification **6407**;
• Repair or installation work, which must be reported separately;
• Sales of pets; see classifications **6406** and **7308**;
• Working at coffee stands, lunch counters, or any on-site food preparation or manufacturing of candy, where employees hours are to be reported separately in classification **3905**;
• Employees doing custom framing; see classifications **6406** and **6309**;
• Product demonstration services which are to be reported in subclassification **6406-40**;
• Businesses providing inventory services which are to be reported in subclassification **6406-00**;
• Wholesales, reported in classification **6407**;
• High volume warehouse and distribution facilities which are reported separately in classification **6407**.

For administrative purposes, classification **6411** is divided into the following retail store subclassification(s):

6411-00 Stores meeting the criteria for classification 6411, but not specifically described in any other subclassification. N.O.C.

6411-14 Wind, string, brass, and percussion musical instruments

Includes hand held keyboards and music instruction.

Excludes:

• Stores selling pianos and organs, see classifications **6406**, **6309**, and **6306**;
• Repair of instruments, which is reported separately in classification **2906** or **3602**; (if more than one is applicable, assign only the highest rated classification for all repair).

6411-19 Coin, stamp, rare metals, and collectible cards

6411-20 Book, videos, electronic games, newspapers, magazines, and comic books

Excludes establishments with coin or token arcades, to be reported in subclassification **6406-00**.

6411-24 Tobacco and marijuana products, vaporizers and liquids, and smoking accessories

Excludes:

• Medicinal marijuana dispensaries; see classification **6406**;
• Retail stores primarily selling marijuana infused grocery items or marijuana, see classification **6304**;
• Retail bakeries selling a variety of baked goods infused with marijuana; see subclassification **3901-00**.

6411-25 Phones, cameras, electronic tablets, laptops, and notebooks, GPS displays, small stereo components and other small portable electronic devices, N.O.C.

Includes stores and kiosks selling and/or arranging DSL, cable, or dish services for phones, computers, televisions and other devices.

Excludes:

• Stores selling office or school supplies, reported in subclassification **6406-11**;

• Stores selling furniture or furniture kits; see classification **6406**, **6309,** or **6306**;

• Stores providing photo development and printing, see classification **6406** or **6506**;

• Workers performing repair work, which is to be reported separately in classification **3602**.

WSR 16-17-130
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed August 23, 2016, 12:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-14-087.

Title of Rule and Other Identifying Information: Fee increase to electrical rules, chapter 296-46B WAC, Electrical safety standards, administration, and installation.

Hearing Location(s): Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501 (for directions to the L&I office http://www.lni.wa.gov/Main/ContactInfo/OfficeLocations/), on September 30, 2016, at 9:00 a.m.

Date of Intended Adoption: November 22, 2016.

Submit Written Comments to: Alicia Curry, P.O. Box 44400, Olympia, WA 98504-4400, e-mail Alicia.Curry@Lni.wa.gov, fax (360) 902-5292, by 5 p.m. on September 30, 2016.

Assistance for Persons with Disabilities: Contact Alicia Curry, management analyst, by September 15, 2016, at (360) 902-6244 or e-mail Alicia.Curry@Lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The electrical program is proposing amendments to chapter 296-46B WAC, Electrical safety standards, administration, and installation, to increase fees by the fiscal-growth factor of 4.32 percent for fiscal year 2017 (within the allowable fiscal growth rate established by the office of financial management).

Reasons Supporting Proposal: The electrical program's budget and projected revenue were evaluated and the 4.32 percent fee increase is necessary to support the program's operating expenses and to maintain services for customers.

For more information on this rule making, visit the L&I web site at http://www.lni.wa.gov/TradesLicensing/Electrical/LawRulePol/RuleDev/default.asp or contact the individual below. Interested parties can sign up for e-mail updates at http://www.lni.wa.gov/Main/Listservs/Electrical.asp.

Statutory Authority for Adoption: Chapter 19.28 RCW, Electricians and electrical installations.

Statute Being Implemented: Chapter 19.28 RCW, Electricians and electrical installations.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: José Rodriguez, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes to chapter 296-46B WAC generates probable benefits that exceed probable costs; moreover, the probable imposed costs are believed to be no more than minor cost to businesses. As such, the department is exempt from conducting a small business economic impact statement for this rule making.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Alicia Curry, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6244, fax (360) 902-5292, e-mail Alicia.Curry@Lni.wa.gov.

August 23, 2016
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-906 Inspection fees. To calculate inspection fees, the amperage is based on the conductor ampacity or the overcurrent device rating. The total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) of this section, PROGRESS INSPECTIONS.

The amount of the fee due is calculated based on the fee effective at the date of a department assessed fee (e.g., plan review or fee due) or when the electrical permit is purchased.

(1) **Residential.**

(a) **Single- and two-family residential (New Construction).**

Notes:
(1) Square footage is the area included within the surrounding exterior walls of a building exclusive of any interior courts. (This includes any floor area in an attached garage, basement, or unfinished living space.)
(2) "Inspected with the service" means that a separate service inspection fee is included on the same electrical work permit.
(3) "Inspected at the same time" means all wiring is to be ready for inspection during the initial inspection trip.
(4) An "outbuilding" is a structure that serves a direct accessory function to the residence, such as a pump house or storage building. Outbuilding does not include buildings used for commercial type occupancies or additional dwelling occupancies.

(i) First 1300 sq. ft.	$((~~90.30~~)) 94.20
Each additional 500 sq. ft. or portion of	$((~~28.90~~)) 30.10
(ii) Each outbuilding or detached garage - Inspected at the same time as a dwelling unit on the property	$((~~37.60~~)) 39.20
(iii) Each outbuilding or detached garage - Inspected separately	$((~~59.50~~)) 62.00
(iv) Each swimming pool - Inspected with the service	$((~~59.50~~)) 62.00
(v) Each swimming pool - Inspected separately	$((~~90.30~~)) 94.20
(vi) Each hot tub, spa, or sauna - Inspected with the service	$((~~37.60~~)) 39.20

(vii) Each hot tub, spa, or sauna - Inspected separately	$((~~59.50~~)) 62.00
(viii) Each septic pumping system - Inspected with the service	$((~~37.60~~)) 39.20
(ix) Each septic pumping system - Inspected separately	$((~~59.50~~)) 62.00

(b) **Multifamily residential and miscellaneous residential structures, services and feeders (New Construction).**

Each service and/or feeder

Ampacity	Service/Feeder	Additional Feeder
0 to 200	$((~~97.40~~)) 101.60	$((~~28.90~~)) 30.10
201 to 400	$((~~121.10~~)) 126.30	$((~~59.50~~)) 62.00
401 to 600	$((~~166.40~~)) 173.50	$((~~82.80~~)) 86.30
601 to 800	$((~~213.50~~)) 222.70	$((~~113.70~~)) 118.60
801 and over	$((~~304.50~~)) 317.60	$((~~228.40~~)) 238.20

(c) **Single or multifamily altered services or feeders including circuits.**

(i) Each altered service and/or altered feeder

Ampacity	Service/Feeder
0 to 200	$((~~82.80~~)) 86.30
201 to 600	$((~~121.10~~)) 126.30
601 and over	$((~~182.60~~)) 190.40

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder)	$((~~44.80~~)) 46.70

(d) **Single or multifamily residential circuits only (no service inspection).**

Note:
Altered or added circuit fees are calculated per panelboard. Total cost of the alterations in an individual panel should not exceed the cost of a complete altered service or feeder of the same rating, as shown in subsection (1) RESIDENTIAL (c) (table) of this section.

(i) 1 to 4 circuits (see note above)	$((~~59.50~~)) 62.00
(ii) Each additional circuit (see note above)	$((~~6.40~~)) 6.60

(e) **Mobile homes, modular homes, mobile home parks, and RV parks.**

(i) Mobile home or modular home service or feeder only	$((~~59.50~~)) 62.00
(ii) Mobile home service and feeder	$((~~97.40~~)) 101.60

(f) **Mobile home park sites and RV park sites.**

Note:
For master service installations, see subsection (2) COMMERCIAL/INDUSTRIAL of this section.

(i) First site service or site feeder	$((~~59.50~~)) 62.00
(ii) Each additional site service; or additional site feeder inspected at the same time as the first service or feeder	$((~~37.60~~)) 39.20

(2) **Commercial/industrial.**

(a) **New service or feeder, and additional new feeders inspected at the same time (includes circuits).**

Note:
For large COMMERCIAL/INDUSTRIAL projects that include multiple feeders, "inspected at the same time" can be interpreted to include additional inspection trips for a single project. The additional inspections must be for electrical work specified on the permit at the time of purchase. The permit fee for such projects must be calculated using this section. However, the total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) PROGRESS INSPECTIONS of this section.

Ampacity	Service/Feeder	Additional Feeder
0 to 100	$((~~97.40~~)) 101.60	$((~~59.50~~)) 62.00
101 to 200	$((~~118.60~~)) 123.70	$((~~75.80~~)) 79.00
201 to 400	$((~~228.40~~)) 238.20	$((~~90.30~~)) 94.20
401 to 600	$((~~266.20~~)) 277.60	$((~~106.30~~)) 110.80
601 to 800	$((~~344.30~~)) 359.10	$((~~144.80~~)) 151.00
801 to 1000	$((~~420.30~~)) 438.40	$((~~175.20~~)) 182.70
1001 and over	$((~~458.50~~)) 478.30	$((~~244.50~~)) 255.00

(b) **Altered services/feeders (no circuits).**

(i) Service/feeder

Ampacity	Service/Feeder
0 to 200	$((~~97.40~~)) 101.60
201 to 600	$((~~228.40~~)) 238.20
601 to 1000	$((~~344.30~~)) 359.10
1001 and over	$((~~382.40~~)) 398.90

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder)	$((~~82.80~~)) 86.30

(c) **Circuits only.**

Note:
Altered/added circuit fees are calculated per panelboard. Total cost of the alterations in a panel (or panels) should not exceed the cost of a new feeder (or feeders) of the same rating, as shown in subsection (2) COMMERCIAL/INDUSTRIAL (2)(a)(table) above.

(i) First 5 circuits per branch circuit panel	$((~~75.80~~)) 79.00
(ii) Each additional circuit per branch circuit panel	$((~~6.40~~)) 6.60
(d) **Over 600 volts surcharge per permit.**	$((~~75.80~~)) 79.00

(3) **Temporary service(s).**

Notes:
(1) See WAC 296-46B-590 for information about temporary installations.
(2) Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections will be the greater of the fee from this subsection or the portal-to-portal fee.

Temporary services, temporary stage or concert productions.

Ampacity	Service/Feeder	Additional Feeder
0 to 60	$((~~52.10~~)) 54.30	$((~~26.70~~)) 27.80
61 to 100	$((~~59.50~~)) 62.00	$((~~28.90~~)) 30.10
101 to 200	$((~~75.80~~)) 79.00	$((~~37.60~~)) 39.20
201 to 400	$((~~90.30~~)) 94.20	$((~~44.90~~)) 46.80
401 to 600	$((~~121.10~~)) 126.30	$((~~59.50~~)) 62.00
601 and over	$((~~137.40~~)) 143.30	$((~~68.40~~)) 71.30

(4) **Irrigation machines, pumps, and equipment.**

Irrigation machines.

(a) Each tower - When inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL	$((~~6.40~~)) 6.60
(b) Towers - When not inspected at the same time as a service and feeder - 1 to 6 towers	$((~~90.30~~)) 94.20
(c) Each additional tower	$((~~6.40~~)) 6.60

(5) **Miscellaneous - Commercial/industrial and residential.**

(a) **A Class 2 low-voltage thermostat** and its associated cable controlling a single piece of utilization equipment or a single furnace and air conditioner combination.

(i) First thermostat	$((~~44.90~~)) 46.80
(ii) Each additional thermostat inspected at the same time as the first	$((~~13.90~~)) 14.50

(b) **Class 2 or 3 low-voltage systems and telecommunications systems.** Includes all telecommunications installations, fire alarm, nurse call, energy management control systems, industrial and automation control systems, lighting control systems, and similar Class 2 or 3 low-energy circuits and equipment not included in WAC 296-46B-908 for Class B work.

(i) First 2500 sq. ft. or less	$((~~52.10~~)) 54.30
(ii) Each additional 2500 sq. ft. or portion thereof	$((~~13.90~~)) 14.50

(c) **Signs and outline lighting.**

(i) First sign (no service included)	$((~~44.90~~)) 46.80
(ii) Each additional sign inspected at the same time on the same building or structure	$((~~21.20~~)) 22.10

(d) **Berth at a marina or dock.**

Note:
Five berths or more will be permitted to have the inspection fees based on appropriate service and feeder fees from section (2) COMMERCIAL/INDUSTRIAL above.

(i) Berth at a marina or dock	$((~~59.50~~)) 62.00
(ii) Each additional berth inspected at the same time	$((~~37.60~~)) 39.20

(e) **Yard pole, pedestal, or other meter loops only.**

(i) Yard pole, pedestal, or other meter loops only	$((~~59.50~~)) 62.00
(ii) Meters installed remote from the service equipment and inspected at the same time as a service, temporary service or other installations	$((~~13.90~~)) 14.50

(f) **Inspection appointment requested for outside of normal working hours.**

Regular fee plus surcharge of:	$((~~113.70~~)) 118.60

(g) **Generators.**

Note:
Permanently installed generators: Refer to the appropriate residential or commercial new/altered service or feeder section.

Portable generators: Permanently installed transfer equipment for portable generators	$((~~82.80~~)) 86.30

(h) **Electrical - Annual permit fee.**

Note:
See WAC 296-46B-901(13).

For commercial/industrial location employing full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Note, all yearly maintenance contracts must detail the number of contractor electricians necessary to complete the work required under the contract. This number will be used as a basis for calculating the appropriate fee. Each inspection is based on a 2-hour maximum.

	Inspections	Fee
1 to 3 plant electricians	12	$((~~2,189.70~~)) 2,284.20
4 to 6 plant electricians	24	$((~~4,381.80~~)) 4,571.00
7 to 12 plant electricians	36	$((~~6,572.30~~)) 6,856.20
13 to 25 plant electricians	52	$((~~8,764.40~~)) 9,143.00
More than 25 plant electricians	52	$((~~10,956.50~~)) 11,429.80

(i) **Telecommunications - Annual permit fee.**

Notes:
(1) See WAC 296-46B-901(12).
(2) Annual inspection time required may be estimated by the purchaser at the rate for "OTHER INSPECTIONS" in this section, charged portal-to-portal per hour.

For commercial/industrial location employing full-time telecommunications maintenance staff or having a yearly maintenance contract with a licensed electrical/telecommunications contractor.

2-hour minimum	$((~~181.00~~)) 188.80
Each additional hour, or portion thereof, of portal-to-portal inspection time	$((~~90.30~~)) 94.20

(j) **Permit requiring ditch cover inspection only.**

Each 1/2 hour, or portion thereof	$((~~44.90~~)) 46.80
(k) **Cover inspection for elevator/conveyance installation. This item is only available to a licensed/registered elevator contractor.**	$((~~75.80~~)) 79.00

(6) **Carnival inspections.**

(a) **First carnival field inspection each calendar year.**

(i) Each ride and generator truck	$((~~21.20~~)) 22.10
(ii) Each remote distribution equipment, concession, or gaming show	$((~~6.40~~)) 6.60
(iii) If the calculated fee for first carnival field inspection above is less than $100.50, the minimum inspection fee will be:	$((~~113.70~~)) 118.60

(b) **Subsequent carnival inspections.**

(i) First ten rides, concessions, generators, remote distribution equipment, or gaming show	$((~~113.70~~)) 118.60
(ii) Each additional ride, concession, generator, remote distribution equipment, or gaming show	$((~~6.40~~)) 6.60

(c) **Concession(s) or ride(s) not part of a carnival.**

(i) First field inspection each year of a single concession or ride, not part of a carnival	$((~~90.30~~)) 94.20
(ii) Subsequent inspection of a single concession or ride, not part of a carnival	$((~~59.50~~)) 62.00

(7) **Trip fees.**

(a) Requests by property owners to inspect existing installations. (This fee includes a maximum of one hour of inspection time. All inspection time exceeding one hour will be charged at the rate for progressive inspections.)	$((~~90.30~~)) 94.20
(b) Submitter notifies the department that work is ready for inspection when it is not ready.	$((~~44.90~~)) 46.80
(c) Additional inspection required because submitter has provided the wrong address or incomplete, improper or illegible directions for the site of the inspection.	$((~~44.90~~)) 46.80
(d) More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work.	$((~~44.90~~)) 46.80
(e) Each trip necessary to remove a noncompliance notice.	$((~~44.90~~)) 46.80
(f) Corrections that have not been made in the prescribed time, unless an exception has been requested and granted.	$((~~44.90~~)) 46.80
(g) Installations that are covered or concealed before inspection.	$((~~44.90~~)) 46.80

(8) **Progress inspections.**

Note:
The fees calculated in subsections (1) through (6) of this section will apply to all electrical work. This section will be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in subsections (1) through (6) of this section.

On partial or progress inspections, each 1/2 hour.	$((~~44.90~~)) 46.80

(9) **Plan review.**

(a) Plan review fee is 35% of the electrical work permit fee as determined by WAC 296-46B-906.	35%
(b) Plan review submission fee .	$((~~75.80~~)) 79.00
(c) Supplemental submissions of plans per hour or fraction of an hour of review time.	$((~~90.30~~)) 94.20
(d) Plan review handling fee.	$((~~21.20~~)) 22.10

(10) **Out-of-state inspections.**

(a) Permit fees will be charged according to the fees listed in this section.

(b) Travel expenses:

All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section.

(11) **Other inspections.**

Inspections not covered by above inspection fees must be charged portal-to-portal per hour:	$((~~90.30~~)) 94.20

(12) **Variance request processing fee.**

Variance request processing fee. This fee is nonrefundable once the transaction has been validated.	$((~~90.30~~)) 94.20

(((~~(13) **Marking of industrial utilization equipment.**~~

~~(a) Standard(s) letter review (per hour of review time).~~	~~$90.30~~
~~(b) Equipment marking - Charged portal-to-portal per hour:~~	~~$90.30~~

~~(c) All travel expenses and per diem for in/out-of-state review and/or equipment marking are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in (b) of this subsection.~~

~~(14)~~)) (13) **Class B basic electrical work labels.**

(a) Block of twenty Class B basic electrical work labels (not refundable).	$((~~248.00~~)) 258.70
(b) Reinspection of Class B basic electrical work to assure that corrections have been made (per 1/2 hour timed from leaving the previous inspection until the reinspection is completed). See WAC 296-46B-908(5).	$((~~44.90~~)) 46.80
(c) Reinspection of Class B basic electrical work because of a failed inspection of another Class B label (per 1/2 hour from previous inspection until the reinspection is completed). See WAC 296-46B-908(5).	$((~~44.90~~)) 46.80

(((~~(15)~~))) (14) **Provisional electrical work permit labels.**

Block of twenty provisional electrical work permit labels.	$((~~248.00~~)) 258.70

AMENDATORY SECTION (Amending WSR 14-11-075, filed 5/20/14, effective 7/1/14)

WAC 296-46B-909 Electrical/telecommunications contractor's license, administrator certificate and examination, master electrician certificate and examination, electrician certificate and examination, copy, and miscellaneous fees.

Notes:
(1) The department will deny renewal of a license, certificate, or permit if an individual owes money as a result of an outstanding final judgment(s) to the department or is in revoked status. The department will deny application of a license, certificate, or permit if an individual is in suspended status or owes money as a result of an outstanding final judgment(s) to the electrical program.

(2) Certificates may be prorated for shorter renewal periods in one-year increments. Each year or part of a year will be calculated to be one year.

(3) The amount of the fee due is calculated based on the fee effective at the date payment is made.

(1) **General or specialty contractor's license per twenty-four month period. (Nonrefundable after license has been issued.)**

(a) **Initial application or renewal made in person, by mail, or by fax** $((~~266.20~~)) 277.60

(b) **Renewal fully completed using the online web process** $((~~230.20~~)) 240.10

(c) **Reinstatement of a general or specialty contractor's license after a suspension** $((~~53.90~~)) 56.20

(2) **Master electrician/administrator/electrician/trainee certificate.**

(a) **Examination application (nonrefundable)**

Administrator certificate examination application. (Required only for department administered examinations.) (Not required when testing with the department's contractor.) $((~~33.30~~)) 34.70

(b) **Examination fees (nonrefundable)**

Note:
Normal examination administration is performed by a state authorized contractor. The fees for such examinations are set by contract with the department. For written examinations administered by the department, use the following fee schedule.

(i) Master electrician or administrator first-time examination fee (when administered by the department) $((~~80.40~~)) 83.80

(ii) Master electrician or administrator retest examination fee (when administered by the department) $((~~94.20~~)) 98.20

(iii) Journey level or specialty electrician examination fee (first test or retest when administered by the department) $((~~60.50~~)) 63.10

(iv) Certification examination review fee $((~~124.60~~)) 129.90

(c) **Original certificates (nonrefundable after certificate has been issued)**

(i) Electrical administrator original certificate (except **09** telecommunication) $((~~120.40~~)) 125.60

(ii) Telecommunications administrator original certificate (for **09** telecommunications) $((~~80.10~~)) 83.50

(iii) Master electrician exam application (includes original certificate and application processing fee) **($((~~33.30~~)) 34.70 is nonrefundable after application is submitted)** $((~~154.00~~)) 160.60

(iv) Journey level or specialty electrician application (includes original certificate and application processing fee) **($((~~33.30~~)) 34.70 is nonrefundable after application is submitted)** $((~~86.30~~)) 90.00

(v) Training certificate

(A) Initial application made in person, by mail, or by fax $((~~42.30~~)) 44.10

(B) Initial application fully completed online using the online web process $((~~36.40~~)) 37.90

(C) 0% supervision modified training certificate. Includes trainee update of hours (i.e., submission of affidavit of experience) **($((~~51.20~~)) 53.40 is nonrefundable after application is submitted)** $((~~77.00~~)) 80.30

(D) 75% supervision modified training certificate. $((~~51.20~~)) 53.40

(E) Unsupervised training certificate as allowed by RCW 19.28.161 (4)(b). $((~~25.40~~)) 26.40

(d) **Certificate renewal (nonrefundable)**

(i) Master electrician or administrator certificate renewal

(A) Renewal made in person, by mail, or by fax $((~~152.20~~)) 158.70

(B) Renewal fully completed using the online web process $((~~132.20~~)) 137.90

(ii) Telecommunications **(09)** administrator certificate renewal

(A) Renewal made in person, by mail, or by fax $((~~101.40~~)) 105.70

(B) Renewal fully completed using the online web process $((~~87.50~~)) 91.20

(iii) Late renewal of master electrician or administrator certificate

(A) Renewal made in person, by mail, or by fax $((~~304.40~~)) 317.50

(B) Renewal fully completed using the online web process $((~~264.50~~)) 275.90

(iv) Late renewal of telecommunications **(09)** administrator certificate

(A) Renewal made in person, by mail, or by fax $((~~202.90~~)) 211.60

(B) Renewal fully completed using the online web process $((~~175.00~~)) 182.50

(v) Journey level or specialty electrician certificate renewal

(A) Renewal made in person, by mail, or by fax $((~~80.10~~)) 83.50

(B) Renewal fully completed using the online web process $((~~69.70~~)) 72.70

(vi) Late renewal of journey level or specialty electrician certificate

(A) Renewal made in person, by mail, or by fax $((~~160.30~~)) 167.20

(B) Renewal fully completed using the online web process $((~~139.50~~)) 145.50

(vii) Trainee update of hours outside of renewal period (i.e., submission of affidavit of experience outside of the timeline in WAC 296-46B-942 (8)(d)) $((~~51.20~~)) 53.40

(viii) Trainee certificate renewal

(A) Renewal made in person, by mail, or by fax $((~~51.20~~)) 53.40

(B) Renewal fully completed using the online web process when the affidavit of experience is submitted per WAC 296-46B-942 (8)(d) $((~~44.70~~)) 46.60

(ix) Late trainee certificate renewal

(A) Renewal made in person, by mail, or by fax $((~~71.80~~)) 74.90

(B) Renewal fully completed using the online web process $((~~62.50~~)) 65.20

(e) **Certificate - Reinstatement (nonrefundable)**

(i) Reinstatement of a suspended master electrician or administrator's certificate (in addition to normal renewal fee) $((~~53.90~~)) 56.20

(ii) Reinstatement of suspended journey level, or specialty electrician certificate (in addition to normal renewal fee) $((~~25.40~~)) 26.40

(f) **Assignment/unassignment of master electrician/administrator designation (nonrefundable)** $((~~39.90~~)) 41.60

(3) **Certificate/license.**

(a) Replacement for lost or damaged certificate/license. (Nonrefundable.) $((~~17.50~~)) 18.20

(b) Optional display quality General Master Electrician certificate.	$((~~28.40~~)) 29.60
(4) **Continuing education courses or instructors. (Nonrefundable.)**	
(a) If the course or instructor review is performed by the electrical board or the department	
The course or instructor review	$((~~51.30~~)) 53.50
(b) If the course or instructor review is contracted out by the electrical board or the department	
(i) Continuing education course or instructor submittal and approval (per course or instructor)	As set in contract
(ii) Applicant's request for review, by the chief electrical inspector, of the contractor's denial	$((~~124.90~~)) 130.20
(5) **Copy fees. (Nonrefundable.)**	
(a) **Certified copy of each document (maximum charge per file):**	$((~~56.70~~)) 59.10
(i) First page:	$((~~25.40~~)) 26.40
(ii) Each additional page:	$2.10
(b) RCW or WAC printed document:	$((~~5.60~~)) 5.80
(6) **Training school program review fees. Initial training school program review fee. (Nonrefundable.)**	
(a) Initial training school program review fee submitted for approval. Valid for three years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	$589.90 615.30
(b) Renewal of training school program review fee submitted for renewal. Valid for 3 years or until significant changes in program content or course length are implemented (see WAC 296-46B-971(4)).	$((~~294.90~~)) 307.60

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 12-11-108, filed 5/22/12, effective 6/30/12)

WAC 296-46B-911 Electrical testing laboratory and engineer accreditation fees. The amount of the fee due is calculated based on the fee effective at the date payment is made.

Electrical testing laboratory	
Initial filing fee: (Nonrefundable)	$((~~560.80~~)) 585.00
Initial accreditation fee:	
1 product category	$((~~280.30~~)) 292.40
Each additional category for the next 19 categories	$((~~112.10~~)) 116.90 each
Maximum for 20 categories or more	$((~~2,411.60~~)) 2,515.70
Renewal fee: (Nonrefundable)	50% of initial filing fee
Renewal of existing accreditations	
Each additional category for the next 19 categories	$((~~112.10~~)) 116.90 each
Maximum for 20 categories or more	$((~~2,411.60~~)) 2,515.70
Engineer for evaluating industrial utilization equipment	
Initial filing fee: (Nonrefundable)	$((~~560.80~~)) 585.00
Renewal fee: (Nonrefundable)	50% of initial filing fee

WSR 16-17-134
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION

[Filed August 23, 2016, 2:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-20-123.

Title of Rule and Other Identifying Information: New chapter 468-602 WAC, Electric vehicle charging infrastructure pilot program.

Hearing Location(s): Transportation Building, Nisqually Conference Room, 310 Maple Park Avenue S.E., Olympia, WA 98504, on October 10, 2016, at 9:00 a.m.

Date of Intended Adoption: October 10, 2016.

Submit Written Comments to: Tonia Buell, Project Development Manager, WSDOT Innovative Partnerships, 310 Maple Park Avenue S.E., Olympia, WA 98504-7395, buellt@wsdot.wa.gov, by October 9, 2016.

Assistance for Persons with Disabilities: Contact Grant Heap by October 9, 2016, TTY 711 or (360) 705-7760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New rules, chapter 47.04 RCW directs the department's innovative partnerships office to adopt rules and develop a pilot program to support the deployment of electric vehicle charging infrastructure that is supported by private financing.

Reasons Supporting Proposal: 2ESSB 5987, Sec. 403 adds a new section to chapter 47.04 RCW directing Washington state department of transportation (WSDOT) to adopt rules for a new electric vehicle charging infrastructure pilot program.

Statutory Authority for Adoption: Chapter 47.04 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: New rules as directed by chapter 47.04 RCW. See below for proposed rules. Chapter 468-602 WAC, Electric vehicle charging infrastructure pilot program.

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting: Tonia Buell, Olympia, Washington, (360) 705-7439; Implementation and Enforcement: Anthony Buckley, Olympia, Washington, (360) 705-7023.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules will not result in a negative economic impact for small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. There are no additional costs required to implement these rules.

August 23, 2016
Kara Larsen
Director of Risk Management
and Legal Services

Chapter 468-602 WAC

ELECTRIC VEHICLE CHARGING INFRASTRUCTURE PILOT PROGRAM

NEW SECTION

WAC 468-602-010 Authority and purpose. RCW 47.04.350 directs the Washington state department of transportation public-private partnership office to develop a pilot program to support the deployment of electric vehicle charging infrastructure that is supported by private financing.

The pilot program will consist solely of projects that provide a benefit to the public through development, demonstration, and deployment of clean energy technologies that save energy and reduce energy costs, reduce harmful air emissions or otherwise increase energy independence for the state.

Funds will be available for the deployment of electric vehicle fast-charging stations at key locations along state and federal highway corridors to support interurban, interstate, and interregional travel.

NEW SECTION

WAC 468-602-020 Definitions. Bidder: Nonprofit organizations and government agencies including, but not limited to, federal, state and local public agencies such as cities, counties, municipal corporations, special purpose districts, tribes, ports, air quality districts, public utility districts, transit systems, and regional organizations serving areas adjacent to highway corridors.

Corridor: A state or federal highway and interconnected streets connecting communities or destinations and serving major sources of vehicular travel within the state of Washington.

Department: Washington state department of transportation.

Electric vehicle charging station: Products or assemblies installed for the purpose of safely delivering and managing the transfer of electrical energy from an electrical source to an electric vehicle.

Eligible project or project: The installation of one or more electric vehicle charging stations along a corridor within the state of Washington.

Indirect value: Benefits of the project that may accrue to project participants other than for the use of the charging equipment.

Industry standard charging equipment: Nonpropriety electric vehicle supply equipment (EVSE) that meets the common standards used for most mass-produced makes and models of plug-in electric vehicles sold in North America including, but not limited to, CHAdeMO, SAE CCS, and SAE J1772.

Owner-operator: An entity involved in installing and operating charging equipment including, but not limited to, dedicated charging service companies, charging equipment manufacturers, property owners acting as site hosts, automakers, electric utilities, electricity generators, and state and local governments.

Private sector partner: An entity contributing to the project who stands to gain indirect value from development of the project including, but not limited to, a motor vehicle manufacturer, retail store, nonprofit organization, or tourism stakeholder.

Profitable and sustainable: Yielding profit or financial gain after the initial project investment and the financial ability to maintain the equipment over time. Projects that strongly demonstrate their financial sustainability within a five-year performance period may be prioritized.

Project: Deployment of publicly accessible electric vehicle fast-charging stations at one or more accessible locations along a corridor.

NEW SECTION

WAC 468-602-030 Priority corridors. The department shall define the corridors within which bidders may propose to install electric vehicle charging infrastructure. Priority corridors include Interstate 5, U.S. Highway 2, Interstate 90, U.S. Highway 101, Interstate 82, U.S. Highway 395, and roadways connecting midsize communities and major tourist destinations.

The department believes having publicly accessible electric vehicle fast chargers in forty-mile interval along corridors will provide the basic network necessary to enable vehicle travel between communities. The department further recognizes that an effective corridor requires redundancy and fault tolerance, especially in high-use areas. Bidders are encouraged to submit proposals that clearly support the department's goal of a minimum forty-mile interval target and/or that add capacity/redundancy in congested, high-volume areas for a more robust, dependable charging network. Bidders must explain how their project will lead to the eventual build out of the corridor, and/or planned future charging infrastructure along the corridor.

A bidder may submit a proposal for a project in a corridor that is not listed above as a priority corridor. The department will consider such proposals under the following guidelines:

• Must meet the requirements listed in WAC 468-602-040.

• Must provide supporting evidence that charging stations will be located where the charging services are in demand by electric vehicle customers.

NEW SECTION

WAC 468-602-040 Project requirements. Projects shall provide safe, convenient, cost-competitive, reliable, and easy access for drivers to recharge mass-produced plug in electric vehicles with industry standard charging equipment. Projects shall expand the network of infrastructure geograph-

ically along underserved roadways and/or strengthen the existing network by providing equipment that is compatible with more makes and models of vehicles and by providing additional locations for fault tolerance and redundancy. The department shall ensure projects meet the following requirements:

(1) Bidders must have private sector partners contributing to the project who stand to gain indirect value from development of the project including, but not limited to, motor vehicle manufacturers, retail stores, or tourism stakeholders;

(2) Bidders must demonstrate that the proposed project will be valuable to electric vehicle drivers and will address a gap in the state's electric vehicle charging station infrastructure;

(3) Projects must be expected to be profitable and sustainable over time for the owner-operator and/or the private sector partner, inclusive of indirect value gained;

(4) Bidders must specify how the project captures the indirect value of charging station deployment to the private sector partner;

(5) Bidders and their private sector partners must agree to operate and maintain the stations for at least five years and must meet the requirements in the department's solicitation materials for networked equipment offerings, station operations and uptime, public access, payment options, customer service, signage, and period of performance; and

(6) Bidders and their private sector partners have the ability to reinvest any proceeds from ongoing operations to expand the power and amount of chargers at a given site to accommodate higher utilization rates in the future.

NEW SECTION

WAC 468-602-050 Selection process. The selection process shall comply with all applicable state laws and policies that govern the department. Solicitations will include, but are not limited to, the following steps:

- Appointment of a procurement coordinator;
- A schedule of procurement activities;
- Bidder question and answer period;
- Public notification of apparently successful bidder;
- An optional bidder debrief; and
- Complaint and protest procedures.

In evaluating proposals, the department may use the electric vehicle financial analysis tool developed during the joint transportation committee's study of financing models for electric vehicle charging station infrastructure if the tool is made available to all potential bidders.

The department may award only one grant or loan per project from the electric vehicle charging infrastructure account.

WSR 16-17-135
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION

[Filed August 23, 2016, 2:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-11-034.

Title of Rule and Other Identifying Information: WAC 468-38-270 Specialized equipment, automobile transporters are identified as specialized vehicles. This proposal increases the overall length and overhang dimension limits for stinger steered combinations.

Authorizes backhaul of general freight on a conventional and stinger steered automobile transporter.

Hearing Location(s): Transportation Building, Commission Board Room, 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504, on October 10, 2016, at 10:00 a.m.

Date of Intended Adoption: October 10, 2016.

Submit Written Comments to: Justin Heryford, P.O. Box 47367, Olympia, WA 98504-7367, e-mail HeryfoJ@wsdot.wa.gov, fax (360) 704-6391, by October 9, 2016.

Assistance for Persons with Disabilities: Contact Grant Heap by October 9, 2016, TTY 711 or (360) 705-7760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amending WAC 468-38-270 was initiated by a federal proposal in Fixing America's Surface Transportation Act (FAST Act). The proposal increases the stinger steered automobile transporter overall length from seventy-five feet to eighty feet. The proposal also increases the front overhang allowance from three to four feet and the rear overhang from four feet to six feet.

The proposal gives authority for all automobile transporters to haul general freight on a backhaul.

Reasons Supporting Proposal: To comply with federal requirements.

Statutory Authority for Adoption: RCW 46.44.090, 46.44.093.

Rule is necessary because of federal law, [no information supplied by agency].

Name of Proponent: WSDOT Traffic Offic, commercial vehicle services, governmental.

Name of Agency Personnel Responsible for Drafting: Justin Heryford, 7345 Linderson Way S.W., Tumwater, WA, (360) 704-6345; Implementation: Anne Ford, 7345 Linderson Way S.W., Tumwater, WA, (360) 705-7341; and Enforcement: Captain Michael Dahl, 210 11th Street, General Administration Building, Olympia, WA, (360) 596-3800.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule is proposed to comply with federal regulation.

A cost-benefit analysis is not required under RCW 34.05.328. There is no additional cost related to this proposal.

August 23, 2016
Kara Larsen
Director of Risk Management and Legal Services

AMENDATORY SECTION (Amending WSR 11-17-130, filed 8/24/11, effective 9/24/11)

WAC 468-38-270 Specialized equipment. (1) **Why are certain vehicles designated as specialized equipment?** Certain vehicles are designed and built for very unique functions other than transporting persons. The federal highway

administration classifies and references some of these vehicles as specialized equipment in Title 23 C.F.R. Part 658.13 (e) and sets minimum and/or maximum parameters for the vehicle to operate. The department adopted these specialized classifications and accepted or further defined the legal parameters for operation on state highways. In addition to federal rule, the department has also recognized certain specially designed vehicles that, by necessity, exceed one or more of the vehicle size and weight parameters in chapter 46.44 RCW. The department has also classified these overlegal vehicles as specialized equipment in order to ((~~authorized [authorize]~~)) authorize their movement on state highways, using a special motor vehicle permit, and provide a consistent administrative and enforcement treatment. All vehicles exceeding legal requirements are subject to the requirements of this section and the requirements of chapter 46.44 RCW.

(2) **What vehicle types are classified by Title 23 Code of Federal Regulations (C.F.R.) 658.13(e) as specialized equipment, including size limits, and authorized to operate on the state highways without a special permit?** Listed in alphabetical order:

Automobile transporter: To be considered an automobile transporter, the power unit and the trailing unit must be modified to carry assembled automobiles. If the combination consists of a truck and stinger-steered trailing unit, the overall dimension for length must not exceed ((~~seventy-five~~)) eighty feet, plus a front overhang of ((~~three~~)) four feet and rear overhang of ((~~four~~)) six feet. If the combination consists of a tractor and semi-trailer (traditional high mount), overall dimension for length will not exceed sixty-five feet, plus three-foot front overhang and four-foot rear overhang.

• The conventional and stinger steered automobile transporter is authorized to haul general freight on a backhaul. Backhaul for this section means a return trip back over all or part of the same route.

Boat transporter: See automobile transporter.

Driveaway saddlemount vehicles: A combination consisting of a maximum of four trucks or truck tractors used in driveaway service where three of the vehicles are towed by the fourth in triple saddlemount position. The overall dimension for the length of the saddlemount combination will not exceed ninety-seven feet. Such combinations may include all axles of one vehicle loaded upon another, known as a full-mount.

Munitions carriers with dromedary equipment: A truck tractor equipped with a dromedary unit operating in combination with a semi-trailer transporting Class 1 explosives and/or any munitions related security material, as specified by the U.S. Department of Defense in compliance with 49 C.F.R. 177.835, overall dimension for length not to exceed seventy-five feet.

(3) **What other vehicle types does the department recognize as specialized equipment for the purpose of oversize and overweight permitting?** The following specialized equipment, including size and weight parameters, can operate with special permit. Listed in alphabetical order:

Concrete pumper trucks: As a single unit fixed load vehicle, may exceed the legal weight limits in RCW 46.44.-041 and 46.44.042 with a special motor vehicle permit, but must comply with the requirements in RCW 46.44.091. Tire loading for the movement is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire. Pumper hose extensions and a volume of water to flush the system, when the pumping process is complete.

Construction equipment: Equipment used primarily for off-road heavy construction activity may be permitted for use on designated highway segments identified in RCW 46.16.010 (5)(h)(i)(B) and (C) and must comply with the weight limits in RCW 46.44.091. Equipment may operate without permit on highway segments designated as part of the construction zone.

Cranes: As a single unit fixed load vehicle, may exceed the legal weight limits in RCW 46.44.041 and 46.44.042 with a special motor vehicle permit but must comply with the requirements in RCW 46.44.091. Tire loading for the movement is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire. Cranes may be permitted with standard working components that are included within the rated capacity of the crane. A boom trailer or boom dolly will be permitted only when the boom is attached to the crane upper works, for the purpose of transferring load to meet weight requirements. A crane may be permitted with counterweights, outrigger assemblies, load block, hook and cable tension ball assembly also loaded on the boom trailer or boom dolly, as long as those components are included in the rated capacity of the crane and do not cause the vehicle to exceed permitted weight limits.

Well drilling trucks: As a single unit fixed load vehicle, may exceed the legal weight limits in RCW 46.44.041 and 46.44.042 with a special motor vehicle permit but must comply with the requirements in RCW 46.44.091. Tire loading for the movement is limited to the lesser of six hundred pounds per inch width of tire or the tire manufacturer's rating with proper inflation, as determined by the nomenclature imprinted on the tire. The vehicle may carry drill extensions as part of the fixed load.

(4) **Can specialized equipment tow a licensed vehicle used for commute purposes?** A specialized self-propelled single unit vehicle registered as a fixed load, operating under a fixed load permit, and/or cranes operating under an oversize/overweight permit (exclusive of boom dollies or trailers), may be permitted to tow a vehicle with a gross vehicle weight rating not to exceed eight thousand pounds. The overall length of the combination must not exceed seventy-five feet. The towed vehicle must be used for the sole purpose of commuting to and from the job site where the specialized equipment is in service.

(5) **Does a specialized vehicle operating under an overweight or fixed load permit receive any exemption from weight postings or weight restrictions placed on highway infrastructure?** No. Specialized mobile equipment must not cross load-restricted infrastructure when the equipment, either as a result of gross weight, axle weight or tire loadings, exceeds the stated capacity of the posting or restriction. However, exemptions to specific requirements, in WAC

468-38-075, may apply to specific fixed loads as identified in WAC 468-38-075.

WSR 16-17-136
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed August 23, 2016, 2:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-11-033.

Title of Rule and Other Identifying Information: WAC 468-38-265 Tow trucks—Permitting for oversize/overweight.

States are directed by the federal provision in the Fixing America's Surface Transportation Act (FAST Act) to exempt tow trucks from weight limits to expedite moving disabled vehicles.

Hearing Location(s): Transportation Building, Commission Board Room, 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504, on October 10, 2016, at 10:00 a.m.

Date of Intended Adoption: October 10, 2016.

Submit Written Comments to: Justin Heryford, P.O. Box 47367, Olympia, WA 98504-7367, e-mail HeryfoJ@wsdot.wa.gov, fax (360) 704-6391, by October 9, 2016.

Assistance for Persons with Disabilities: Contact Grant Heap by October 9, 2016, TTY 711 or (360) 705-7760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amending WAC 468-38-265 was initiated by a federal proposal in the FAST Act. The proposal authorizes heavy duty tow trucks to move a disabled vehicle without a permit if the heavy duty tow truck weighs the same or greater than the disable[d] vehicle. The disabled vehicle may be moved from the place where it became disabled to the nearest appropriate repair facility.

Reasons Supporting Proposal: To comply with federal requirements.

Statutory Authority for Adoption: RCW 46.44.090, 46.44.0941.

Rule is necessary because of federal law, [no information supplied by agency].

Name of Proponent: WSDOT Traffic Office, commercial vehicle services, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Wright, 7345 Linderson Way S.W., Tumwater, WA, (360) 704-6345; Implementation: Anne Ford, 7345 Linderson Way S.W., Tumwater, WA, (360) 705-7341; and Enforcement: Captain Michael Dahl, 210 11th Street, General Administration Building, Olympia, WA, (360) 596-3800.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule is proposed to comply with federal regulation.

A cost-benefit analysis is not required under RCW 34.05.328. There is no additional cost related to this proposal.

August 23, 2016
Kara Larsen
Director of Risk Management and Legal Services

AMENDATORY SECTION (Amending WSR 04-16-060, filed 7/30/04, effective 8/30/04)

WAC 468-38-265 Tow trucks—Permitting for oversize/overweight. (1) **What classes of tow trucks are eligible for special permits?**

Special permits may be issued to Class B and Class C tow trucks, including Class E tow trucks with either a Class B or Class C rating.

(2) **What is the duration of a special permit issued to tow trucks?**

The special permit issued specifically to tow trucks is an annual permit from date of purchase.

(3) **Are there size and weight limitations and/or requirements to the special permit for tow trucks?**

Permit limits and/or requirements are categorized as follows:

(a) **Weight of tow truck:** Maximum weights for tow trucks are as follows:

(i) All classes of tow trucks must conform to RCW 46.44.041 when towing a disabled unit by draw bar or tow chain method.

(ii) When any portion of the weight of the disabled unit rests upon a Class B, C or E (with B or C rating) tow truck; the weight must not exceed:

(A) Six hundred pounds per inch width of tire up to twenty-two thousand pounds per single axle; or

(B) Forty-three thousand pounds per tandem axle set; or

(C) The weight allowed for axle groups per formula in RCW 46.44.091(1).

(iii) The tow truck steer axle must carry sufficient weight to maintain safe operation.

(iv) A Class B tow truck steer axle must carry a minimum of three thousand pounds at all times.

(v) A Class C tow vehicle steer axle must carry a minimum of three thousand five hundred pounds at all times.

(vi) A Class E tow truck with B or C rating must meet the requirement for minimum steer axle load for the rating.

(vii) The special permit does not allow a tow truck to exceed legal weight limits when not in tow or haul status.

(b) **Weight of disabled unit:** Maximum weight for disabled units towed under an annual special permit are as follows:

(i) When being towed by a Class B, C or E (with B or C rating) tow truck, using a draw bar or tow chain method, the weight of the disabled unit must conform with weight limits in RCW 46.44.041, or to the limits of any special permit issued to the disabled unit.

(ii) When a Class B, C or E (with B or C rating) tow truck carries a portion of the weight of the disabled unit, the first load bearing axle(s) of the disabled unit must not exceed:

(A) Six hundred pounds per inch width of tire;

(B) Twenty-two thousand pounds per single axle;

(C) Forty-three thousand pounds per tandem axle set; and

(D) Weight limits for axle groups per formula in RCW 46.44.091.

(iii) A load recovery vehicle configured as a truck-tractor/semi-trailer, or solo vehicle may carry either a divisible or nondivisible load. The recovery vehicle is limited to weight limits in RCW 46.44.041 when carrying divisible loads, or to

the weight limits in (a)(ii) of this subsection when carrying nondivisible loads. The recovery vehicle must be rated as either a Class B or Class C tow truck in order to be issued the annual special permit.

(c) **Height and width:** No disabled unit, including load, shall exceed fourteen feet in height or eight feet six inches in width, except:

(i) When the disabled unit is authorized under a special permit allowing a greater height or width. The allowances granted under the special permit shall apply only to the route identified on the special permit; or

(ii) Where an accident or collision has caused a disfigurement of the disabled unit resulting in a width greater than eight feet six inches, but not exceeding ten feet in width. In this event, during daylight hours the disabled unit must be flagged per WAC 468-38-155, and during the hours of darkness the extreme width must have clearance lights that comply with the requirements of *Code of Federal Regulation*, 49 C.F.R. 393.11.

(iii) Rear view mirrors may exceed the width authorized in the special permit to a point that allows the driver a view to the rear along both sides of the vehicle(s) in conformance with *Federal National Safety Standard 111* (49 C.F.R. 571.111).

(d) **Length:** All classes of single unit tow vehicles may not exceed forty feet in length. The length of the disabled unit shall not exceed the length for such vehicle established in statute or as allowed by a special permit issued to the disabled unit. The towing of a vehicle combination (i.e., tractor/trailer or truck/trailer) is not authorized, except during an emergent situation when directed by the state patrol or the department to remove the disabled combination to the nearest safe location off the highway.

(e) **Restrictions and postings:** An annual special permit must not be used to exceed published road and bridge restrictions, or posted bridges. Restrictions and postings should be reviewed online daily for changes, each permit will contain this instruction. It is the operator's responsibility to remain current with bridge restriction and posting information.

(f) **Exceptions:** Exceptions to the rules provided in this section will be handled on an individual basis by separate special permit, after the disabled unit has been moved to the nearest safe location.

(4) **Is there ever a time when a Class A or D tow truck is authorized to exceed legal weight?**

Class A and D tow trucks are not eligible for special permits. In an emergent situation, when no other class of truck is available, either class truck may make or assist in making short moves, at the direction of the state patrol or the department, to the nearest safe location off the highway.

(5) **What constitutes an emergent situation?**

An emergent situation, for purposes of this section, is defined as a disabled vehicle on any public highway, including shoulders and access ramps.

(6) When a heavy duty tow truck weighs the same or greater than the disabled vehicle, a permit is not required to move the disabled vehicle from the place where the vehicle became disabled to the nearest appropriate repair facility.

WSR 16-17-139
PROPOSED RULES
STATE BOARD OF HEALTH
[Filed August 23, 2016, 4:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-036.

Title of Rule and Other Identifying Information: Chapter 246-290 WAC, Group A public water supplies, the proposed rule adopts the federal revised total coliform rule (RTCR), revises the water system planning submittal time frame, establishes requirements for emergency sources and supplies, revises the triggers for requiring continuous disinfection and monitoring, and technical changes to clarify existing requirements.

Hearing Location(s): SeaTac Red Lion Hotel, Rainier Room, 18220 International Boulevard, Seattle, WA 98188, on October 12, 2016, at 1:30 p.m.

Date of Intended Adoption: October 12, 2016.

Submit Written Comments to: Theresa Phillips, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, e-mail https://fortress.wa.gov/doh/policyreview, by September 28, 2016.

Assistance for Persons with Disabilities: Contact Melanie Hisaw by October 7, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The public health objective of the RTCR is to strengthen protection against microbial contamination in Group A public water systems as required by the United States Environmental Protection Agency (EPA). The proposal amends water system planning requirements to lengthen the planning time frame from six to ten years to reduce costs without jeopardizing public health. The proposal sets new requirements for water systems that choose to use an emergency source or truck water during an emergency to ensure drinking water is safe. Clarifies disinfection requirements to improve public health protection. The proposal makes technical changes to existing requirements to make the rule easier to understand and use.

Reasons Supporting Proposal: The department of health has a primacy agreement with EPA to assume lead responsibilities for implementation of the Safe Drinking Water Act which requires adopting federal rules into state rules. The proposal will reduce costs to water systems that are required to submit a water system plan to the department by lengthening the planning time frame and streamlining planning criteria. It clarifies which sources are vulnerable to contamination and require disinfection, and setting new emergency source and supply requirements for those systems that respond to drinking water emergencies.

Statutory Authority for Adoption: RCW 43.20.050.

Statute Being Implemented: RCW 70.119A.080.

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

Name of Proponent: Washington state board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Theresa Phillips, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3147; Implementation and Enforcement:

Garin Schrieve, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3100.

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

Small Business Economic Impact Statement

Chapter 246-290 WAC, Group A Public Water Supplies

July 2016

SECTON [SECTION] 1:

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 department conducted a review of chapter 246-290 WAC, Group A public water supplies (Group A rule). After analyzing feedback from both staff and stakeholders, the department identified water system planning, emergency sources and supplies, and disinfection as three parts of the Group A rule that could be improved. In addition, EPA adopted RTCR, which must be adopted by the state board of health (board) to maintain primacy. The board is proposing to revise the Group A rules to improve public health protection, streamline regulations, provide clarity, and improve consistency between state and federal regulations by:

- Adopting EPA's RTCR into state rules;
- Amending requirements for water system planning to provide greater flexibility;
- Adding a new rule section on emergency sources and supplies to set requirements for systems that have an emergency source and converts long-standing guidance concerning supplies (trucked water) into rule; and
- Amending requirements for disinfection to strengthen public health protection.

In addition to these changes, the board is proposing technical corrections and clarifications to existing requirements throughout the chapter to make the rule easier to understand and use.

Rule Revision Background:

RTCR: As part of the primacy agreement, states must adopt and administer rules that are no less stringent than the federal rules. In order to maintain our primacy agreement, RTCR must be adopted into state rules. RTCR provides greater public health protection by improving the original Total Coliform Rule of 1989. RTCR requires systems that are vulnerable to microbial contamination to identify and fix problems, makes adjustments to existing monitoring requirements based on system type and size and compliance history, sets new requirements for seasonal systems, and strengthens public notice requirements when systems incur violations such as failing to conduct an assessment or fix identified problems.

Water System Planning: Some systems must submit water system plan updates to the department every six years. For many of these water systems, the public health benefit may not justify the cost of the requirements. In order to streamline regulations, provide clarity, improve consistency, and reduce costs for stakeholders without jeopardizing public health, the proposal:

- Revises the time frame for water system plan updates from six to ten years with the option to choose a shorter time frame.
- Revises the planning elements and forecasting requirements to align with the new time frame for water system plan approvals.
- Revises the triggers for expanding systems to submit a water system plan.
- Removes requirements that prevent extending service beyond the retail service area without redefining the retail service area in a plan amendment, and broadens local government consistency determination requirements.
- Clarifies conditions and options for water system plan amendments.
- Simplifies service area definitions.

Emergency Sources and Supplies: To improve public health protection, the proposal sets requirements for systems that have an emergency source of supply, and converts long-standing guidance for the use of trucked water into rule.

- Requires systems with an emergency source to include information in its emergency response program such as engineering design, a monitoring schedule, emergency activation, and operational procedures.
- Sets conditions under which an emergency source can be physically connected to the distribution system when not in service, and if conditions are not met, requires systems to physically disconnect the emergency source when not in use.
- Requires systems to receive permission prior to using trucked water during an emergency event, and sets disinfection, storage, and recordkeeping requirements.

Disinfection: The Group A rule includes varying disinfection methods and requirements that were adopted to meet the needs of water systems with specific water quality issues, and other requirements were adopted to align with federal rules. The department identified areas that could be improved, including:

- Revisions to the triggers for continuous disinfection.
- Revisions to monitoring and reporting requirements to provide flexibility.
- New requirements for systems that desalinate seawater using reverse osmosis.
- Clarifies criteria for treatment techniques and reporting violations.

In analyzing the potential impact of the proposed rule on investor owned water utilities (IOWU), there are several requirements that may apply to IOWU, depending on their specific circumstances. For example, some IOWUs may have to contract with professional engineer[s] to design a disinfection unit as a result of the changes in the proposed rule. These "applicable" costs are addressed in Section 3 below.

SECTION 2:

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:

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
221310	Water Supply and Irrigation Systems	141	$1418	Not Available

SECTION 3:

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 revenue:

The following sections create "situational" requirements, that is, depending on the circumstances for an individual IOWU, they may have to complete required tasks and function[s]. If an IOWU does not take action to satisfy a proposed regulatory requirement, cost estimates are provided below.

WAC 246-290-131 Emergency sources and supplies: This section establishes requirement[s] for water systems that want to maintain an emergency source that is either physically connected or not physically connected to their system. It is unknown how many IOWU will elect to have an emergency source. If an IOWU elects to physically disconnect their emergency source, they must document in their emergency response program: (1) That the source is approved; (2) that the source has satisfactory water quality; (3) that they have procedures/operational steps when activating source; and (4) how they will inform the department and their customers when they use the source. The department's assumption is that systems that elect to maintain an emergency source or an emergency supply (trucked water option) will incur nominal costs to create required documentation. Based on input received from stakeholders, the department assumes systems will spend one to two days of additional staff time (system operator time, $30.59 hourly wage[1]) to arrange, collect and document required information to include in the required content of the emergency response program.

[1] Bureau of Labor Statistics, Annual Mean Wage of Water and Wastewater Treatment Plant and Water System Operators by State, May 2015. http://www.bls.gov/oes/current/oes518031.htm

If an IOWU elects to maintain an emergency source that is physically connected to the distribution system, they must have an isolation valve and would have to lockout and tag out the well pump motor starter. System specific details (size of pipe, length, location, access, etc.) will impact the cost of maintaining a physically connected emergency source. For illustrative purposes, if a system had to purchase and install a 4" isolation gate valve and lockout and tag the pump motor above ground, it could cost from $1500 to $2500.[2] There is a similar requirement for IOWUs that elect to maintain an emergency source that is physically disconnected from their distribution system to put in safeguards. For these IOWUs, the department assumes the most affordable way is to cut the well discharge pipe in two places, install a pipe flange on both ends of the removed pipe piece and on the pipe that was cut (four flanges total) (cost range of $2,000 and $3,000 per source). If the discharge pipe already has flanged sections, then the cost to remove a flanged section of pipe is only the labor and equipment cost, which will be less than creating a flanged section of pipe. Thus, the estimated costs of complying with the proposed requirements is dependent on how IOWU connects their emergency source and could cost between $1,000 and $3,000 for one emergency source.

[2] 4" Flanged gate valve costs approximately $1200, lock out devices and tags range from $40-$120 with labor the total cost range between $1500 and $2000. Source Grainger.com Class 300 300# Flanged Gate Valve, Inlet to Outlet Length: 12", Pipe Size: 4", Max. Fluid Temp.: 800

If an IOWU elects to truck water to address an emergency, the propose[d] rules establish requirements for this function. IOWU will incur costs for the required functions and generally all of these have nominal costs (typically taking a few hours of staff time). The department contacted several firms that offer trucking services for water. These firms charge clients different ways, including flat daily rates, hourly rates, hourly rates with designated maximum travel distances, and typical "time and materials" contracts (e.g., hourly rate or mileage rate plus cost of water). Given each case is unique; it is not possible to identify a cost for this service and therefore is indeterminate.

WAC 246-290-451 Disinfection of drinking waters: It is unknown how many IOWU will have to install disinfection because of this proposed rule. IOWU required to disinfect because of the proposed changes will incur costs for the treatment design and review, the disinfection equipment, and ongoing costs for chemicals, operation, maintenance, testing equipment, and staff time. The department assumes that most IOWU that will have to disinfect because of the proposed changes will install "simple disinfection," which entails installing a chlorine tank, connecting pipes and measuring equipment. The department's professional engineers identified estimated costs of disinfection and shared our assumptions with several consulting professionals. The consulting professionals, in turn, provided the department with their cost estimates, which in some cases includes cost ranges (low and high cost estimates). Table 1 identifies cost estimates for simple disinfection with a capacity that ranges from ten thousand gallons per day (gpd) up to five hundred thousand gpd. The costs provided have large ranges, with one explanation of the differences in system capacities and are for illustrative purposes only. The actual cost of installing disinfection ultimately depends on the specific water system design, physical layout, and water quality characteristics.

Table 1 Simple Disinfection

Disinfection components for simple disinfection using chlorine	Costs Estimates for a system with a capacity of 10,000 to 500,000 gpd		
	Low	High	Average
Engineering design	$1,000	$12,000	$4111
Equipment (chlorine pump, solution tank, injection nozzle, etc.)	$1,000	$2,500	$1644
Flow control if needed (controller, pulse meter)	$1000	$3,000	$2556
Instrumentation (unit measuring chlorine levels)	$75	$500	$350
Department project review costs for simple disinfection	$205	$994	$874[3]
Labor and industries (L&I) permit	$150	$400	$372
Installing disinfection unit including piping equipment setup and testing	$1,000	$9000	$3772
Total Estimated Cost of Unit (One Time Costs)	$7794	$28194	$13629
Operation and maintenance - taking daily reading of chlorination levels and completing monthly reports (annual costs)	$100	$6000	$1672
Operation and maintenance - completing (semi-annual) equipment maintenance	$200	$200	$200
Annual cost of chlorine (for a 500,000 gpd unit)	$200	$3000	$1889
Total Annualized Operation and Maintenance	$840	$9400	$3916

[3] Per Fee WAC 246-290-990

The existing regulation requires free chlorine residual measurement by an EPA-approved method and disallows the use of test strips for chlorine residual measurements. The department does not know how many IOWUs are currently using a color wheel to measure free chlorine residual for CT6 compliance (Hach color wheels cost $52-894[4]). The proposed rules also allow IOWUs to use a digital colorimeter, which is a common device that is an EPA-approved method, to measure chlorine residual that costs approximately $415[5].

[4] Internet search of cost color wheels http://www.hach.com/free-chlorine-color-disc-test-kit-model-cn-66f/product

[5] Internet search of cost of pocket colorimeter http://www.hach.com/pocket-colorimeter-ii-chlorine-free-and-total/product

As described in this analysis, there are selected sections that could result in increased costs for select water systems (e.g., disinfection section, and the emergency source and supply section). Although select IOWU may incur these costs, the proposed rule enhances public health protection by requiring disinfection for sources vulnerable to contamination, requiring accurate measuring devices, and requiring safeguards for water systems that elect to truck water to address an emergency source). Furthermore, the rule making also makes changes that will result in cost savings to water systems (e.g., water system planning section).

The department's assumption is that collectively some IOWU may incur costs due to the proposed rule but the rule will not result in IOWU losing sales or revenue.

SECTION 4:

Analyze whether the proposed rule may impose more than minor costs on businesses in the industry: Based on the preceding analysis of potential costs of the proposed rule, the department is unable to determine whether the rule will result in costs that impose more than minor cost on IOWUs. Because of this uncertainty, the department is taking the conservative position that the rule may impose more than minor costs and thus are completing this analysis.

SECTION 5:

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: Given the uncertainty of costs and size of IOWU that may incur compliance costs associated with the proposed rule, the department is assuming that the rule may have a disproportionate cost on small businesses.

SECTION 6:

If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why: The department considered the mitigation methods identified in RCW 19.85.030. The department was not able to lower the cost of the proposed rule for small business. The rule could have costs for IOWU given their situation. The department was not able to reduce, modify, or eliminate substantive regulatory requirements; simplify, reduce, or eliminate recordkeeping and reporting requirements; delay compliance timetables; or create or implement any other mitigation techniques. Adopting these mitigation techniques was not possible because they would have undermined the intent of the rule, which is to establish regulatory requirements to protect the health of consumers using public drinking water supplies.

SECTION 7:

Describe how small businesses were involved in the development of the proposed rule: The department completes rule making in a transparent collaborate process. The department maintains a list of interested parties, which includes IOWUs. The department has shared draft versions of the proposed rule with stakeholders, including IOWU, and provided them an opportunity to provide input, comments, and suggested changes to the draft rules during the rule-making process.

SECTION 8:

Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule: Based on the legislative significant analysis created for the proposed rule, the department's assumption is that IOWU will not have to create (add) or remove (fire) employees because of the proposed rule.

A copy of the statement may be obtained by contacting Theresa Phillips, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, phone (360) 236-3147, e-mail theresa.phillips@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Theresa Phillips, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, phone (360) 236-3147, e-mail theresa.phillips@doh.wa.gov.

August 23, 2016
Michelle A. Davis
Executive Director

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-001 Purpose and scope. (1) The purpose of this chapter is to define basic regulatory requirements and to protect the health of consumers using public drinking water supplies.

(2) The rules of this chapter are specifically designed to ensure:

(a) Adequate design, construction, sampling, management, maintenance, and operation practices; and

(b) Provision of safe and high quality drinking water in a reliable manner and in a quantity suitable for intended use.

(3) Purveyors shall be responsible for complying with the regulatory requirements of this chapter.

(4) These rules are intended to conform with Public Law 93-523, the Federal Safe Drinking Water Act of 1974, and Public Law 99-339, the Safe Drinking Water Act Amendments of 1986, and certain provisions of Public Law 104-182, the Safe Drinking Water Act Amendments of 1996.

(5) The rules set forth are adopted under chapter 43.20 RCW. Other statutes relating to this chapter are:

(a) RCW 43.20B.020, Fees for services—Department of health and department of social and health services;

(b) Chapter 43.70 RCW, Department of health;

(c) Chapter 70.05 RCW, Local health department, boards, officers—Regulations;

(d) Chapter 70.116 RCW, Public Water System Coordination Act of 1977;

(e) Chapter 70.119 RCW, Public water supply systems—((~~Certification and regulation of~~)) Operators;

(f) Chapter 70.119A RCW, Public water systems—Penalties and compliance; and

(g) Chapter 70.142 RCW, Chemical contaminants and water quality.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-002 Guidance. (1) The department has numerous guidance documents available to help purveyors comply with state and federal rules regarding drinking water. These include documents on the following subjects:

(a) Compliance;
(b) Consumer and public education;
(c) Contaminants;
(d) Cross-connection control and backflow prevention;
(e) Emergency response and drinking water security;
(f) Engineering design and water treatment;
(g) Financial assistance and state revolving fund (SRF);
(h) General information;
(i) Groundwater protection;
(j) Growth management;
(k) Operations and maintenance;
(l) Operator certification;
(m) Planning and financial viability;
(n) Regulations;
(o) Small water systems;
(p) System approval;
(q) Water quality monitoring and source protection;
(r) Water system planning; and
(s) Water use efficiency.

(2) The department's guidance documents are available ((~~at minimal or no cost by contacting the office of drinking water's publication service at 360-236-3100 or 800-521-0323. Individuals can also request the documents via the internet at http://www.doh.wa.gov/ehp/dw or through conventional~~)) online at https://fortress.wa.gov/doh/eh/dw/publications/publications.cfm or through U.S. mail at P.O. Box 47822, Olympia, Washington 98504-7822.

(3) Federal guidance documents are available from the Environmental Protection Agency (EPA) for a wide range of topics. These are available from the EPA Office of Ground Water and Drinking Water web site at ((~~www.epa.gov/drink.index.cfm~~)) http://water.epa.gov/drink.index.cfm.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-010 Definitions, abbreviations, and acronyms. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) **"Acute"** means posing an immediate risk to human health.

(2) **"ADD"** means an average day demand.

(3) **"AG"** means an air gap.

(4) **"Alternative filtration technology"** means a filtration process for substantial removal of particulates (generally > 2-log *Giardia lamblia* cysts and ≥ 2-log removal of *Crypto-*

sporidium oocysts) by other than conventional, direct, diatomaceous earth, or slow sand filtration processes.

(5) **"Analogous treatment system"** means an existing water treatment system that has unit processes and source water quality characteristics that are similar to a proposed treatment system.

(6) **"ANSI"** means the American National Standards Institute.

(7) **"Approved air gap"** means a physical separation between the free-flowing end of a potable water supply pipeline and the overflow rim of an open or nonpressurized receiving vessel.

To be an air gap approved by the department, the separation must be at least:

(a) Twice the diameter of the supply piping measured vertically from the overflow rim of the receiving vessel, and in no case be less than one inch, when unaffected by vertical surfaces (sidewalls); and

(b) Three times the diameter of the supply piping, if the horizontal distance between the supply pipe and a vertical surface (sidewall) is less than or equal to three times the diameter of the supply pipe, or if the horizontal distance between the supply pipe and intersecting vertical surfaces (sidewalls) is less than or equal to four times the diameter of the supply pipe and in no case less than one and one-half inches.

(8) **"Approved atmospheric vacuum breaker (AVB)"** means an AVB of make, model, and size that is approved by the department. AVBs that appear on the current approved backflow prevention assemblies list developed by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research or that are listed or approved by other nationally recognized testing agencies (such as IAPMO, ANSI, or UL) acceptable to the authority having jurisdiction are considered approved by the department.

(9) **"Approved backflow preventer"** means an approved air gap, an approved backflow prevention assembly, or an approved AVB. The terms "approved backflow preventer," "approved air gap," or "approved backflow prevention assembly" refer only to those approved backflow preventers relied upon by the purveyor for the protection of the public water system. The requirements of WAC 246-290-490 do not apply to backflow preventers installed for other purposes.

(10) **"Approved backflow prevention assembly"** means an RPBA, RPDA, DCVA, DCDA, PVBA, or SVBA of make, model, and size that is approved by the department. Assemblies that appear on the current approved backflow prevention assemblies list developed by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research or other entity acceptable to the department are considered approved by the department.

(11) **"As-built drawing"** means the drawing created by an engineer from the collection of the original design plans, including changes made to the design or to the system, that reflects the actual constructed condition of the water system.

(12) **"Assessment source water monitoring"** means an evaluation of groundwater sources that may be at risk for fecal contamination. Assessment source water monitoring involves the collection of source water samples at regular intervals and analysis of those samples for fecal indicators as directed by the department.

(13) **"Authority having jurisdiction"** (formerly known as local administrative authority) means the local official, board, department, or agency authorized to administer and enforce the provisions of the Uniform Plumbing Code as adopted under chapter 19.27 RCW.

(14) **"Authorized agent"** means any person who:

(a) Makes decisions regarding the operation and management of a public water system whether or not he or she is engaged in the physical operation of the system;

(b) Makes decisions whether to improve, expand, purchase, or sell the system; or

(c) Has discretion over the finances of the system.

(15) **"Authorized consumption"** means the volume of metered and unmetered water used for municipal water supply purposes by consumers, the purveyor, and others authorized to do so by the purveyor, including, but not limited to, fire fighting and training, flushing of mains and sewers, street cleaning, and watering of parks and landscapes. These volumes may be billed or unbilled.

(16) **"AVB"** means an atmospheric vacuum breaker.

(17) **"Average day demand (ADD)"** means the total quantity of water use from all sources of supply as measured or estimated over a calendar year divided by three hundred sixty-five. ADD is typically expressed as gallons per day (gpd) per equivalent residential unit (ERU).

(18) **"AWWA"** means the American Water Works Association.

(19) **"Backflow"** means the undesirable reversal of flow of water or other substances through a cross-connection into the public water system or consumer's potable water system.

(20) **"Backflow assembly tester"** means a person holding a valid BAT certificate issued under chapter 246-292 WAC.

(21) **"Backpressure"** means a pressure (caused by a pump, elevated tank or piping, boiler, or other means) on the consumer's side of the service connection that is greater than the pressure provided by the public water system and which may cause backflow.

(22) **"Backsiphonage"** means backflow due to a reduction in system pressure in the purveyor's distribution system and/or consumer's water system.

(23) **"Bag filter"** means a pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a nonrigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.

(24) **"Bank filtration"** means a water treatment process that uses a well to recover surface water that has naturally infiltrated into groundwater through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).

(25) **"BAT"** means a backflow assembly tester.

(26) **"Best available technology"** means the best technology, treatment techniques, or other means that EPA finds, after examination for efficacy under field conditions, are available, taking cost into consideration.

(27) **"Blended sample"** means a sample collected from two or more individual sources at a point downstream of the confluence of the individual sources and prior to the first connection.

(28) **"C"** means the residual disinfectant concentration in mg/L at a point before or at the first consumer.

(29) **"Cartridge filter"** means a pressure-driven separation device that removes particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

(30) **"Category red operating permit"** means an operating permit identified under chapter 246-294 WAC. Placement in this category results in permit issuance with conditions and a determination that the system is inadequate.

(31) **"CCP"** means composite correction program.

(32) **"CCS"** means a cross-connection control specialist.

(33) **"C.F.R."** means the Code of Federal Regulations.

(34) **"Chemical contaminant treatment facility"** means a treatment facility specifically used for the purpose of removing chemical contaminants.

(35) **"Clarification"** means a treatment process that uses gravity (sedimentation) or dissolved air (flotation) to remove flocculated particles.

(36) **"Clean compliance history"** means a record of:

(a) No *E. coli* MCL violations;

(b) No monitoring violations under WAC 246-290-300(3); and

(c) No coliform treatment technique trigger exceedances or treatment technique violations under WAC 246-290-320(2) or 246-290-415.

(37) **"Closed system"** means any water system or portion of a water system in which water is transferred to a higher pressure zone closed to the atmosphere, such as when no gravity storage is present.

(((~~37~~))) (38) **"Coagulant"** means a chemical used in water treatment to destabilize particulates and accelerate the rate at which they aggregate into larger particles.

(((~~38~~))) (39) **"Coagulation"** means a process using coagulant chemicals and rapid mixing to destabilize colloidal and suspended particles and agglomerate them into flocs.

(((~~39~~))) (40) **"Combination fire protection system"** means a fire sprinkler system that:

(a) Is supplied only by the purveyor's water;

(b) Does not have a fire department pumper connection; and

(c) Is constructed of approved potable water piping and materials that serve both the fire sprinkler system and the consumer's potable water system.

(((~~40~~))) (41) **"Combined distribution system"** means the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.

(((~~41~~))) (42) **"Completely treated water"** means water from a surface water source, or a groundwater source under the direct influence of surface water (GWI) source that receives filtration or disinfection treatment that fully complies with the treatment technique requirements of Part 6 of this chapter as determined by the department.

(((~~42~~))) (43) **"Composite correction program (CCP)"** means a program that consists of two elements - a comprehensive performance evaluation (CPE) and comprehensive technical assistance (CTA).

(((~~43~~))) (44) **"Composite sample"** means a sample in which more than one source is sampled individually by the water system and then composited by a certified laboratory by mixing equal parts of water from each source (up to five different sources) and then analyzed as a single sample.

(((~~44~~))) (45) **"Comprehensive monitoring plan"** means a schedule that describes both the frequency and appropriate locations for sampling of drinking water contaminants as required by state and federal rules.

(((~~45~~))) (46) **"Comprehensive performance evaluation (CPE)"** means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements.

The comprehensive performance evaluation must consist of at least the following components:

(a) Assessment of plant performance;

(b) Evaluation of major unit processes;

(c) Identification and prioritization of performance limiting factors;

(d) Assessment of the applicability of comprehensive technical assistance; and

(e) Preparation of a CPE report.

(((~~46~~))) (47) **"Comprehensive technical assistance (CTA)"** means the performance improvement phase that is implemented if the CPE results indicate improved performance potential. The system must identify and systematically address plant-specific factors. The CTA is a combination of using CPE results as a basis for follow-up, implementing process control priority-setting techniques, and maintaining long-term involvement to systematically train staff and administrators.

(((~~47~~))) (48) **"Confirmation"** means to demonstrate the accuracy of results of a sample by analyzing another sample from the same location within a reasonable period of time, generally not to exceed two weeks. Confirmation is when analysis results fall within plus or minus thirty percent of the original sample results.

(((~~48~~))) (49) **"Confluent growth"** means a continuous bacterial growth covering a portion or the entire filtration area of a membrane filter in which bacterial colonies are not discrete.

(((~~49~~))) (50) **"Consecutive system"** means a public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

(((~~50~~))) (51) **"Construction completion report"** means a form provided by the department and completed for each specific construction project to document:

(a) Project construction in accordance with this chapter and general standards of engineering practice;

(b) Physical capacity changes; and

(c) Satisfactory test results.

The completed form must be stamped with an engineer's seal, and signed and dated by a professional engineer.

(((~~(51)~~))) (52) **"Consumer"** means any person receiving water from a public water system from either the meter, or the point where the service line connects with the distribution system if no meter is present. For purposes of cross-connection control, "consumer" means the owner or operator of a water system connected to a public water system through a service connection.

(((~~(52)~~))) (53) **"Consumer's water system,"** as used in WAC 246-290-490, means any potable or industrial water system that begins at the point of delivery from the public water system and is located on the consumer's premises. The consumer's water system includes all auxiliary sources of supply, storage, treatment, and distribution facilities, piping, plumbing, and fixtures under the control of the consumer.

(((~~(53)~~))) (54) **"Contaminant"** means a substance present in drinking water that may adversely affect the health of the consumer or the aesthetic qualities of the water.

(((~~(54)~~))) (55) **"Contingency plan"** means that portion of the wellhead protection program section of the water system plan or small water system management program that addresses the replacement of the major well(s) or wellfield in the event of loss due to groundwater contamination.

(((~~(55)~~))) (56) **"Continuous monitoring"** means determining water quality with automatic recording analyzers that operate without interruption twenty-four hours per day.

(((~~(56)~~))) (57) **"Conventional filtration treatment"** means a series of processes including coagulation, flocculation, clarification, and filtration that together result in substantial particulate removal in compliance with Part 6 of this chapter.

(((~~(57)~~))) (58) **"Corrective action plan"** means specific written actions and deadlines developed by the water system or the department that the system must follow as a result of either the identification of significant deficiencies during a sanitary survey or the determination of a fecal indicator-positive sample in source water monitoring.

(((~~(58)~~))) (59) **"Cost-effective"** means the benefits exceed the costs.

(((~~(59)~~))) (60) **"Council"** means the Washington state building code council under WAC 51-04-015(2).

(((~~(60)~~))) (61) **"CPE"** means a comprehensive performance evaluation.

(((~~(61)~~))) (62) **"Critical water supply service area (CWSSA)"** means a geographical area which is characterized by a proliferation of small, inadequate water systems, or by water supply problems which threaten the present or future water quality or reliability of service in a manner that efficient and orderly development may best be achieved through coordinated planning by the water utilities in the area as set forth by the Public Water System Coordination Act, chapter 70.116 RCW and chapter 246-293 WAC.

(((~~(62)~~))) (63) **"Cross-connection"** means any actual or potential physical connection between a public water system or the consumer's water system and any source of nonpotable liquid, solid, or gas that could contaminate the potable water supply by backflow.

(((~~(63)~~))) (64) **"Cross-connection control program"** means the administrative and technical procedures the purveyor implements to protect the public water system from contamination via cross-connections as required in WAC 246-290-490.

(((~~(64)~~))) (65) **"Cross-connection control specialist"** means a person holding a valid CCS certificate issued under chapter 246-292 WAC.

(((~~(65)~~))) (66) **"Cross-connection control summary report"** means the annual report that describes the status of the purveyor's cross-connection control program.

(((~~(66)~~))) (67) **"CT"** or **"CTcalc"** means the product of "residual disinfectant concentration" (C) and the corresponding "disinfectant contact time" (T) i.e., "C" x "T."

(((~~(67)~~))) (68) **"$CT_{99.9}$"** means the CT value required for 99.9 percent (3-log) inactivation of *Giardia lamblia* cysts.

(((~~(68)~~))) (69) **"CTA"** means comprehensive technical assistance.

(((~~(69)~~))) (70) **"CTreq"** means the CT value a system shall provide to achieve a specific percent inactivation of *Giardia lamblia* cysts or other pathogenic organisms of health concern as directed by the department.

(((~~(70)~~))) (71) **"Curtailment"** means short-term, infrequent actions by a purveyor and its consumers to reduce their water use during or in anticipation of a water shortage.

(((~~(71)~~))) (72) **"CWSSA"** means a critical water supply service area.

(((~~(72)~~))) (73) **"DBPs"** means disinfection byproducts.

(((~~(73)~~))) (74) **"DCDA"** means a double check detector assembly.

(((~~(74)~~))) (75) **"DCVA"** means a double check valve assembly.

(((~~(75)~~))) (76) **"Dead storage"** means the volume of stored water not available to all consumers at the minimum design pressure under WAC 246-290-230 (5) and (6).

(((~~(76)~~))) (77) **"Demand forecast"** means an estimate of future water system water supply needs assuming historically normal weather conditions and calculated using numerous parameters, including population, historic water use, local land use plans, water rates and their impacts on consumption, employment, projected water use efficiency savings from implementation of a water use efficiency program, and other appropriate factors.

(((~~(77)~~))) (78) **"Department"** means the Washington state department of health or health officer as identified in a joint plan of ((~~operation~~)) responsibility under WAC 246-290-030(1).

(((~~(78)~~))) (79) **"Design and construction standards"** means department design guidance and other peer reviewed documents generally accepted by the engineering profession as containing fundamental criteria for design and construction of water facility projects. Design and construction standards are comprised of performance and sizing criteria and reference general construction materials and methods.

(((~~(79)~~))) (80) **"Detectable residual disinfectant concentration"** means 0.2 mg/L free chlorine, total chlorine, combined chlorine, or chlorine dioxide.

(81) **"Diatomaceous earth filtration"** means a filtration process for substantial removal of particulates (> 2-log *Giardia lamblia* cysts) in which:

(a) A precoat cake of graded diatomaceous earth filter media is deposited on a support membrane (septum); and

(b) Water is passed through the cake on the septum while additional filter media, known as body feed, is continuously added to the feed water to maintain the permeability of the filter cake.

(((~~(80)~~))) (82) **"Direct filtration"** means a series of processes including coagulation, flocculation, and filtration (but excluding sedimentation) that together result in substantial particulate removal in compliance with Part 6 of this chapter.

(((~~(81)~~))) (83) **"Direct service connection"** means a service hookup to a property that is contiguous to a water distribution main and where additional distribution mains or extensions are not needed to provide service.

(((~~(82)~~))) (84) **"Disinfectant contact time (T in CT)"** means:

(a) When measuring the first or only C, the time in minutes it takes water to move from the point of disinfectant application to a point where the C is measured; and

(b) For subsequent measurements of C, the time in minutes it takes water to move from one C measurement point to the C measurement point for which the particular T is being calculated.

(((~~(83)~~))) (85) **"Disinfection"** means the use of chlorine or other agent or process the department approves for killing or inactivating microbiological organisms, including pathogenic and indicator organisms.

(((~~(84)~~))) (86) **"Disinfection profile"** means a summary of *Giardia lamblia* inactivation through a surface water treatment plant.

(((~~(85)~~))) (87) **"Distribution coliform sample"** means a sample of water collected from a representative location in the distribution system at or after the first service and analyzed for coliform presence in compliance with this chapter.

(((~~(86)~~))) (88) **"Distribution-related projects"** means distribution projects such as storage tanks, booster pump facilities, transmission mains, pipe linings, and tank coating. It does not mean source of supply (including interties) or water quality treatment projects.

(((~~(87)~~))) (89) **"Distribution system"** means all piping components of a public water system that serve to convey water from transmission mains linked to source, storage and treatment facilities to the consumer excluding individual services.

(((~~(88)~~))) (90) **"Domestic or other nondistribution system plumbing problem((~~,~~))"** means contamination of a system having more than one service connection with the contamination limited to the specific service connection from which the sample was taken.

(((~~(89)~~))) (91) **"Dual sample set"** means a set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an IDSE under WAC 246-290-300 (6)(b)(i)(F) and determining compliance with the TTHM and HAA5 MCLs under WAC 246-290-310(4).

(((~~(90)~~))) (92) **"Duplicate (verification) sample"** means a second sample collected at the same time and location as the first sample and used for verification.

(((~~(91)~~))) (93) **"DVGW"** means Deutsche Vereinigung des Gas und Wasserfaches.

(((~~(92)~~))) (94) **"Elected governing board"** means the elected officers with ultimate legal responsibility for operational, technical, managerial, and financial decisions for a public water system.

(((~~(93)~~))) (95) **"Emergency"** means an unforeseen event that causes damage or disrupts normal operations and requires immediate action to protect public health and safety.

(((~~(94)~~))) (96) **"Emergency source"** means any source that ((~~is approved by the department~~)) a purveyor intends to use for emergency purposes only((~~, is~~)) and not used for routine or seasonal water demands((~~, is physically disconnected, and is identified in the purveyor's emergency response plan~~)).

(((~~(95)~~))) (97) **"Engineering design review report"** means a form provided by the department and completed for a specific distribution-related project to document:

(a) Engineering review of a project report and/or construction documents under the submittal exception process in WAC 246-290-125(3); and

(b) Design in accordance with this chapter and general standards of engineering practice.

(c) The completed form must be stamped with engineer's seal, and signed and dated by a professional engineer.

(((~~(96)~~))) (98) **"EPA"** means the U.S. Environmental Protection Agency.

(((~~(97)~~))) (99) **"Equalizing storage"** means the volume of storage needed to supplement supply to consumers when the peak hourly demand exceeds the total source pumping capacity.

(((~~(98)~~))) (100) **"Equivalent residential unit (ERU)"** means a system-specific unit of measure used to express the amount of water consumed by a typical full-time single family residence.

(((~~(99)~~))) (101) **"ERU"** means an equivalent residential unit.

(((~~(100) **"Existing service area"** means a specific area within which direct service or retail service connections to customers of a public water system are currently available.~~

(~~(101)~~))) (102) **"Expanding public water system"** means a public water system ((~~installing additions, extensions, changes, or alterations to their existing source, transmission, storage, or distribution facilities that will enable the system to increase in size its existing service area and/or its~~)) that increases the geographical area where direct service connections are available or increases the approved number of ((~~approved~~)) service connections. ((~~Exceptions:~~

~~(a) A system that connects new approved individual retail or direct service connections onto an existing distribution system within an existing service area; or~~

~~(b) A distribution system extension in an existing service area identified in a current and approved water system plan or project report.~~

(~~(102)~~))) (103) **"Filter profile"** means a graphical representation of individual filter performance in a direct or conventional surface water filtration plant, based on continuous turbidity measurements or total particle counts versus time

for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

(((~~103~~))) (104) **"Filtration"** means a process for removal of particulate matter from water by passage through porous media.

(((~~104~~))) (105) **"Financial viability"** means the capability of a water system to obtain sufficient funds to construct, operate, maintain, and manage a public water system, on a continuing basis, in full compliance with federal, state, and local requirements.

(((~~105~~))) (106) **"Finished water"** means water introduced into a public water system's distribution system and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).

(((~~106~~))) (107) **"Finished water storage facility"** means a water storage structure that is integrated with a water system's distribution network to provide for variable system demands including, but not limited to, daily equalizing storage, standby storage, or fire reserves, or to provide for disinfectant contact time.

(((~~107~~))) (108) **"Fire flow"** means the maximum rate and duration of water flow needed to suppress a fire under WAC 246-293-640 or as required under local fire protection authority standards.

(((~~108~~))) (109) **"Fire suppression storage"** means the volume of stored water available during fire suppression activities to satisfy minimum pressure requirements per WAC 246-290-230.

(((~~109~~))) (110) **"First consumer"** means the first service connection associated with any source (i.e., the point where water is first withdrawn for human consumption, excluding connections where water is delivered to another water system covered by these regulations).

(((~~110~~))) (111) **"Flocculation"** means a process enhancing agglomeration and collection of colloidal and suspended particles into larger, more easily settleable or filterable particles by gentle stirring.

(((~~111~~))) (112) **"Flowing stream"** means a course of running water flowing in a definite channel.

(((~~112~~))) (113) **"Flow-through fire protection system"** means a fire sprinkler system that:

(a) Is supplied only by the purveyor's water;

(b) Does not have a fire department pumper connection;

(c) Is constructed of approved potable water piping and materials to which sprinkler heads are attached; and

(d) Terminates at a connection to a toilet or other plumbing fixture to prevent stagnant water.

(((~~113~~))) (114) **"Forecasted demand characteristics"** means the factors that may affect a public water system's projected water needs.

(((~~114~~))) (115) **"Future service area"** means a specific area a ((~~public~~)) water system in a CWSSA plans to provide water service((~~. This is~~)) as determined by a written agreement between purveyors under ((~~WAC 246-293-250 or by the purveyor's elected governing board or governing body if not required under WAC 246-293-250~~)) chapter 70.116 RCW and chapter 246-293 WAC.

(((~~115~~))) (116) **"GAC"** means granular activated carbon.

(((~~116~~))) (117) **"GAC10"** means granular activated carbon filter beds with an empty-bed contact time of ten minutes based on average daily flow and a carbon reactivation frequency of every one hundred eighty days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with MCLs under WAC 246-290-310(4) shall be one hundred twenty days.

(((~~117~~))) (118) **"GAC20"** means granular activated carbon filter beds with an empty-bed contact time of twenty minutes based on average daily flow and a carbon reactivation frequency of every two hundred forty days.

(((~~118~~))) (119) **"Governing body"** means the individual or group of individuals with ultimate legal responsibility for operational, technical, managerial, and financial decisions for a public water system.

(((~~119~~))) (120) **"gph"** means gallons per hour.

(((~~120~~))) (121) **"gpm"** means gallons per minute.

(((~~121~~))) (122) **"Grab sample"** means a water quality sample collected at a specific instant in time and analyzed as an individual sample.

(((~~122~~))) (123) **"Groundwater system"** means all public water systems that use groundwater including:

(a) Consecutive systems receiving finished groundwater; or

(b) Surface water systems with groundwater sources except those systems that combine all sources prior to treatment.

(((~~123~~))) (124) **"Groundwater under the direct influence of surface water (GWI)"** means any water beneath the surface of the ground that the department determines has the following characteristics:

(a) Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or, *Cryptosporidium*; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH closely correlating to climatological or surface water conditions where natural conditions cannot prevent the introduction of surface water pathogens into the source at the system's point of withdrawal.

(((~~124~~))) (125) **"Guideline"** means a department document assisting the purveyor in meeting a rule requirement.

(((~~125~~))) (126) **"GWI"** means groundwater under the direct influence of surface water.

(((~~126~~))) (127) **"GWR"** means groundwater rule.

(((~~127~~))) (128) **"HAA5"** means haloacetic acids (five).

(((~~128~~))) (129) **"Health officer"** means the health officer of the city, county, city-county health department or district, or an authorized representative.

(((~~129~~))) (130) **"Heterotrophic Plate Count (HPC)"** means a procedure to measure a class of bacteria that use organic nutrients for growth. The density of these bacteria in drinking water is measured as colony forming units per milliliter and is referred to as the HPC.

(((~~130~~))) (131) **"High health cross-connection hazard"** means a cross-connection involving any substance that could impair the quality of potable water and create an actual

public health hazard through injury, poisoning, or spread of disease.

(((~~131~~))) (132) **"HPC"** means heterotrophic plate count.

(((~~132~~))) (133) **"Human consumption"** means the use of water for drinking, bathing or showering, hand washing, food preparation, cooking, or oral hygiene.

(((~~133~~))) (134) **"Hydraulic analysis"** means the study of a water system's distribution main and storage network to determine present or future adequacy for provision of service to consumers within the established design parameters for the system under peak flow conditions, including fire flow. The analysis is used to establish any need for improvements to existing systems or to substantiate adequacy of design for distribution system components such as piping, elevated storage, booster stations or similar facilities used to pump and convey water to consumers.

(((~~134~~))) (135) **"IAPMO"** means the International Association of Plumbing and Mechanical Officials.

(((~~135~~))) (136) **"IDSE"** means an initial distribution system evaluation.

(((~~136~~))) (137) **"Inactivation"** means a process which renders pathogenic microorganisms incapable of producing disease.

(((~~137~~))) (138) **"Inactivation ratio"** means the ratio obtained by dividing CTcalc by CTreq.

(((~~138~~))) (139) **"Incompletely treated water"** means water from a surface or GWI source that receives filtration and/or disinfection treatment that does not fully comply with the treatment technique requirements of Part 6 of this chapter as determined by the department.

(((~~139~~))) (140) **"In-line filtration"** means a series of processes, including coagulation and filtration (but excluding flocculation and sedimentation) that together result in particulate removal.

(((~~140~~))) (141) **"In-premises protection"** means a method of protecting the health of consumers served by the consumer's potable water system, located within the property lines of the consumer's premises by the installation of an approved air gap or backflow prevention assembly at the point of hazard, which is generally a plumbing fixture.

(((~~141~~))) (142) **"Intertie"** means an interconnection between public water systems permitting the exchange or delivery of water between those systems.

(((~~142~~))) (143) **"kPa"** means kilo pascal (SI units of pressure).

(((~~143~~))) (144) **"Lake or reservoir"** means a natural or man-made basin or hollow on the earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

(((~~144~~))) (145) **"Legionella"** means a genus of bacteria containing species which cause a type of pneumonia called Legionnaires' Disease.

(((~~145~~))) (146) **"Level 1 assessment"** means an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and when possible, the likely reason that the system triggered the assessment. The assessment is conducted by the system operator or the purveyor.

(147) **"Level 2 assessment"** means an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and when possible, the likely reason that the system triggered the assessment. A level 2 assessment is a more detailed examination of the system (including the system's monitoring and operational practices) than is a level 1 assessment through the use of a more comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices. The level 2 assessment is conducted by a party approved by the department.

(148) **"Limited alternative to filtration"** means a process that ensures greater removal and/or inactivation efficiencies of pathogenic organisms than would be achieved by the combination of filtration and chlorine disinfection.

(((~~146~~))) (149) **"Local plans and regulations"** means any comprehensive plan or development regulation adopted under chapter 36.70A RCW or any other applicable comprehensive plan, land use plan, or development regulation adopted by a city, town, or county for the applicable service area.

(((~~147~~))) (150) **"Locational running annual average (LRAA)"** means the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

(((~~148~~))) (151) **"Low cross-connection hazard"** means a cross-connection that could impair the quality of potable water to a degree that does not create a hazard to the public health, but does adversely and unreasonably affect the aesthetic qualities of potable waters for domestic use.

(((~~149~~))) (152) **"LRAA"** means the locational running annual average.

(((~~150~~))) (153) **"Major project"** means all construction projects subject to the State Environmental Policy Act (SEPA) under chapter 43.21C RCW, and meeting the requirements of WAC 246-03-030 (3)(a) ((~~and include all surface water source development, all water system storage facilities greater than one-half million gallons, new transmission lines longer than one thousand feet and larger than eight inches in diameter located in new rights of way and major extensions to existing water distribution systems involving use of pipes greater than eight inches in diameter, that are designed to increase the existing service area by more than one square mile~~)).

(((~~151~~))) (154) **"Mandatory curtailment"** means curtailment required by a public water system of specified water uses and consumer classes for a specified period of time.

(((~~152~~))) (155) **"Marginal costs"** means the costs incurred by producing the next increment of supply.

(((~~153~~))) (156) **"Maximum contaminant level (MCL)"** means the maximum permissible level of a contaminant in water the purveyor delivers to any public water system user, measured at the locations identified under WAC ((~~246-290-300~~)) 246-290-310, Table ((~~3~~)) 5.

(((~~154~~))) (157) **"Maximum contaminant level violation"** means a confirmed measurement above the MCL and for a duration of time, where applicable, as outlined under WAC 246-290-310.

(((~~155~~))) (158) **"Maximum day demand (MDD)"** means the highest actual or estimated quantity of water that is, or is expected to be, used over a twenty-four hour period,

excluding unusual events or emergencies. MDD is typically expressed as gallons per day per ERU (gpd/ERU).

(((~~156~~))) (159) **"MCL"** means the maximum contaminant level.

(((~~157~~))) (160) **"MDD"** means the maximum day demand.

(((~~158~~))) (161) **"Membrane filtration"** means a pressure or vacuum driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

(((~~159~~))) (162) **"mg/L"** means milligrams per liter (1 mg/L = 1 ppm).

(((~~160~~))) (163) **"mL"** means a milliliter.

(((~~161~~))) (164) **"mm"** means a millimeter.

(((~~162~~))) (165) **"Monitoring waiver"** means an action taken by the department under WAC 246-290-300 (4)(g) or (((~~8~~))) (7)(f) to allow a water system to reduce specific monitoring requirements based on a determination of low source vulnerability to contamination.

(((~~163~~))) (166) **"MRDL"** means the maximum residual disinfectant level.

(((~~164~~))) (167) **"MRDLG"** means the maximum residual disinfectant level goal.

(((~~165~~))) (168) **"MTTP"** means maximum total trihalomethane potential.

(((~~166~~))) (169) **"Municipal water supplier"** means an entity that supplies water for municipal water supply purposes.

(((~~167~~))) (170) **"Municipal water supply purposes"** means a beneficial use of water:

(a) For residential purposes through fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year;

(b) For governmental or governmental proprietary purposes by a city, town, public utility((~~,~~)) district, county, sewer district, or water district; or

(c) Indirectly for the purposes in (a) or (b) of this definition through the delivery of treated or raw water to a public water system for such use.

(i) If water is beneficially used under a water right for the purposes listed in (a), (b), or (c) of this definition, any other beneficial use of water under the right generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes.

(ii) If a governmental entity holds a water right that is for the purposes listed in (a), (b), or (c) of this definition, its use of water or its delivery of water for any other beneficial use generally associated with the use of water within a municipality is also for "municipal water supply purposes," including, but not limited to, beneficial use for commercial, industrial, irrigation of parks and open spaces, institutional, landscaping, fire flow, water system maintenance and repair, or related purposes.

(((~~168~~))) (171) **"Nested storage"** means one component of storage is contained within the component of another.

(((~~169~~))) (172) **"Nonacute"** means posing a possible or less than immediate risk to human health.

(((~~170~~))) (173) **"Nonresident"** means a person having access to drinking water from a public water system((~~, but~~)) who lives elsewhere. Examples include travelers, transients, employees, students, etc.

(((~~171~~))) (174) **"Normal operating conditions"** means those conditions associated with the designed, day-to-day provision of potable drinking water that meets regulatory water quality standards and the routine service expectations of the system's consumers at all times, including meeting fire flow demands. Operation under conditions such as power outages, floods, or unscheduled transmission or distribution disruptions, even if considered in the system design, are considered abnormal.

(((~~172~~))) (175) **"NSF"** means NSF International (formerly known as the National Sanitation Foundation (NSF)).

(((~~173~~))) (176) **"NTNC"** means nontransient noncommunity.

(((~~174~~))) (177) **"NTU"** means a nephelometric turbidity unit.

(((~~175~~))) (178) **"ONORM"** means Osterreichisches Normungsinstitut.

(((~~176~~))) (179) **"Operational storage"** means the volume of distribution storage associated with source or booster pump normal cycling times under normal operating conditions and is additive to the equalizing and standby storage components, and to fire flow storage if this storage component exists for any given tank.

(((~~177~~))) (180) **"PAA"** means a project approval application.

(((~~178~~))) (181) **"pCi/L"** means picocuries per liter.

(((~~179~~))) (182) **"Peak hourly demand (PHD)"** means the maximum rate of water use, excluding fire flow, that can be expected to occur within a defined service area over a continuous sixty minute time period. PHD is typically expressed in gallons per minute (gpm).

(((~~180~~))) (183) **"Peak hourly flow"** means, for the purpose of CT calculations, the greatest volume of water passing through the system during any one hour in a day.

(((~~181~~))) (184) **"Performance criteria"** means the level at which a system shall operate in order to maintain system reliability compliance, in accordance with WAC 246-290-420, and to meet consumers' reasonable expectations.

(((~~182~~))) (185) **"Permanent residence"** means any dwelling that is, or could reasonably be expected to be, occupied on a continuous basis.

(((~~183~~))) (186) **"Permanent source"** means a public water system supply source that is used regularly each year, and based on expected operational requirements of the system, will be used more than three consecutive months in any twelve-month period. For seasonal water systems that are in operation for less than three consecutive months per year, their sources shall also be considered to be permanent.

(((~~184~~))) (187) **"PHD"** means peak hourly demand.

(((~~185~~))) (188) **"Plant intake"** means the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

(((~~186~~))) (189) **"Point of disinfectant application"** means the point where the disinfectant is added, and where water downstream of that point is not subject to contamination by untreated surface water.

(((~~187~~))) (190) **"Population served"** means the number of persons, resident and nonresident, having immediate access to drinking water from a public water system, whether or not persons have actually consumed water from that system. The number of nonresidents shall be the average number of persons having immediate access to drinking water on days access was provided during that month. In the absence of specific population data, the number of residents shall be computed by multiplying the number of active services by two and one-half.

(((~~188~~))) (191) **"Potable"** means water suitable for drinking by the public.

(((~~189~~))) (192) **"Potential GWI"** means a source identified by the department as possibly under the influence of surface water, and includes, but is not limited to, all wells with a screened interval fifty feet or less from the ground surface at the wellhead and located within two hundred feet of a surface water, and all Ranney wells, infiltration galleries, and springs.

(((~~190~~))) (193) **"ppm"** means parts per million (1 ppm = 1 mg/L).

(((~~191~~))) (194) **"Premises isolation"** means a method of protecting a public water system by installation of approved air gaps or approved backflow prevention assemblies at or near the service connection or alternative location acceptable to the purveyor to isolate the consumer's water system from the purveyor's distribution system.

(((~~192~~))) (195) **"Presedimentation"** means a preliminary treatment process used to remove gravel, sand, and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

(((~~193~~))) (196) **"Pressure filter"** means an enclosed vessel containing properly sized and graded granular media through which water is forced under greater than atmospheric pressure.

(((~~194~~))) (197) **"Primary disinfection"** means a treatment process for achieving inactivation of *Giardia lamblia* cysts, viruses, or other pathogenic organisms of public health concern to comply with the treatment technique requirements of Part 6 of this chapter.

(((~~195~~))) (198) **"Primary standards"** means standards based on chronic, nonacute, or acute human health effects.

(((~~196~~))) (199) **"Primary turbidity standard"** means an accurately prepared formazin solution or commercially prepared polymer solution of known turbidity (prepared in accordance with "standard methods") that is used to calibrate bench model and continuous turbidimeters (instruments used to measure turbidity).

(((~~197~~))) (200) **"Project approval application (PAA)"** means a department form documenting ownership of water system, design engineer for the project, and type of project.

(((~~198~~))) (201) **"Protected groundwater source"** means a groundwater source the purveyor shows to the department's satisfaction as protected from potential sources of contamination on the basis of hydrogeologic data and/or satisfactory water quality history.

(((~~199~~))) (202) **"psi"** means pounds per square inch.

(((~~200~~))) (203) **"Public forum"** means a meeting open to the general public that allows for their participation.

(((~~201~~))) (204) **"Public water system"** is defined and referenced under WAC 246-290-020.

(((~~202~~))) (205) **"Purchased source"** means water a purveyor purchases from a public water system not under the control of the purveyor for distribution to the purveyor's consumers.

(((~~203~~))) (206) **"Purveyor"** means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or other entity owning or operating a public water system. Purveyor also means the authorized agents of these entities.

(((~~204~~))) (207) **"PVBA"** means a pressure vacuum breaker assembly.

(((~~205~~))) (208) **"RAA"** means the running annual average.

(((~~206~~))) (209) **"Reclaimed water"** means effluent derived in any part from sewage from a wastewater treatment system that has been adequately and reliably treated, so that as a result of that treatment, it is suitable for beneficial use or a controlled use that would not otherwise occur, and it is no longer considered wastewater.

(((~~207~~))) (210) **"Record drawings"** means the drawings bearing the seal and signature of a professional engineer that reflect the modifications made to construction documents, documenting actual constructed conditions of the water system facilities.

(((~~208~~))) (211) **"Recreational tract"** means an area that is clearly defined for each occupant, but has no permanent structures with internal plumbing, and the area has been declared in the covenants or on the recorded plat in order to be eligible for reduced design considerations.

(((~~209~~))) (212) **"Regional public water supplier"** means a water system that provides drinking water to one, or more, other public water systems.

(((~~210~~))) (213) **"Regularly"** means four hours or more per day for four days or more per week.

(((~~211~~))) (214) **"Removal credit"** means the level (expressed as a percent or log) of *Giardia* and virus removal the department grants a system's filtration process.

(((~~212~~))) (215) **"Repeat sample"** means a sample collected to confirm the results of a previous analysis.

(((~~213~~))) (216) **"Resident"** means an individual living in a dwelling unit served by a public water system.

(((~~214~~))) (217) **"Residual disinfectant concentration"** means the analytical level of a disinfectant, measured in milligrams per liter, that remains in water following the application (dosing) of the disinfectant after some period of contact time.

(((~~215~~))) (218) **"Retail service area"** means the specific area defined by the municipal water supplier where the municipal water supplier has a duty to provide service to all

new service connections((~~. This area must include the municipal water supplier's existing service area and may also include areas where future water service is planned if the requirements of RCW 43.20.260 are met~~)) as set forth in RCW 43.20.260.

(((~~216~~))) (219) **"RPBA"** means reduced pressure backflow assembly.

(((~~217~~))) (220) **"RPDA"** means reduced pressure detector assembly.

(((~~218~~))) (221) **"SAL"** means state advisory level.

(((~~219~~))) (222) **"Same farm"** means a parcel of land or series of parcels that are connected by covenants and devoted to the production of livestock or agricultural commodities for commercial purposes and does not qualify as a **Group A** public water system.

(((~~220~~))) (223) **"Sanitary defect"** means a defect that could provide a pathway of entry for microbial contamination into the distribution system or that is indicative of a failure or imminent failure in a barrier that is already in place.

(224) **"Sanitary survey"** means a review, inspection, and assessment of a public water system, by the department or department designee, to determine the adequacy of the system and its operation for producing and distributing safe and reliable drinking water. Each survey includes, but is not limited to, an evaluation of the following components:

(a) Source;

(b) Treatment;

(c) Distribution system;

(d) Finished water storage;

(e) Pump, pump facilities, and controls;

(f) Monitoring, reporting, and data verification;

(g) System management and operation; and

(h) Operator compliance.

(((~~221~~))) (225) **"Satellite system management agency (SMA)"** means a person or entity that is approved by the department to own or operate public water systems on a regional or county-wide basis without the necessity for a physical connection between the systems.

(((~~222~~))) (226) **"SCA"** means a sanitary control area.

(((~~223~~))) (227) **"SDWA"** means the Safe Drinking Water Act.

(((~~224~~))) (228) **"Seasonal source"** means a public water system source used on a regular basis, that is not a permanent or emergency source.

(((~~225~~))) (229) **"Seasonal system"** means a noncommunity water system defined and referenced under WAC 246-290-020 that is not operated as a public water system on a year-round basis and starts up and shuts down at the beginning and end of each operating season.

(230) **"Secondary standards"** means standards based on factors other than health effects.

(((~~226~~))) (231) **"SEPA"** means the State Environmental Policy Act.

(((~~227~~))) (232) **"Service area"** means the specific area ((~~or areas~~)) a water system currently serves ((~~or plans to provide~~)) and areas where future water service is planned. This may ((~~be comprised of the existing service area, retail service area, future service area, and~~)) include areas where wholesale water is provided to other public water systems. A water system in a CWSSA includes its future service area in its service area as "future service area" as defined under chapters 70.116 RCW and 246-293 WAC.

(((~~228~~))) (233) **"Service connection"** means a connection to a public water system designed to provide potable water to a single family residence, or other residential or nonresidential population. When the connection provides water to a residential population without clearly defined single family residences, the following formulas shall be used in determining the number of services to be included as residential connections on the WFI form:

(a) Divide the average population served each day by two and one-half; or

(b) Using actual water use data, calculate the total ERUs represented by the service connection in accordance with department design guidance.

(c) In no case shall the calculated number of services be less than one.

(((~~229~~))) (234) **"Severe health cross-connection hazard"** means a cross-connection which could impair the quality of potable water and create an immediate, severe public health hazard through poisoning or spread of disease by contaminants from radioactive material processing plants, nuclear reactors, or wastewater treatment plants.

(((~~230~~))) (235) **"Simple disinfection"** means any form of disinfection that requires minimal operational control in order to maintain the disinfection at proper functional levels, and that does not pose safety concerns that would require special care, equipment, or expertise. Examples include hypochlorination, UV-light, contactor chlorination, or any other form of disinfection practice that is safe to use and easy to routinely operate and maintain.

(((~~231~~))) (236) **"Slow sand filtration"** means a process involving passage of source water through a bed of sand at low velocity (generally less than 0.10 gpm/ft^2) that results in substantial particulate removal (> 2-log *Giardia lamblia* cysts) by physical and biological mechanisms.

(((~~232~~))) (237) **"SMA"** means a satellite system management agency.

(((~~233~~))) (238) **"SOC"** means a synthetic organic chemical.

(((~~234~~))) (239) **"Societal perspective"** means:

A point of view that includes a broad spectrum of public benefits((,)) including, but not limited to:

(a) Enhanced system reliability;

(b) Savings that result from delaying, deferring, or minimizing capital costs; and

(c) Environmental benefits such as increased water in streams, improvements in aquifer recharge and other environmental factors.

(((~~235~~))) (240) **"Source meter"** means a meter that measures total output of a water source over specific time periods.

(((~~236~~))) (241) **"Source water"** means untreated water that is not subject to recontamination by surface runoff and:

(a) For unfiltered systems, enters the system immediately before the first point of disinfectant application; and

(b) For filtered systems, enters immediately before the first treatment unit of a water treatment facility.

(((~~237~~))) (242) **"SPI"** means a special purpose investigation.

(((~~238~~))) (243) **"Special purpose investigation (SPI)"** means on-site inspection of a public water system by the department or designee to address a potential public health concern, regulatory violation, or consumer complaint.

(((~~239~~))) (244) **"Special purpose sample"** means a sample collected for reasons other than the monitoring compliance specified in this chapter.

(((~~240~~))) (245) **"Spring"** means a source of water where an aquifer comes in contact with the ground surface.

(((~~241~~))) (246) **"SRF"** means the state revolving fund.

(((~~242~~))) (247) **"SSNC"** means state significant noncomplier.

(((~~243~~))) (248) **"Standard methods"** means the book, titled *Standard Methods for the Examination of Water and Waste Water,* jointly published by the American Public Health Association, American Water Works Association (AWWA), and Water Pollution Control Federation. This book is available through public libraries or may be ordered from AWWA, 6666 West Quincy Avenue, Denver, Colorado 80235. The edition to be used is that specified by EPA for the relevant drinking water parameter in 40 C.F.R. Part 141.

(((~~244~~))) (249) **"Standby storage"** means the volume of stored water available for use during a loss of source capacity, power, or similar short-term emergency.

(((~~245~~))) (250) **"State advisory level (SAL)"** means a level established by the department and state board of health for a contaminant without an existing MCL. The SAL represents a level that when exceeded, indicates the need for further assessment to determine if the chemical is an actual or potential threat to human health.

(((~~246~~))) (251) **"State board of health"** and **"board"** means the board created by RCW 43.20.030.

(((~~247~~))) (252) **"State building code"** means the codes adopted by and referenced in chapter 19.27 RCW; the state energy code; and any other codes so designated by the Washington state legislature as adopted and amended by the council.

(((~~248~~))) (253) **"State revolving fund (SRF)"** means the revolving loan program financed by the state and federal governments and managed by the state for the purpose of assisting water systems to meet their capital needs associated with complying with the federal Safe Drinking Water Act under chapter 246-296 WAC.

(((~~249~~))) (254) **"State significant noncomplier (SSNC)"** means a system that is violating or has violated department rules, and the violations may create, or have created an imminent or a significant risk to human health.

The violations include, but are not limited to:

(a) Repeated violations of monitoring requirements;

(b) Failure to address an exceedance of permissible levels of regulated contaminants;

(c) Failure to comply with treatment technique standards or requirements;

(d) Failure to comply with waterworks operator certification requirements; or

(e) Failure to submit to a sanitary survey.

(((~~250~~))) (255) **"Subpart H System"** see definition for **"surface water system."**

(((~~251~~))) (256) **"Surface water"** means a body of water open to the atmosphere and subject to surface runoff.

(((~~252~~))) (257) **"Surface water system"** means a public water system that uses in whole, or in part, source water from a surface supply, or GWI supply. This includes systems that operate surface water treatment facilities, and systems that purchase "completely treated water" (((~~as defined in this subsection~~))). A "surface water system" is also referred to as a "Subpart H System" in some federal regulatory language adopted by reference and the two terms are considered equivalent for the purposes of this chapter.

(((~~253~~))) (258) **"Susceptibility assessment"** means the completed Susceptibility Assessment Survey Form developed by the department to evaluate the hydrologic setting of the water source and assess its contribution to the source's overall susceptibility to contamination from surface activities.

(((~~254~~))) (259) **"SUVA"** means specific ultraviolet absorption.

(((~~255~~))) (260) **"SVBA"** means spill resistant vacuum breaker assembly.

(((~~256~~))) (261) **"SWTR"** means the surface water treatment rule.

(((~~257~~))) (262) **"Synthetic organic chemical (SOC)"** means a manufactured carbon-based chemical.

(((~~258~~))) (263) **"System capacity"** means the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations.

(((~~259~~))) (264) **"System physical capacity"** means the maximum number of service connections or equivalent residential units (ERUs) that the system can serve when considering the limitation of each system component such as source, treatment, storage, transmission, or distribution, individually and in combination with each other.

(((~~260~~))) (265) **"T"** means disinfectant contact time in minutes.

(((~~261~~))) (266) **"Time-of-travel"** means the time required for groundwater to move through the water bearing zone from a specific point to a well.

(((~~262~~))) (267) **"TNC"** means transient noncommunity.

(((~~263~~))) (268) **"TNTC"** means too numerous to count.

(((~~264~~))) (269) **"TOC"** means total organic carbon.

(((~~265~~))) (270) **"Too numerous to count (TNTC)"** means the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

(((~~266~~))) (271) **"Tracer study"** means a field study conducted to determine the disinfectant contact time, T, provided by a water system component, such as a clearwell or storage reservoir, used for *Giardia lamblia* cyst and virus inactivation. The study involves introducing a tracer chemical at the inlet of the contact basin and measuring the resulting outlet tracer concentration as a function of time.

(((~~267~~))) (272) **"Transmission line"** means pipes used to convey water from source, storage, or treatment facilities to points of distribution or distribution mains, and from source facilities to treatment or storage facilities. This also can include transmission mains connecting one section of distribution system to another section of distribution system as long as this transmission main is clearly defined on the

plans and no service connections are allowed along the transmission main.

(((~~268~~))) (273) **"Treatment technique requirement"** means a department-established requirement for a public water system to provide treatment, such as filtration or disinfection, as defined by specific design, operating, and monitoring requirements. A "treatment technique requirement" is established in lieu of a primary MCL when monitoring for the contaminant is not economically or technologically feasible.

(((~~269~~))) (274) **"Triggered source water monitoring"** means collection of groundwater source samples as a result of a total coliform-positive routine sample in the distribution system under WAC 246-290-300(3).

(((~~270~~))) (275) **"Trihalomethane (THM)"** means one of a family of organic compounds, named as derivatives of methane, where three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure. THMs may occur when chlorine, a halogen, is added to water containing organic material and are generally found in water samples as disinfection byproducts.

(((~~271~~))) (276) **"TTHM"** means total trihalomethane.

(((~~272~~))) (277) **"Turbidity event"** means a single day or series of consecutive days, not to exceed fourteen, when one or more turbidity measurement each day exceeds 5 NTU.

(((~~273~~))) (278) **"Two-stage lime softening"** means a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

(((~~274~~))) (279) **"T10"** means the time it takes ten percent of the water passing through a system contact tank intended for use in the inactivation of *Giardia lamblia* cysts, viruses, and other microorganisms of public health concern, as determined from a tracer study conducted at peak hourly flow or from published engineering reports or guidance documents for similarly configured tanks.

(((~~275~~))) (280) **"ug/L"** means micrograms per liter.

(((~~276~~))) (281) **"UL"** means the Underwriters Laboratories, Inc.

(((~~277~~))) (282) **"umhos/cm"** means micromhos per centimeter.

(((~~278~~))) (283) **"Unapproved auxiliary water supply"** means a water supply (other than the purveyor's water supply) on or available to the consumer's premises that is either not approved for human consumption by the health agency having jurisdiction or is not otherwise acceptable to the purveyor.

(((~~279~~))) (284) **"Uncovered finished water storage facility"** means a tank, reservoir, or other facility used to store water, which will undergo no further treatment to reduce microbial pathogens except residual disinfection and is directly open to the atmosphere without a suitable watertight roof or cover.

(((~~280~~))) (285) **"Uniform Plumbing Code (UPC)"** means the code adopted under RCW 19.27.031(4) and implemented under chapter 51-56 WAC. This code establishes statewide minimum plumbing standards applicable within the property lines of the consumer's premises.

(((~~281~~))) (286) **"UPC"** means the Uniform Plumbing Code.

(((~~282~~))) (287) **"Used water"** means water which has left the control of the purveyor.

(((~~283~~))) (288) **"UTC"** means the utilities and transportation commission.

(((~~284~~))) (289) **"Verification"** means to demonstrate the results of a sample to be precise by analyzing a duplicate sample. Verification occurs when analysis results fall within plus or minus thirty percent of the original sample.

(((~~285~~))) (290) **"Virus"** means a virus of fecal origin which is infectious to humans and transmitted through water.

(((~~286~~))) (291) **"VOC"** means a volatile organic chemical.

(((~~287~~))) (292) **"Volatile organic chemical (VOC)"** means a manufactured carbon-based chemical that vaporizes quickly at standard pressure and temperature.

(((~~288~~))) (293) **"Voluntary curtailment"** means a curtailment of water use requested, but not required of consumers.

(((~~289~~))) (294) **"WAC"** means the Washington Administrative Code.

(((~~290~~))) (295) **"Waterborne disease outbreak"** means the significant occurrence of acute infectious illness, epidemiologically associated with drinking water from a public water system, as determined by the appropriate local health agency or the department.

(((~~291~~))) (296) **"Water demand efficiency"** means minimizing water use by the public water system's consumers through purveyor sponsored activities that may include, but are not limited to, distributing water saving devices, providing rebates or incentives to promote water efficient technologies or by providing water audits to homes, businesses, or landscapes.

(((~~292~~))) (297) **"Water facilities inventory (WFI) form"** means the department form summarizing each public water system's characteristics.

(((~~293~~))) (298) **"Water right"** means a certificated water right, water right permit, valid claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

(((~~294~~))) (299) **"Water right self-assessment"** means an evaluation of the legal ability of a water system to use water for existing or proposed usages in conformance with state water right laws. The assessment may be done by a water system, a purveyor, the department of ecology, or any combination thereof.

(((~~295~~))) (300) **"Watershed"** means the region or area that:

(a) Ultimately drains into a surface water source diverted for drinking water supply; and

(b) Affects the physical, chemical, microbiological, and radiological quality of the source.

(((~~296~~))) (301) **"Water shortage"** means a situation during which the water supplies of a system cannot meet normal water demands for the system, including peak periods.

(((~~297~~))) (302) **"Water shortage response plan"** means a plan outlining policies and activities to be implemented to reduce water use on a short-term basis during or in anticipation of a water shortage.

(((~~298~~))) (303) **"Water supply characteristics"** means the factors related to a public water system's source of water supply that may affect its availability and suitability to provide for both short-term and long-term needs.

Factors include, but are not limited to:

(a) Source location;

(b) Name of any body of water and water resource inventory area from which water is diverted or withdrawn;

(c) Production capacity;

(d) The source's natural variability;

(e) The system's water rights for the source;

(f) Other legal demands on the source such as water rights for other uses;

(g) Conditions established to protect species listed under the Endangered Species Act in 50 C.F.R. 17.11;

(h) Instream flow restrictions established under Title 173 WAC; and

(i) Any conditions established by watershed plans approved under chapter 90.82 RCW and RCW 90.54.040(1) or salmon recovery plans under chapter 77.85 RCW.

(((~~299~~))) (304) **"Water supply efficiency"** means increasing a public water system's transmission, storage and delivery potential through activities that may include, but are not limited to:

(a) System-wide water audits;

(b) Documenting authorized uses;

(c) Conducting leak surveys; and

(d) Repairs on:

(i) Meters;

(ii) Lines;

(iii) Storage facilities; and

(iv) Valves.

(((~~300~~))) (305) **"Water use efficiency (WUE)"** means increasing water supply efficiency and water demand efficiency to minimize water withdrawals and water use.

(((~~301~~))) (306) **"Water use efficiency program"** means policies and activities focusing on increasing water supply efficiency and water demand efficiency to minimize water withdrawals and water use.

(((~~302~~))) (307) **"Well field"** means a group of wells one purveyor owns or controls that:

(a) Draw from the same aquifer or aquifers as determined by comparable inorganic chemical analysis and comparable static water level and top of the open interval elevations; and

(b) Discharge water through a common pipe and the common pipe shall allow for collection of a single sample before the first distribution system connection.

(((~~303~~))) (308) **"Wellhead protection area (WHPA)"** means the portion of a well's, wellfield's or spring's zone of contribution defined using WHPA criteria established by the department.

(((~~304~~))) (309) **"WFI"** means a water facilities inventory form.

(((~~305~~))) (310) **"Wholesale system"** means a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

(((~~306~~))) (311) **"WHPA"** means a wellhead protection area.

(((~~307~~))) (312) **"WUE"** means water use efficiency.

(((~~308~~))) (313) **"Zone of contribution"** means the area surrounding a pumping well or spring that encompasses all areas or features that supply groundwater recharge to the well or spring.

AMENDATORY SECTION (Amending WSR 11-17-062, filed 8/15/11, effective 10/1/11)

WAC 246-290-025 Adoption by reference. The following sections and subsections of Title 40 Code of Federal Regulations (C.F.R.) Part 141 National Primary Drinking Water Regulations and Part 143 National Secondary Drinking Water Regulations revised as of July 1, (((~~2009~~))) 2016, (((~~and including all amendments and modifications thereto effective as of the date of adoption of this chapter~~))) are adopted by reference:

141.2 Definitions. Only those definitions listed as follows:

Action level;

Corrosion inhibitor;

Effective corrosion inhibitor residual;

Enhanced coagulation;

Enhanced softening;

First draw sample;

Haloacetic acids (five) (HAA5);

(((~~First draw sample;~~)))

Large water system;

Lead service line;

Maximum residual disinfectant level (MRDL);

Maximum residual disinfectant level goal (MRDLG);

Medium-size water system;

Optimal corrosion control treatment;

Service line sample;

Single family structure;

Small water system;

Specific ultraviolet absorption (SUVA); and

Total Organic Carbon (TOC).

(((~~141.12~~	~~Maximum contaminant levels for organic chemicals.~~)))
141.13	Maximum contaminant levels for turbidity.
(((~~141.21~~	~~Coliform monitoring.~~)))
141.22	Turbidity sampling and analytical requirements.
141.23(a) - excluding (i)(2)	141.23(j), Inorganic chemical sampling.
141.23(m) -	141.23(o)

141.24(a) - 141.24(d)	Organic chemicals ((~~other than total trihalomethanes~~)), sampling and analytical requirements.
141.24 (f)(1) - 141.24 (f)(15), 141.24 (f)(18), 141.24 (f)(19), 141.24 (f)(21), 141.24 (f)(22) 141.24 (g)(1) - 141.24 (g)(9), 141.24 (g)(12) - 141.24 (g)(14), 141.24 (h)(1) - 141.24 (h)(11), 141.24 (h)(14) - 141.24 (h)(17) 141.24 (h)(20)	
141.25(a),	141.25 (c) - (d), Analytical methods for radioactivity.
141.26	Monitoring frequency and compliance for ((~~radioactivity~~)) radionuclides in community water systems.
141.31(d)	Reporting ((~~of public notices and compliance certifications~~)) requirements.
141.33(e)	Record maintenance ((~~of public notices and certifications~~)).
141.40	Monitoring requirements for unregulated contaminants.
141.61	Maximum contaminant levels for organic contaminants.
141.62, excluding (b)	Maximum contaminant levels for inorganic ((~~chemical and physical~~)) contaminants.
141.63(e)	Maximum contaminant levels (MCLs) for microbiological contaminants.
141.64	Maximum contaminant levels ((~~and Best Available Technologies (BATs)~~)) for disinfection byproducts.
141.65(c)	((~~Best Available Technologies (BATs) for~~)) Maximum Residual Disinfectant Levels.
141.66	Maximum contaminant levels for radionuclides.
Control of Lead and Copper	
141.80, excluding (c)(3)(v)	General requirements.
141.81	Applicability of corrosion control treatment steps to small, medium-size and large water systems.
141.82(a) - 141.82(h)	Description of corrosion control treatment requirements.
141.83	Source water treatment requirements.
141.84	Lead service line replacement requirements.
141.85	Public education and supplemental monitoring requirements.
141.86 (a) - (f)	Monitoring requirements for lead and copper in tap water.
141.87	Monitoring requirements for water quality parameters.
141.88	Monitoring requirements for lead and copper in source water.
141.89	Analytical methods ((~~for lead and copper testing~~)).
141.90, excluding (a)(4)	Reporting requirements.
141.91	Recordkeeping requirements.
Disinfectants and Disinfection Byproducts (D/DBP)	
141.130	General requirements.
141.131	Analytical requirements.
141.132, excluding (c)(1)(i)	Monitoring requirements.
141.133	Compliance requirements.
141.134	Reporting and recordkeeping requirements.
141.135	Treatment technique for control of disinfection byproduct precursors.
Subpart O - Consumer Confidence Reports	
141.153 (h)(6) and (7)	Contents of the reports.
Enhanced Filtration ((~~- Reporting and Recordkeeping~~)) and Disinfection - Systems Serving 10,000 or More People	
141.175(b)	((~~Individual filter reporting and follow-up action requirements for systems treating surface water with conventional, direct, or in-line filtration and serving at least 10,000 people.~~)) Reporting and recordkeeping requirements.
Subpart Q - Public Notification of Drinking Water Violations	
141.201, excluding (3)(ii) of Table 1	General public notification requirements.
141.202, excluding (3) of Table 1	Tier 1 Public Notice - Form, manner, and frequency of notice.
141.203	Tier 2 Public Notice - Form, manner, and frequency of notice.
141.204	Tier 3 Public Notice - Form, manner, and frequency of notice.
141.205	Content of the public notice.
141.206	Notice to new billing units or new customers.
141.207	Special notice of the availability of unregulated contaminant monitoring results.

141.208	Special notice for exceedances of the SMCL for fluoride.
141.211	Special notice for repeated failure to conduct monitoring of the source water for *Cryptosporidium* ((~~monitoring~~)) and for failure to determine bin classification or mean *Cryptosporidium* level.

Appendix A to Subpart Q of Part 141 - NPDWR violations and other situations requiring ((~~PN~~)) public notice

Appendix B to Subpart Q of Part 141 - Standard health effects language for ((~~PN~~)) public notification

Appendix C to Subpart Q of Part 141- List of acronyms used in ((~~PN~~)) public notification regulation

141.400	General requirements and applicability.
141.402(c)	Groundwater source microbial monitoring and analytical methods.
141.403 (b)(3)(i) through (iii)	Treatment technique requirements for groundwater systems.

Subpart T - Enhanced Filtration and Disinfection - Systems Serving Fewer Than 10,000 People

141.530 - 141.544	Disinfection profile and benchmark.
141.563	((~~Follow-up actions required.~~)) What follow-up action is my system required to take based on continuous turbidity monitoring?
141.570, excluding (c)	((~~Reporting requirements.~~)) What does Subpart T require that my system report to the state?

Subpart U ((~~and V~~)) - Initial Distribution System Evaluations ((~~and Stage 2 Disinfection Byproducts Requirements.~~))

141.600 - 141.605	Initial distribution system evaluations.

Subpart V - Stage 2 Disinfection Byproducts Requirements

141.620 - 141.629, excluding 624	Stage 2 Disinfection Byproducts Requirements.

Subpart W - Enhanced Treatment for *Cryptosporidium*

141.700-722 Enhanced Treatment for *Cryptosporidium*

Subpart Y - Revised Total Coliform Rule

141.852	Analytical methods and laboratory certification.
141.860 (c) - (d)	Violations

Part 143 - National Secondary Drinking Water Regulations

143.1	Purpose.
143.2	Definitions.
143.3	Secondary maximum contaminant levels.
143.4	Monitoring.

Copies of the incorporated sections and subsections of Title 40 C.F.R. are available from the Department of Health((,)) online at: http://www/doh.wa.gov/CommunityandEnvironment/DrinkingWater/RegulationandCompliance/Rules, or P.O. Box 47822, Olympia, Washington 98504-7822, or by calling the department's drinking water hotline at 800-521-0323.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-030 General administration. (1) The department and the health officer for each local health jurisdiction may develop a joint plan of ((~~operation~~)) responsibility. Wherever in this chapter the term "department" is used, the term "health officer" may be substituted based on the terms of this joint plan of responsibility. This plan shall:

(a) List the roles and responsibilities of each agency;

(b) Specifically designate those **Group A** systems for which the department and local health officer have primary responsibility;

(c) Provide for an agreed-to level of public water system oversight;

(d) Be signed by the department and the local health department or district; and

(e) Be reviewed at least once every five years and updated as needed.

((~~Wherever in this chapter the term "department" is used, the term "health officer" may be substituted based on the terms of this plan of operation.~~))

(2) The department shall, upon request, review and report on the adequacy of water supply supervision to both the state and local boards of health.

(3) The local board of health may adopt rules governing **Group A** water systems within its jurisdiction for which the health officer has assumed primary responsibility. Adopted local board of health rules shall be:

(a) No less stringent than this chapter; and

(b) Revised, if necessary, within twelve months after the effective date of revised state board of health rules. During this time period, existing local rules shall remain in effect, except provisions of the revised state board of health rules that are more stringent than the local board of health rules shall apply.

(4) For those **Group A** water systems where the health officer has assumed primary responsibility, the health officer may approve project reports and construction documents in accordance with engineering criteria approved by the department and listed under Part 3 of this chapter and water system plans in accordance with planning criteria listed under WAC 246-290-100.

(5) ((~~An advisory committee shall be established to provide advice to the department on the organization, functions, service delivery methods, and funding of the drinking water program. Members shall be appointed by the department for fixed terms of no less than two years, and may be reappointed. The committee shall reflect a broad range of interests in the regulation of public water supplies, including water utilities of all sizes, local governments, business groups, special purpose districts, local health jurisdictions,~~

~~other state and federal agencies, financial institutions, environmental organizations, the legislature, professional engineers engaged in water system design, and other groups substantially affected by the department's role in implementing state and federal requirements for public water systems.~~

~~(6)~~)) The department may develop guidance to clarify sections of the rules as needed and make these available for distribution. ((~~Copies of the~~)) Guidance may be obtained by contacting the ((~~division~~)) office of drinking water.

(((~~(7)~~))) (6) Fees may be charged and collected by the department as authorized in chapter 43.20B RCW and by local health ((~~agencies~~)) jurisdictions as authorized in RCW 70.05.060 to recover all or a portion of the costs incurred in administering this chapter or that are required to be paid under WAC 246-290-990.

(((~~(8)~~))) (7) All state and local agencies involved in review, approval, surveillance, testing, ((~~and/or~~)) or operation of public water systems, or issuance of permits for buildings or sewage systems shall be governed by these rules and any decisions of the department.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-035 Water system ownership. (1) The following requirements apply to all newly developed public water systems:

(a) Except for systems proposed within an ((~~individual~~)) existing water system's approved service area in a ((~~critical water supply service area as governed by the Public Water System Coordination Act, chapter 70.116 RCW and chapter 246-293 WAC,~~)) CWSSA and offered service by that existing system, any proposed new public water system must be owned or operated by a department approved satellite management agency (SMA) if one is available;

(b) The approval of any proposed new public water system shall be conditioned upon the periodic review of the system's operational history to determine its ability to meet the department's financial viability and other operating requirements. If, upon periodic review, the department determines the system is in violation of financial viability or other operating requirements, the system shall transfer ownership to an approved SMA or obtain operation and management by an approved SMA, if such ownership or operation and management can be made with reasonable economy and efficiency.

(2) An owner of a public water system who is proposing to transfer or has transferred ownership shall:

(a) Provide written notice to the department and all consumers at least one year prior to the transfer, unless the new owner agrees to an earlier date. Notification shall include a time schedule for transferring responsibilities, identification of the new owner, and under what authority the new ownership will operate. If the system is a corporation, identification of the registered agent shall also be provided;

(b) Ensure all health-related standards pursuant to this chapter are met during transfer of the utility. It shall also be the responsibility of the utility transferring ownership to inform and train the new owner regarding operation of the utility; and

(c) Comply with the operating permit requirements pursuant to chapter 246-294 WAC.

(3) The purveyor may be required to document compliance with other relevant ownership requirements, such as those pursuant to UTC jurisdiction under Title 80 RCW.

(4) No purveyor may end utility operations without providing written notice to all customers and to the department at least one year prior to termination of service. A purveyor that fails to provide such notice remains subject to the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

WAC 246-290-060 Variances, exemptions, and waivers. (1) General.

(a) The state board of health may grant variances, exemptions, and waivers of the requirements of this chapter according to the procedures outlined in subsection (5) of this section. See WAC 246-290-300 (4)(g) and (((~~(8)~~))) (7)(f) for monitoring waivers.

(b) Consideration by the board of requests for variances, exemptions, and waivers shall not be considered adjudicative proceedings as that term is defined in chapter 34.05 RCW.

(c) Statements and written material regarding the request may be presented to the board at or before the public hearing where the application will be considered. Allowing cross-examination of witnesses shall be within the discretion of the board.

(d) The board may grant a variance, exemption, or waiver if it finds:

(i) Due to compelling factors, the public water system is unable to comply with the requirements; and

(ii) The granting of the variance, exemption, or waiver will not result in an unreasonable risk to the health of consumers.

(2) Variances.

(a) MCL.

(i) The board may grant a MCL variance to a public water system that cannot meet the MCL requirements because of characteristics of the source water that is reasonably available to the system.

(ii) A MCL variance may only be granted in accordance with 40 C.F.R. 141.4.

(iii) A variance shall not be granted from the MCL for presence of ((~~total coliform~~)) *E. coli* under WAC 246-290-310(2).

(b) Treatment techniques.

(i) The board may grant a treatment technique variance to a public water system if the system demonstrates that the treatment technique is not necessary to protect the health of consumers because of the nature of the system's source water.

(ii) A treatment technique variance granted in accordance with 40 C.F.R. 141.4.

(iii) A variance shall not be granted from any treatment technique requirement under Part 6 of chapter 246-290 WAC.

(c) The board shall condition the granting of a variance upon a compliance schedule as described in subsection (6) of this section.

(3) Exemptions.

(a) The board may grant a MCL or treatment technique exemption to a public water system that cannot meet an MCL standard or provide the required treatment in a timely manner, or both, in accordance with 40 C.F.R. 141.4.

(b) No exemption shall be granted from:

(i) The requirement to provide a residual disinfectant concentration in the water entering the distribution system under WAC 246-290-662 or 246-290-692; or

(ii) The MCL for presence of ((~~total coliform~~)) *E. coli* under WAC 246-290-310(2).

(c) The board shall condition the granting of an exemption upon a compliance schedule as described in subsection (6) of this section.

(4) Waivers. The board may grant a waiver to a public water system if the system cannot meet the requirements of these regulations pertaining to any subject not covered by EPA variance and/or exemption regulations.

(5) Procedures.

(a) For variances and exemptions. The board shall consider granting a variance or exemption to a public water system in accordance with 40 C.F.R. 141.4.

(b) For waivers. The board shall consider granting a waiver upon completion of the following actions:

(i) The purveyor applies to the department in writing. The application, which may be in the form of a letter, shall clearly state the reason for the request;

(ii) The purveyor provides notice of the purveyor's application to consumers and provides proof of the notice to the department;

(iii) The department prepares a recommendation to the board; and

(iv) The board provides notice for and conducts a public hearing on the purveyor's request.

(6) Compliance schedule.

(a) The board shall condition the granting of a variance or exemption based on a compliance schedule. The compliance schedule shall include:

(i) Actions the purveyor shall undertake to comply with a MCL or treatment technique requirement within a specified time period; and

(ii) A description and time-table for implementation of interim control measures the department may require while the purveyor completes the actions required in (a)(i) of this subsection.

(b) The purveyor shall complete the required actions in the compliance schedule within the stated time frame.

(7) Extensions to variances and exemptions.

((~~(a)~~)) The board may extend the final date of compliance prescribed in the compliance schedule for a variance and/or exemption in accordance with 40 C.F.R. 141.4.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-100 Water system plan. (1) The purpose of this section is to establish a uniform process for purveyors to:

(a) Demonstrate ((~~the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with relevant local, state, and federal plans and regulations~~)) system capacity as defined in WAC 246-290-010;

(b) Demonstrate how the system will address present and future needs in a manner consistent with other relevant plans and local, state, and federal laws, including applicable land use plans;

(c) Establish eligibility for funding under chapter 246-296 WAC.

(2) Purveyors of the following categories of community public water systems shall submit a water system plan for review and approval by the department:

(a) Systems ((~~having~~)) serving one thousand or more service((~~s~~)) connections;

(b) Systems required to develop water system plans under the Public Water System Coordination Act of 1977 (chapter 70.116 RCW);

(c) Any system experiencing problems related to ((~~planning, operation, and/or management~~)) system capacity, as determined by the department;

(d) All new systems;

(e) Any ((~~expanding~~)) system((~~; and~~)) proposing to:

(i) Increase or otherwise modify the service area identified in a previously approved planning document; or

(ii) Increase the geographical area where direct service is provided if a planning or engineering document has not been previously approved; or

(iii) Install additions, extensions, or changes to existing source, storage, or transmission facilities and increase the approved number of service connections.

(f) Any system proposing to use the document submittal exception process in WAC 246-290-125; or

(g) Any system operating under or proposing to operate under an unspecified number of service connections.

(3) The purveyor shall work with the department to establish the relative priority and level of detail for ((~~a~~)) each element of the water system plan. ((~~In general,~~)) The ((~~scope~~)) priority and level of detail ((~~of the plan will~~)) must be related to size, complexity, water supply characteristics, forecasted demand characteristics, past performance, planning history, and use of the water system. Project reports may be combined with a water system plan.

(4) ((~~In order to demonstrate system capacity, the water system plan~~)) The purveyor shall, at a minimum, address the following elements((~~, as a minimum, for a period of at least twenty years into the future~~)) in the water system plan:

(a) Description of the water system, including:

(i) Ownership and management, including the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system;

(ii) System history and background;

(iii) Related plans, such as coordinated water system plans, abbreviated coordinated water system plans, local land use plans, groundwater management plans, and basin plans;

(iv) Service area maps, ((~~characteristics, agreements, and policies. Water systems must include their existing service area and future service area. Municipal water suppliers must define their retail service area and meet the requirements under WAC 246-290-106. Municipal water suppliers must identify where their water rights place of use will be~~

~~expanded to their service area if the requirements under WAC 246-290-107 have been met; and~~

~~(v)~~)) including retail service area and future service area, if applicable, and areas where wholesale water is provided to other public water systems. Municipal water suppliers shall identify the area that will expand their water rights' place of use if the requirements under WAC 246-290-107 have been met;

(v) Service area characteristics, agreements, and policies;

(vi) Satellite management, if applicable.

(b) Basic planning data, including:

(i) Current population, service connections, water use, and equivalent residential units; and

(ii) Sufficient water production and consumption data to identify trends including the following elements:

(A) Monthly and annual production totals for each source, including water purchased from another public water system;

(B) Annual usage totals for each customer class as determined by the purveyor;

(C) Annual usage totals for water supplied to other public water systems; and

(D) For systems serving one thousand or more total connections, a description of the seasonal variations in consumption patterns of each customer class defined by the purveyor.

(iii) Designated land use, zoning, ((~~future~~)) population, and water demand ((~~for a consecutive six-year~~)) within the water system's service area for the plan approval period, and at least a twenty-year planning period ((~~within the water system's service area~~)).

(c) Demand forecasts, developed under WAC 246-290-221, for ((~~a consecutive six-year and~~)) the plan approval period, and at least a twenty-year planning period. These shall show future use with and without savings expected from the system's water use efficiency program.

(d) For systems serving one thousand or more total connections, a demand forecast ((~~projecting~~)) for the plan approval period and at least a twenty-year planning period that projects demand if the measures deemed cost-effective per WAC 246-290-810 were implemented.

(e) System analysis, including:

(i) System design standards;

(ii) Water quality analysis;

(iii) ((~~System~~)) Inventory ((~~description~~)) and analysis of water system facilities; and

(iv) Summary of system deficiencies.

(f) Water resource analysis for the plan approval period and at least a twenty-year planning period, including:

(i) A water use efficiency program. Municipal water suppliers must meet the requirements in WAC 246-290-810;

(ii) Source of supply analysis, which includes:

(A) An evaluation of water supply alternatives if additional water rights will be pursued within twenty years; and

(B) A narrative description of the system's water supply characteristics and the foreseeable effect from current and future use on the water quantity and quality of any body of water from which its water is diverted or withdrawn based on existing data and studies;

(iii) A water shortage response plan as a component of the reliability and emergency response requirements under WAC 246-290-420;

(iv) Water right self-assessment;

(v) Water supply reliability analysis;

(vi) Interties; and

(vii) For systems serving one thousand or more total connections, an evaluation of opportunities for the use of reclaimed water, where they exist, as defined in RCW ((~~90.46.010(4)~~)) 90.46.120.

(g) Source water protection program under WAC 246-290-135.

(h) Operation and maintenance program under WAC 246-290-415 and 246-290-654(5), as applicable.

(i) Improvement program, including a ((~~six-year~~)) capital improvement schedule that identifies all capital improvements scheduled within the plan approval period and any major projects or other capital improvements planned within at least a twenty-year planning period.

(j) Financial program, including demonstration of financial viability by providing:

(i) A summary of past income and expenses;

(ii) A ((~~one-year~~)) balanced operational budget for ((~~systems serving one thousand or more connections or a six-year balanced operational budget for systems serving less than one thousand connections~~)) the plan approval period;

(iii) A plan for collecting the revenue necessary to maintain cash flow stability and to fund the capital improvement program and emergency improvements; and

(iv) An evaluation that has considered:

(A) The affordability of water rates; and

(B) The feasibility of adopting and implementing a rate structure that encourages water demand efficiency.

(k) Other documents, such as:

(i) Documentation of SEPA compliance;

(ii) Agreements; and

(iii) Comments from each local government with jurisdiction and adjacent utilities.

(5) Purveyors intending to implement the project report and construction document submittal exceptions authorized under WAC 246-290-125 must include:

(a) Standard construction specifications for distribution mains; and/or

(b) Design and construction standards for distribution-related projects, including:

(i) Description of project report and construction document internal review procedures, including engineering design review and construction completion reporting requirements;

(ii) Construction-related policies and requirements for external parties, including consumers and developers;

(iii) Performance and sizing criteria; and

(iv) General reference to construction materials and methods.

(6) ((~~The department, at its discretion, may require reports from purveyors identifying the progress in developing their water system plans.~~)) Purveyors shall submit reports identifying the progress in developing their water system plans if required by the department.

(7) Purveyors shall transmit water system plans to adjacent utilities and each local government with jurisdiction, to assess consistency with ongoing and adopted planning efforts.

(8) Prior to department approval of a water system plan or a water system plan update, the purveyor shall:

(a) Hold an informational meeting for the water system consumers and notify consumers in a way that is appropriate to the size of the water system; and

(b) Obtain ((~~the~~)) approval of the water system plan from the purveyor's governing body or elected governing board.

(9) Department approval of a water system plan ((~~shall be in effect for six~~)) is effective for ten years from the date of written approval unless:

(a) ((~~Major projects subject to SEPA as defined in WAC 246-03-030 (3)(a) are proposed that are not addressed in the plan;~~

~~(b) Changes occur in the basic planning data significantly affecting system improvements identified~~)) The purveyor requests and receives a plan approval period of less than ten years; or

(((~~(c)~~))) (b) The department requests an updated plan ((~~or plan amendment~~)).

(10) The purveyor shall update the water system plan and obtain department approval at ((~~least every six years.~~)) or before the expiration of the current plan approval if the system ((~~no longer~~)) meets any of the conditions of subsection (2) of this section((~~, the purveyor shall as directed by the department, either:~~

~~(a) Submit a water system plan amendment for review and approval with the scope to be determined by the department; or~~

~~(b) Meet the requirements under WAC 246-290-105~~)).

(11) Water system plan amendments. A purveyor may submit an amendment to its current approved water system plan for department approval at any time during the plan approval period. Project reports may be included in a water system plan amendment to meet the requirements under WAC 246-290-110(3). Department approval of a water system plan amendment does not alter the current plan approval period in accordance with subsection (9) of this section and does not satisfy the requirement of subsection (2) of this section to update the water system plan.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-105 Small water system management program. (1) The purpose of a small water system management program is to:

(a) Demonstrate the system's operational, technical, managerial, and financial capability to achieve and maintain compliance with all relevant local, state, and federal plans and regulations; and

(b) Establish eligibility for funding under chapter 246-296 WAC.

(2) All noncommunity systems and ((~~all~~)) community systems not required to complete a water system plan ((~~as described~~)) under WAC 246-290-100(2) shall develop and implement a small water system management program.

(3) The purveyor shall submit this program for department review and approval ((~~to the department~~)) when:

(a) A new NTNC public water system is created;

(b) An existing system has operational, technical, managerial, or financial problems, as determined by the department; or

(c) An existing system without approved construction documents is seeking as-built system approval under WAC 246-290-140; or

(d) A system applies for funding under chapter 246-296 WAC.

(4) Content and detail shall be consistent with the size, complexity, past performance, and use of the public water system. General content topics shall include, but not be limited to, the following elements:

(a) System management;

(b) Annual operating permit;

(c) Water facilities inventory form;

(d) Service area and facility map. Municipal water suppliers ((~~must~~)) shall identify ((~~where~~)) the area that will expand their water rights' place of use ((~~will be expanded to their service area~~)) if the requirements under WAC 246-290-107 have been met;

(e) Water right self-assessment;

(f) Description of the system's source(s) including the name and location of any body of water from which its water is diverted or withdrawn;

(g) A water use efficiency program. Municipal water suppliers must meet the requirements in WAC 246-290-810;

(h) Water production and consumption data including each of the following:

(i) Monthly and annual production for each source, including water purchased from another public water system;

(ii) Annual consumption totals for residential and nonresidential connections;

(iii) Total annual volume of water supplied to other public water systems;

(i) Average daily demand;

(j) Current population served;

(k) The forecast of average daily demand based on the system's approved number of connections that considers:

(i) Water use trends based on actual water use records; and

(ii) Applicable land use plans;

(l) An evaluation that has considered the feasibility of adopting and implementing a rate structure that encourages water demand efficiency;

(m) Source water protection program;

(n) Component inventory and assessment;

(o) List of planned system improvements;

(p) Water quality monitoring program;

(q) Operation and maintenance program under WAC 246-290-415(2) and 246-290-654(5) as applicable;

(r) Cross-connection control program;

(s) Emergency response plan; and

(t) Budget.

(5) The department may require changes be made to a small water system management program if necessary to effectively accomplish the program's purpose.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-106 Duty to provide service. Municipal water suppliers required to submit a water system plan for department approval under WAC 246-290-100(2) must also include in the water system plan the provisions of this section as required under RCW 43.20.260. In approving a water system plan, the department shall ensure that water service to be provided by the water system for any new industrial, commercial, or residential use is consistent with local plans and regulations.

(1) A municipal water supplier has a duty to provide retail water service to all new service connections within its retail service area if:

(a) It can be available in a timely and reasonable manner;

(b) There is sufficient water rights to provide water service;

(c) There is sufficient capacity to serve the water in a safe and reliable manner as determined by the department; and

(d) It is consistent with the requirements of local plans and regulations and, for water service by the water utility of a city or town, with the utility service extension ordinances of the city or town.

(2) Municipal water suppliers ((~~must provide~~)) shall include a retail service area map in the water system plan.

(3) Municipal water suppliers must meet the requirements of WAC 246-290-108 ((~~for their retail service area~~)).

(4) Municipal water suppliers ((~~must provide~~)) shall include their service policies and conditions of service including how new service will be provided in the water system plan.

(((~~(5) Municipal water suppliers may provide temporary water service to another water system if a written agreement with the water system is in place.~~

~~(6) To resolve a significant public health and safety concern, the department may allow water service to be extended prior to meeting the requirements of this section.~~))

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-107 Place of use expansion. The place of use of a surface or groundwater right may be expanded to include any portion of the approved service area that was not previously within the place of use for the water right when documented in an approved planning or engineering document under chapter 43.20 RCW or in accordance with procedures adopted under chapter 70.116 RCW. This occurs as an effect of the department's approval of a service area identified in a water system plan, water system plan amendment, small water system management program, engineering document, or as an effect of the local legislative authority's approval of a service area as part of a coordinated water system plan.

(1) The following conditions must be met:

(a) The municipal water supplier is in compliance with the terms of the water system plan or small water system management program, including those regarding water use efficiency.

(b) The alteration of the place of use is not inconsistent regarding an area added to the place of use with any local plans and regulations.

(c) The alteration of the place of use is not inconsistent regarding an area added to the place of use with any watershed plan approved under chapter 90.82 RCW or a comprehensive watershed plan approved under RCW 90.54.040(1) after September 3, 2003, if such a watershed plan has been approved for the area.

(2) As part of the planning or engineering document, municipal water suppliers must:

(a) Identify the ((~~portions of the service~~)) area where the place of use will be expanded.

(b) Document that subsection (1)(a) and (c) of this section are met.

(c) Meet the requirements of WAC 246-290-108 for the ((~~portions of the service~~)) area where the place of use will be expanded.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-108 Consistency with local plans and regulations. Consistency with local plans and regulations applies to planning and engineering documents under WAC 246-290-106, 246-290-107, and 246-290-110.

(1) Municipal water suppliers must include a consistency review and supporting documentation in its planning or engineering document describing how it has considered consistency with local plans and regulations. This review must include elements of local plans and regulations, as they reasonably relate to water service to be provided by a municipal water supplier for any new connection, including:

(a) Land use and zoning within the ((~~applicable~~)) service area;

(b) ((~~Six-year~~)) Growth projections used in the demand forecast;

(c) Utility service extension ordinances of a city or town when water service is provided by the water utility of the city or town;

(d) Provisions of water service for new service connections; and

(e) Other relevant elements related to water supply planning as determined by the department.

(2) Municipal water suppliers must request each local government with jurisdiction over the ((~~applicable~~)) service area to provide a consistency review.

(a) Municipal water suppliers shall provide each local government with jurisdiction sixty days to review the planning or engineering document unless another state statute or state regulation requires a different time frame. The municipal water supplier must provide the local government with jurisdiction an additional thirty days for review if requested.

(b) If an inconsistency is documented by the local government with jurisdiction within the time frame outlined in (a) of this subsection, the municipal water supplier must provide the inconsistency information to the department.

(c) If the local government with jurisdiction documents in writing an inconsistency exists with local plans and regulations, the municipal water supplier shall address the inconsis-

tency. The local government with jurisdiction shall be provided sixty days to review any revisions or responses that address the inconsistency.

(3) If the local government with jurisdiction does not provide a consistency review, the municipal water supplier shall complete the consistency review as described in subsection (1) of this section. The municipal water supplier must also document:

(a) The amount of time provided to each local government with jurisdiction to review the planning and engineering documents as defined in subsection (2) of this section; and

(b) The efforts taken to request a consistency review from the local government with jurisdiction.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-125 Project report and construction document submittal exceptions. (1) The following projects do not require project reports under WAC 246-290-110 and construction documents under WAC 246-290-120 to be submitted to the department for review and approval prior to installation:

(a) Installation of valves, fittings, ((~~and~~)) meters, ((~~including~~)) and approved backflow prevention assemblies;

(b) Installation of hydrants under WAC 246-290-230 (3) and (6);

(c) Repair of a system component or replacement with a component of a similar capacity and material in accordance with the original construction specifications of the approved design. For the purposes of replacing existing pipe, similar capacity includes one standard pipe size larger((~~.~~)); or

(d) Maintenance or painting of surfaces not contacting potable water.

(2) Purveyors may elect to not submit to the department for review and approval project reports under WAC 246-290-110 and construction documents under WAC 246-290-120 for new distribution mains if:

(a) The purveyor has on file with the department a current department-approved water system plan that includes standard construction specifications for distribution mains; and

(b) The purveyor maintains on file a completed construction completion report (department form) in accordance with WAC 246-290-120(5) and makes it available for review upon request by the department.

(3) Purveyors may elect to not submit to the department for review and approval project reports under WAC 246-290-110 and construction documents under WAC 246-290-120 for review and approval of other distribution-related projects as defined in WAC 246-290-010 providing:

(a) The purveyor has on file with the department a current department-approved water system plan, in accordance with WAC 246-290-100(5);

(b) The purveyor submits a written request with a new water system plan or an amendment to a water system plan, and updates the request with each water system plan update. The written request should specifically identify the types of projects or facilities for which the submittal exception procedure is requested;

(c) The purveyor has documented that they have employed or hired under contract the services of a professional engineer licensed in the state of Washington to review distribution-related projects not submitted to the department for review and approval. The review engineer and design engineer shall not be the same individual. The purveyor shall provide written notification to the department whenever they propose to change their designated review engineer;

(d) If the project is a new transmission main, storage tank, or booster pump station, it must be identified in the capital improvement program of the utility's water system plan. If not, either the project report must be submitted to the department for review and approval, or the water system plan must be amended;

(e) A project summary file is maintained by the purveyor for each project and made available for review upon request by the department, and includes:

(i) Descriptive project summary;

(ii) Anticipated completion schedule;

(iii) Consistency with utility's water system plan;

(iv) Water right self-assessment, where applicable;

(v) Change in system physical capacity;

(vi) Copies of original design and record drawings;

(vii) Engineering design review report (department form). The form shall:

(A) Bear the seal, date, and signature of a professional engineer licensed in the state of Washington prior to the start of construction;

(B) Provide a descriptive reference to completed project report and/or construction documents reviewed, including date of design engineer's seal and signature; and

(C) State the project report and/or construction documents have been reviewed, and the design is in accordance with department regulations and principles of standard engineering practice;

(f) The construction completion report is submitted to the department in accordance with WAC 246-290-120(5) for new storage tanks and booster pump stations, and maintained on file with the water system for all other distribution-related projects;

(g) A WFI is completed in accordance with WAC 246-290-120(6); and

(h) The purveyor meets the requirements of chapter 246-294 WAC to have a category "green" operating permit.

(4) Source of supply (including interties) and water quality treatment-related projects shall not be eligible for the submittal exception procedure.

(5) Purveyors not required to prepare a water system plan under WAC 246-290-100 shall be eligible for the submittal exception procedure if the purveyor:

(a) Has a department-approved water system plan meeting the requirements of WAC 246-290-100;

(b) Complies with all other requirements in this section; and

(c) Ensures that all work required to be prepared under the direction of a professional engineer be accomplished per WAC 246-290-040 and chapter 18.43 RCW.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-130 Source approval. (1) Every purveyor shall obtain drinking water from the highest quality source feasible. No new source, previously unapproved source, or modification of an existing source shall be used as a public water supply without department approval. No intake or other connection shall be maintained between a public water system and a source of water not approved by the department.

(2) Before initiating source development or modification, the purveyor shall contact the department to identify submittal requirements.

(3) Any party seeking source approval shall provide the department sufficient documentation, in a project report, construction documents, or in supplemental documents, that the source:

(a) Is reasonable and feasible for the type and size of the system;

(b) May legally be used in conformance with state water rights laws;

(c) Supplies water that is physically and reliably available in the necessary quantities, as shown in:

(i) A hydrogeologic assessment of the proposed source;

(ii) A general description of the watershed, spring, and/or aquifer recharge area affecting the quantity or quality of flow, which includes seasonal variation and upstream water uses that may significantly affect the proposed source;

(iii) For groundwater and spring sources, well source development data that are available from a pump test at the maximum design rate and duration, or are available from other sources of information, that establish pump settings (depth) in the well and demonstrate adequacy of water quantity to meet design criteria while not leading to water quality problems;

(iv) For groundwater and spring sources, installation of a source meter or other equivalent device that reliably measures volume of flow into the system;

(d) Is, or is not, a GWI under WAC 246-290-640, and meets or can meet the applicable requirements for GWI sources as described in that section including treatment;

(e) Adequately provides for source protection, as shown in:

(i) For surface water and GWI sources, the watershed control program identified under WAC 246-290-135 and Part 6 of this chapter;

(ii) For wells, a preliminary department susceptibility assessment or equivalent information, and preliminary WHPA delineation and contaminant inventory, under the requirements for sanitary control and wellhead protection under WAC 246-290-135;

(f) Is designed and constructed in conformance with this chapter, and relevant requirements of chapter 173-160 WAC (department of ecology well construction standards);

(g) Meets water quality standards under WAC 246-290-310, as shown in an initial water quality analysis that includes, at a minimum, the following:

(i) Bacteriological;

(ii) Complete inorganic chemical and physical except that the MCL for arsenic under WAC 246-290-310 does not apply to TNC systems;

(iii) Complete VOC;

(iv) Radionuclides, if source approval is requested for a community system;

(v) SOC, except where waived or not required under WAC ((~~246-290-310~~)) 246-290-300; and

(vi) Any other information required by the department relevant to the circumstances of the particular source.

Sources that otherwise would not meet water quality standards may be approved if treatment is provided.

(4) The required documentation under subsection (3) of this section shall include, at a minimum:

(a) A water right self-assessment;

(b) A map showing the project location and vicinity;

(c) A map depicting topography, distances to the surface water intake, well or spring from existing property lines, buildings, potential sources of contamination, ditches, drainage patterns, and any other natural or man-made features affecting the quality or quantity of water;

(d) The dimensions, location, and legal documentation of the SCA under WAC 246-290-135;

(e) A copy of the on-site inspection form completed by the department or local health department representative;

(f) A copy of the water well report including the unique well identification tag number, depth to open interval or top of screened interval, overall depth of well from the top of the casing, vertical elevation, and location (both plat location and latitude/longitude); and

(g) Documentation of source meter installation. The purveyor may utilize other documents, such as a water system plan, susceptibility assessment, wellhead protection program, project report, or construction documents, to provide the documentation and information to the department, provided that the documents are current, and the purveyor indicates the location in the document of the relevant information.

(5) If treatment of a source is necessary to meet water quality standards, the purveyor may be required to meet the provisions of WAC 246-290-250 and Part 6 of this chapter, if applicable, prior to or as a condition of approval.

(6) An intertie must be adequately described in a written agreement between the purveyor and the supplier of the water, and otherwise meet the requirements of WAC 246-290-132.

(7) The purveyor shall not construct facilities for source development and use without prior approval of the department pursuant to the provisions of WAC 246-290-120.

(8) The purveyor may request a conditional source approval, such as one that sets limits on use or requires interim treatment, if further analysis of the quality of the source is required before final approval.

(9) For sources or supplies of water used by bottled water or ice plants to produce bottled water or ice:

(a) If the bottled water or ice plant is a Group A community water system and the plant uses the system's source for the water that is bottled or made into ice, the source and supply used for the bottled water and ice shall meet the applicable Group A requirements;

(b) If the bottled water or ice plant uses its own source for the water that is bottled or made into ice, and the plant is not a Group A community water system, the owner or operator shall obtain source approval from the department, and the source water shall meet the ongoing source water quality monitoring requirements for a Group A community system;

(c) If the bottled water or ice plant purchases the water for bottling or making ice from another source or supply, the water shall meet the minimum requirements for a Group A community water system, and the owner or operator of the plant shall ensure that the water meets the requirements;

(d) The source or supply for the water that is bottled or made into ice shall be protected from contamination prior to the bottling or ice making process; and

(e) In addition to the requirements imposed under this subsection, the processing of bottled water shall be subject to regulation by the state department of agriculture and the United States Food and Drug Administration.

NEW SECTION

WAC 246-290-131 Emergency sources and supplies. (1) A purveyor with an emergency source shall provide, at a minimum, the following information in its department-approved emergency response program required under WAC 246-290-415 (2)(d):

(a) Source name, department identification number, capacity, and location;

(b) Engineering design department approval status;

(c) Routine water quality emergency source monitoring schedule, if applicable; and

(d) Procedures to activate the emergency source for the purpose of supplying the distribution system, including:

(i) Persons authorized to activate the source;

(ii) Conditions in which the emergency source will be activated;

(iii) Operational steps that will be taken before the source is activated;

(iv) Water quality sampling performed immediately before activating the source and while the emergency source is in operation; and

(v) Steps that will be taken to inform the public and the department before activating the source.

(2) A purveyor may maintain a physical connection between an emergency source and the distribution system if:

(a) The emergency source is an emergency intertie with another Group A water system, approved under WAC 246-290-132; or

(b) The emergency source is a drilled and cased well which:

(i) Is identified in the purveyor's department-approved emergency response program in accordance with WAC 246-290-420;

(ii) Has an isolation valve between the emergency source and the distribution system that is secured in the fully closed position when not in use; and

(iii) Has the motor starter locked-out and tagged-out in the off position so that the pump is isolated from the power supply when not in use.

(3) A purveyor with an emergency source that does not meet the requirements of subsection (2) of this section shall:

(a) Physically disconnect the emergency source from the distribution system by the removal of a pipe segment or by an alternate means as determined by the department; and

(b) Receive permission from the department or health officer before physically connecting and activating the emergency source for the purpose of supplying the distribution system.

(4) Unless otherwise directed by the department, a purveyor using trucked water as an emergency drinking water supply shall only use water that:

(a) Originates from a Group A public water system that is in compliance with the requirements of this chapter;

(b) Is treated with chlorine when the truck is filled by adding one-half cup of six to eight and twenty-five one hundredths of one percent regular unscented household bleach per one thousand gallons of water, or equivalent;

(c) Has a free chlorine residual equal to or greater than 0.5 mg/L at the time of delivery; and

(d) Is collected, temporarily stored, and delivered by tanks, bladders, pumps, pipes and other equipment that:

(i) Are contaminant-free and constructed and maintained to prevent contamination; and

(ii) Have not previously been used to carry nonfood products, toxic substances, or petroleum products.

(5) Purveyors using trucked water as an emergency drinking water supply shall:

(a) Receive permission from the department, health officer, or local or state emergency management agency prior to use;

(b) Measure the free chlorine residual of the delivered water and only accept water that has a free chlorine residual that is equal to or greater than 0.5 mg/L at the time of delivery;

(c) Store trucked water in the delivery truck or in an approved component of the purveyor's water system; and

(d) Maintain records of trucked water deliveries, including the hauler, water source, chlorine test results, and delivery date, time, and volume. Records must be available for review upon request by the department or health officer.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-135 Source water protection. (1) The department may require monitoring and controls in addition to those specified in this section if the department determines a potential risk exists to the water quality of a source.

(2) SCA.

(a) The purveyor shall maintain an SCA around all sources for the purpose of protecting them from existing and potential sources of contamination.

(b) For wells and springs, the minimum SCA shall have a radius of one hundred feet (thirty meters) and two hundred feet (sixty meters) respectively, unless engineering justification demonstrates that a smaller area can provide an adequate level of source water protection. The justification shall address geological and hydrological data, well construction

details, mitigation measures, and other relevant factors necessary to assure adequate sanitary control.

(c) The department may require a larger SCA than specified in (b) of this subsection, or additional mitigation measures if land use, geological, or hydrological data support the decision. It shall be the purveyor's responsibility to obtain the protection needed.

(d) The purveyor shall prohibit the construction, storage, disposal, or application of any source of contamination within the SCA without the permission of the purveyor.

(e) The SCA shall be owned by the purveyor in fee simple, or the purveyor shall have the right to exercise complete sanitary control of the land through other legal provisions.

(f) A purveyor, owning all or part of the SCA in fee simple or having possession and control, shall send to the department copies of legal documentation, such as a duly recorded declaration of covenant, restricting the use of the land. This legal documentation shall state:

(i) Constructing, storing, disposing, or applying any source of contamination is prohibited without the permission of the purveyor; and

(ii) If any change in ownership of the system or SCA is considered, all affected parties shall be informed of these requirements.

(g) Where portions of the control area are in the possession and control of another, the purveyor shall obtain a duly recorded restrictive covenant which shall run with the land, restricting the use of the land in accordance with this chapter and provide the department with copies of the appropriate documentation.

(3) Wellhead protection.

(a) Purveyors of water systems using groundwater or spring sources shall develop and implement a wellhead protection program.

(b) The wellhead protection program shall be part of the water system plan required under WAC 246-290-100 or the small water system management program required under WAC 246-290-105.

(c) The purveyor's wellhead protection program shall contain, at a minimum, the following elements:

(i) A completed susceptibility assessment or equivalent information;

(ii) WHPA delineation for each well, wellfield, or spring with the six month, one, five and ten year time of travel boundaries marked, or boundaries established using alternate criteria approved by the department in those settings where groundwater time of travel is not a reasonable delineation criteria. WHPA delineations shall be done in accordance with recognized methods such as those described in the following sources:

(A) Department guidance on wellhead protection; or

(B) EPA guidance for delineation of wellhead protection areas;

(iii) An inventory, including identification of site locations and owners/operators, of all known and potential groundwater contamination sources located within the defined WHPA(s) having the potential to contaminate the source water of the well(s) or spring(s). This list shall be updated every two years;

(iv) Documentation of purveyor's notification to all owners/operators of known or potential sources of groundwater contamination ((~~listed in (c)(B)(iii)~~)) identified under (c)(iii) of this subsection;

(v) Documentation of purveyor's notification to regulatory agencies and local governments of the boundaries of the WHPA(s) and the findings of the WHPA inventory;

(vi) A contingency plan to ensure consumers have an adequate supply of potable water in the event that contamination results in the temporary or permanent loss of the principal source of supply (major well(s) or wellfield); and

(vii) Documentation of coordination with local emergency incident responders (including police, fire and health departments), including notification of WHPA boundaries, results of susceptibility assessment, inventory findings, and contingency plan.

(4) Watershed control program.

(a) Purveyors of water systems using surface water or GWI sources shall develop and implement a watershed control program under Part 6 of chapter 246-290 WAC as applicable.

(b) The watershed control program shall be part of the water system plan required ((~~in~~)) under WAC 246-290-100 or the small water system management program required ((~~in~~)) under WAC 246-290-105.

(c) The purveyor's watershed control program shall contain, at a minimum, the following elements:

(i) Watershed description and inventory, including location, hydrology, land ownership and activities that may adversely affect source water quality;

(ii) An inventory of all potential surface water contamination sources and activities, including identification of site locations and owner/operators, located within the watershed and having the significant potential to contaminate the source water quality;

(iii) Watershed control measures, including documentation of ownership and relevant written agreements, and monitoring of activities and water quality;

(iv) System operation, including emergency provisions; and

(v) Documentation of water quality trends.

(d) ((~~The purveyor shall submit the~~)) Purveyors who have not received previous department approval of a watershed control program shall submit a watershed control program to the department for approval. Following department approval, the purveyor shall implement the watershed control program as approved.

(e) Purveyors of systems using unfiltered surface or GWI sources and meeting the criteria to remain unfiltered as specified in WAC 246-290-690 shall submit an annual report to the department that summarizes the effectiveness of the watershed control program. Refer to WAC 246-290-690 for further information about this report.

(f) ((~~The~~)) Purveyors required to develop a small water system management program under WAC 246-290-105 shall update the watershed control program at least every six years((~~, or more frequently if required by the department~~)).

(g) Purveyors required to submit a water system plan under WAC 246-290-100 shall update the watershed control program when the water system plan is updated.

(h) The department may require purveyors to update the watershed control program more frequently if the department determines that a potential risk exists to the water quality of a source.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-200 Design standards. (1) Purveyors shall ensure that good engineering criteria and practices are used in the design and construction of all public water systems, such as those set out in:

(a) Department guidance on design for Group A public water systems;

(b) The most recent published edition of the International Building Code (IBC), the Uniform Plumbing Code (UPC), and other national model codes adopted in Washington state;

(c) The most recent published edition of *Recommended Standards for Water Works, A Committee Report of the Great Lakes - Upper Mississippi River Board of State Public Health and Environmental Managers*;

(d) Standard specifications of the American Public Works Association, the American Society of Civil Engineers, AWWA, or the American Society for Testing and Materials;

(e) Design criteria, such as contained in current college texts and professional journal articles, acceptable to the department;

(f) Chapter 173-160 WAC *Minimum Standards for Construction and Maintenance of ((~~Water~~)) Wells*;

(g) The latest edition of the PNWS-AWWA Cross-Connection Control Manual, or the University of Southern California (USC) Manual of Cross-Connection Control.

(2) In addition, purveyors of new or expanding public water systems shall consider and use, as appropriate, the following design factors:

(a) Historical water use;

(b) Community versus recreational uses of water;

(c) Local conditions and/or regulations;

(d) Community expectations;

(e) Public Water System Coordination Act considerations where appropriate;

(f) Provisions for systems and component reliability in accordance with WAC 246-290-420;

(g) Wind pressures, seismic risk, snow loads, and flooding;

(h) Other risks from potential disasters, as feasible; and

(i) Other information as required by the department.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

WAC 246-290-220 Drinking water materials and additives. (1) All materials shall conform to the ANSI/NSF Standard 61 if in substantial contact with potable water supplies. For the purposes of this section, "substantial contact" means the elevated degree that a material in contact with water may release leachable contaminants into the water such that levels of these contaminants may be unacceptable with respect to either public health or aesthetic concerns. It should take into consideration the total material/water interface area of exposure, volume of water exposed, length of time water is in contact with the material, and level of public health risk. Examples of water system components that would be considered to be in "substantial contact" with drinking water are filter media, storage tank interiors or liners, distribution piping, membranes, exchange or adsorption media, or other similar components that would have high potential for contacting the water. Materials associated with components such as valves, pipe fittings, debris screens, gaskets, or similar appurtenances would not be considered to be in substantial contact.

(2) Materials or additives in use prior to the effective date of these regulations that have not been listed under ANSI/NSF Standard 60 or 61 may be used for their current applications until the materials are scheduled for replacement, or that stocks of existing additives are depleted and scheduled for reorder.

(3) Any treatment chemicals, with the exception of commercially retailed hypochlorite compounds such as unscented Clorox, Purex, etc., added to water intended for potable use must comply with ANSI/NSF Standard 60. The maximum application dosage recommendation for the product certified by the ANSI/NSF Standard 60 shall not be exceeded in practice.

(4) Any products used to coat, line, seal, patch water contact surfaces or that have substantial water contact within the collection, treatment, or distribution systems must comply with the appropriate ANSI/NSF Standard 60 or 61. Application of these products must comply with recommendations contained in the product certification.

(5) The department may accept continued use of, and proposals involving, certain noncertified chemicals or materials on a case-by-case basis, if all of the following criteria are met:

(a) The chemical or material has an acknowledged and demonstrable history of use in the state for drinking water applications;

(b) There exists no substantial evidence that the use of the chemical or material has caused consumers to register complaints about aesthetic issues, or health related concerns, that could be associated with leachable residues from the material; and

(c) The chemical or material has undergone testing through a protocol acceptable to the department and has been found to not contribute leachable compounds into drinking water at levels that would be of public health concern.

(6) Any pipe, pipe fittings, plumbing fittings, fixtures, solder, or flux used in the installation or repair of a public water system shall be lead-free:

(a) This prohibition shall not apply to leaded joints necessary for the repair of cast iron pipes; and

(b) Within the context of this section, lead-free shall mean:

(i) No more than ((~~eight~~)) a weighted average of twenty-five one-hundredths of one percent lead, calculated in ((~~pipes and pipe fittings;~~)) accordance with 42 U.S.C. 300g-6 (d)(2); and

(ii) No more than two-tenths of one percent lead in solder and flux((~~; and~~

~~(iii) Fittings and fixtures that are in compliance with standards established in accordance with 42 U.S.C. 300g-6(e)~~)).

(7) Exceptions to the lead-free requirements of subsection (6) of this section include:

(a) Pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption; or

(b) Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, fire hydrants, shower valves, service saddles, or water distribution main gate valves that are two inches in diameter or larger.

AMENDATORY SECTION (Amending WSR 11-17-062, filed 8/15/11, effective 10/1/11)

WAC 246-290-300 Monitoring requirements. (1) General.

(a) The monitoring requirements specified in this section are minimums. The department may require additional monitoring when:

(i) Contamination is present or suspected in the water system;

(ii) A groundwater source is determined to be a potential GWI;

(iii) The degree of source protection is not satisfactory;

(iv) Additional monitoring is needed to verify source vulnerability for a requested monitoring waiver;

(v) Under other circumstances as identified in a department order; or

(vi) Additional monitoring is needed to evaluate continuing effectiveness of a treatment process where problems with the treatment process may exist.

(b) Special purpose samples collected by the purveyor shall not count toward fulfillment of the monitoring requirements of this chapter unless the quality of data and method of sampling and analysis are acceptable to the department.

(c) The purveyor shall ensure samples required by this chapter are collected, transported, and submitted for analysis according to EPA-approved methods. The analyses shall be performed by a laboratory accredited by the state. Qualified water utility, accredited laboratory, health department personnel, and other parties approved by the department may conduct measurements for pH, temperature, residual disinfectant concentration, alkalinity, bromide, chlorite, TOC, SUVA, turbidity, calcium, conductivity, orthophosphate, and silica as required by this chapter, provided, these measurements are made according to EPA approved methods.

(d) Compliance samples required by this chapter shall be taken at locations listed in Table ((~~3~~)) 4 of this section.

(e) Purveyors failing to comply with a monitoring requirement shall notify:

(i) The department under WAC 246-290-480; and

(ii) The owner or operator of any consecutive system served and the appropriate water system users under 40 C.F.R. 141.201 and Part 7, Subpart A of this chapter.

(2) Selling and receiving water.

(a) Source monitoring. Purveyors, with the exception of those that "wheel" water to their consumers (i.e., sell water that has passed through another purchasing purveyor's distribution system), shall conduct source monitoring under this chapter for the sources under their control. The level of monitoring shall satisfy the monitoring requirements associated with the total population served by the source.

(b) Distribution system monitoring. The purveyor of a system that receives and distributes water shall perform distribution-related monitoring requirements. Monitoring shall include, but not be limited to, the following:

(i) Collect coliform samples under subsection (3) of this section;

(ii) Collect disinfection byproduct samples as required by subsection (6) of this section;

(iii) Perform the distribution system residual disinfectant concentration monitoring under subsection (6) of this section, and as required under WAC 246-290-451, 246-290-664, or 246-290-694. Systems with fewer than one hundred connections shall measure residual disinfectant concentration at the same time and location that a routine or repeat coliform sample is collected, unless the department determines that more frequent monitoring is necessary to protect public health;

(iv) Perform lead and copper monitoring required under 40 C.F.R. 141.86, 141.87, and 141.88;

(v) Perform the distribution system monitoring under 40 C.F.R. 141.23(b) for asbestos if applicable;

(vi) Other monitoring as required by the department.

(c) Reduced monitoring for regional programs. The receiving purveyor may receive reductions in the coliform, lead and copper, disinfection byproduct (including THMs and HAA5) and distribution system disinfectant residual concentration monitoring requirements, provided the receiving system:

(i) Purchases water from a purveyor that has a department-approved regional monitoring program;

(ii) Has a written agreement with the supplying system or regional water supplier that is acceptable to the department, and which identifies the responsibilities of both the supplying and receiving system(s) with regards to monitoring, reporting and maintenance of the distribution system; and

(iii) Has at least one compliance monitoring location for disinfection byproducts, if applicable.

(d) Periodic review of regional programs. The department may periodically review the sampling records of public water systems participating in a department-approved monitoring program to determine if continued reduced monitoring is appropriate. If the department determines a change in the monitoring requirements of the receiving system is appropriate:

(i) The department shall notify the purveyor of the change in monitoring requirements; and

(ii) The purveyor shall conduct monitoring as directed by the department.

(3) Bacteriological.

(a) The purveyor shall be responsible for collection and submittal of coliform samples from representative points throughout the distribution system. Samples shall be collected after the first service and at regular time intervals each month the system provides water to consumers. Samples shall be collected that represent normal system operating conditions.

(i) Systems providing disinfection treatment shall measure the residual disinfectant concentration within the distribution system at the same time and location of routine and repeat samples.

(ii) Systems providing disinfection treatment shall assure that disinfectant residual concentrations are measured and recorded on all coliform sample report forms submitted for compliance purposes.

(b) Coliform monitoring plan.

(i) ((~~The purveyor shall prepare a written coliform monitoring plan and base routine monitoring upon the plan. The plan shall include coliform sample collection sites and a sampling schedule.~~

~~(ii)~~)) Systems shall develop a written coliform monitoring plan that identifies sampling sites and a sample collection schedule that are representative of water throughout the distribution system. The plan is subject to department review and approval. Systems shall collect total coliform samples according to the plan. Monitoring may take place at a customer's premises, dedicated sampling station, or other designated compliance sampling location. Routine and repeat sample sites and any sampling points necessary to meet the requirements of Part 6 of this chapter and WAC 246-290-300 (3)(h) must be identified in the plan.

(ii) Systems shall collect samples at regular time intervals throughout the month, except for systems that use groundwater and serve four thousand nine hundred or fewer people may collect all required samples on a single day if the samples are taken from different sites.

(iii) Systems shall take at least the minimum number of required samples even if the system has had an *E. coli* MCL violation or has exceeded the coliform treatment technique triggers in WAC 246-290-320(2).

(iv) Systems may conduct more compliance monitoring than is required under subsection (3)(b) of this section to investigate potential problems in the distribution system and use monitoring as a tool to assist in identifying problems. Systems may take more than the minimum number of required routine samples and must include the results in calculating whether or not the coliform treatment technique triggers in WAC 246-290-320(2) have been exceeded only if the samples are taken in accordance with the plan and are representative of water throughout the distribution system.

(v) Systems shall identify repeat monitoring locations in the plan. Unless the provisions of subsection (3)(b)(i) through (iv) of this section are met, the system shall collect at least one repeat sample from the sample tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sample site. If a total coliform-positive sample is at the end of the distribution system, or one service connection away from the end of the distribution system, the system shall still take all required repeat samples. The department may allow an alternative sampling location in lieu of the requirement to collect at least one repeat sample upstream or downstream of the original sampling site. Systems may propose repeat monitoring locations to the department that the system believes to be representative of a pathway for contamination of the distribution system. A system may elect to specify either alternative fixed locations or criteria for selecting repeat sampling sites on a situational basis in a standard operating procedure (SOP) in its plan. The system shall design its SOP to focus the repeat samples at locations that best verify and determine the extent of potential contamination of the distribution system area based on specific situations. The department may modify the SOP or require alternative monitoring locations as needed.

(vi) The purveyor shall:

(A) Keep the coliform monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer ensures representative monitoring of the system, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(c) Special purpose coliform samples. Special purpose coliform samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, must not be used to determine whether or not the coliform treatment technique trigger has been exceeded. Repeat samples taken in accordance with subsection (3) of this section are not considered special purpose coliform samples, and must be used to determine whether or not the coliform treatment technique trigger has been exceeded.

(d) Invalidation of total coliform samples. A total coliform-positive sample invalidated under subsection (3) of this section does not count toward meeting the minimum monitoring requirements of this section.

(i) The department may invalidate a total coliform-positive sample if one or more of the following conditions are met:

(A) The laboratory establishes that improper sample analysis caused the total coliform-positive result;

(B) The department, on the basis of the results of repeat samples collected as required under subsection (3) of this section, determines that the total coliform-positive samples resulted from a domestic or other nondistribution system plumbing problem. The department may not invalidate a sample on the basis of repeat sample results unless all repeat samples collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected at a location other than the original tap are total coliform-negative. For example, the department may not invalidate a total coliform-positive sample on the basis of repeat samples if all the repeat samples are total coliform-negative, or if the system has only one service connection; or

(C) The department has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition that does not reflect water quality in the distribution system. In this case, the system shall still collect all repeat samples required under subsection (3) of this section, and use the samples to determine whether a coliform treatment technique trigger under WAC 246-290-320(2) has been exceeded.

(ii) Unless total coliforms are detected, a laboratory shall invalidate a total coliform sample if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined such as the multiple-tube fermentation technique, produces a turbid culture in the absence of an acid reaction in the presence-absence coliform test, or exhibits confluent growth or produces colonies TNTC with an analytical method using a membrane filter such as a membrane filter technique. If a laboratory invalidates a sample because of such interference, the system shall collect another sample from the same location as the original sample within twenty-four hours of notification of the interference problem, and have it analyzed for the presence of total coliforms. The system shall continue to resample within twenty-four hours and have the samples analyzed until it obtains a valid result. The department may waive the twenty-four hour time limit on a case-by-case basis.

(e) Monitoring frequency. The number of required routine coliform samples is based on total population served.

(i) Purveyors of **community** systems shall collect and submit for analysis no less than the number of routine samples listed in Table ((~~1~~)) 2 during each calendar month of operation;

(ii) Unless directed otherwise by the department, purveyors of **noncommunity** systems shall collect and submit for analysis no less than the number of samples required in Table ((~~1, and no less than required under 40 C.F.R. 141.21~~)) 2. Each month's population shall be based on the average daily population and shall include all residents and nonresidents served during that month. During months when the average daily population served is less than twenty-five, routine sample collection is not required when:

(A) Using only protected groundwater sources;

(B) ((~~No coliform were detected in samples during~~)) The system has a clean compliance history for a minimum of twelve months;

(C) The system has no sanitary defects or significant deficiencies;

(D) The system has detected no total coliform-positive routine or repeat samples in the previous month; and

(((~~(C) One~~)) (E) The system has collected and submitted for analysis one routine sample ((~~has been collected and submitted for analysis~~)) during one of the previous two months.

(iii) Purveyors of NTNC and TNC systems are not required to collect routine samples in months when the population served is zero.

(iv) Purveyors of systems serving both a resident and a nonresident population shall base their minimum sampling requirement on the total of monthly populations served, both resident and nonresident as determined by the department, but no less than the minimum required in Table ((~~1; and~~

~~(iv) Purveyors of systems with a nonresident population lasting two weeks or less during a month shall sample as directed by the department. Sampling shall be initiated at least two weeks prior to the time service is provided to consumers.~~

~~(v) Purveyors of TNC systems shall not be required to collect routine samples in months where the population served is zero or the system has notified the department of an unscheduled closure.~~

~~(d) Invalid samples. When a routine or repeat coliform sample is determined invalid under WAC 246-290-320 (2)(d), the purveyor shall:~~

~~(i) Not include the sample in the determination of monitoring compliance; and~~

~~(ii) Take follow-up action as defined in WAC 246-290-320 (2)(d).~~

~~(e) Assessment source water monitoring. If directed by the department, a groundwater system must conduct assessment source water monitoring which may include, but is not limited to, collection of at least one representative groundwater source sample each month the source provides groundwater to the public, for a minimum of twelve months.~~

~~(i) Sampling must be conducted as follows:~~

~~(A) Source samples must be collected at a location prior to any treatment. If the water system's configuration does not allow sampling at the source itself, the department may approve an alternative source sampling location representative of the source water quality.~~

~~(B) Source samples must be at least 100 mL in size and must be analyzed for *E. coli* using one of the analytical methods under 40 C.F.R. 141.402(c).~~

~~(ii) A groundwater system may use a triggered source water sample collected under WAC 246-290-320 (2)(g) to meet the requirements for assessment source water monitoring.~~

~~(iii) Groundwater systems with an *E. coli* positive assessment source water sample that is not invalidated under WAC 246-290-320 (2)(g)(vii), and consecutive systems receiving water from this source must:~~

~~(A) Provide Tier 1 public notice under Part 7, Subpart A of this chapter and special notification under WAC 246-290-71005 (4) and (5); and~~

~~(B) Take corrective action as required under WAC 246-290-453(1).~~

~~(iv) The purveyor of a groundwater system that fails to conduct assessment source water monitoring as directed by the department shall provide Tier 2 public notice under Part 7, Subpart A of this chapter.~~

~~(f) The purveyor using a surface water or GWI source shall collect representative source water samples for bacteriological density analysis under WAC 246-290-664 and 246-290-694 as applicable.~~

~~TABLE 1~~
~~MINIMUM MONTHLY ROUTINE COLIFORM SAMPLING REQUIREMENTS~~

~~Population Served~~ [1]		~~Minimum Number of Routine Samples/Calendar Month~~	
~~During Month~~		~~When NO samples with a coliform presence were collected during the previous month~~	~~When ANY samples with a coliform presence were collected during the previous month~~
~~1~~ -	~~1,000~~	~~1~~*	~~5~~
~~1,001~~ -	~~2,500~~	~~2~~*	~~5~~
~~2,501~~ -	~~3,300~~	~~3~~*	~~5~~

Population Served [1] During Month		Minimum Number of Routine Samples/Calendar Month When NO samples with a coliform presence were collected during the previous month	When ANY samples with a coliform presence were collected during the previous month
3,301 -	4,100	4[*]	5
4,101 -	4,900	5	5
4,901 -	5,800	6	6
5,801 -	6,700	7	7
6,701 -	7,600	8	8
7,601 -	8,500	9	9
8,501 -	12,900	10	10
12,901 -	17,200	15	15
17,201 -	21,500	20	20
21,501 -	25,000	25	25
25,001 -	33,000	30	30
33,001 -	41,000	40	40
41,001 -	50,000	50	50
50,001 -	59,000	60	60
59,001 -	70,000	70	70
70,001 -	83,000	80	80
83,001 -	96,000	90	90
96,001 -	130,000	100	100
130,001 -	220,000	120	120
220,001 -	320,000	150	150
320,001 -	450,000	180	180
450,001 -	600,000	210	210
600,001 -	780,000	240	240
780,001 -	970,000	270	270
970,001 -	1,230,000[3]	300	300

[1] Does not include the population of a consecutive system that purchases water. The sampling requirement for consecutive systems is a separate determination based upon the population of that system.

[2] Noncommunity systems using only protected groundwater sources and serving less than 25 individuals, may collect and submit for analysis, one sample every three months.

[3] Systems serving populations larger than 1,230,000 shall contact the department for the minimum number of samples required per month.

[*] In addition to the provisions of subsection (1)(a) of this section, if a system of this size cannot show evidence of having been subject to a sanitary survey on file with the department, or has been determined to be at risk to bacteriological concerns following a survey, the minimum number of samples required per month may be increased by the department after additional consideration of factors such as monitoring history, compliance record, operational problems, and water quality concerns for the system.))

2.

(v) Seasonal systems.

(A) In accordance with WAC 246-290-480 (2)(f)(ii), seasonal systems shall certify that a department-approved start-up procedure, which may include a requirement for start-up sampling, was completed prior to serving water to the public.

(B) Seasonal systems shall monitor every month that it is in operation unless it meets the criteria in subsection (3)(e)(ii) of this section.

(C) The department may exempt a seasonal system from some or all of the requirements in subsection (3)(e)(v)(A) of this section if the entire distribution system remains pressurized during the entire period that the system is not operating, except that systems that monitor less frequently than monthly shall still monitor during the vulnerable period designated by the department.

Table 2
Total Coliform Monitoring Frequency

Population served	Minimum number of samples per month
1 to 1,000*	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 12,900	10
12,901 to 17,200	15
17,201 to 21,500	20
21,501 to 25,000	25
25,001 to 33,000	30
33,001 to 41,000	40
41,001 to 50,000	50
50,001 to 59,000	60
59,001 to 70,000	70
70,001 to 83,000	80
83,001 to 96,000	90
96,001 to 130,000	100
130,001 to 220,000	120
220,001 to 320,000	150
320,001 to 450,000	180
450,001 to 600,000	210
600,001 to 780,000	240
780,001 to 970,000	270

Population served	Minimum number of samples per month
970,001 to 1,230,000	300
1,230,001 to 1,520,000	330
1,520,001 to 1,850,000	360
1,850,001 to 2,270,000	390
2,270,001 to 3,020,000	420
3,020,001 to 3,960,000	450
3,960,001 or more	480

*Noncommunity systems using only protected groundwater sources and serving less than twenty-five individuals, may collect and submit for analysis, one sample every three months per WAC 246-290-300 (3)(e)(ii).

(f) Repeat monitoring.

(i) If a routine sample taken under subsection (3) of this section is total coliform-positive, the system shall collect a set of repeat samples within twenty-four hours of being notified of the positive result. Additional treatment, such as batch or shock chlorination must not be started prior to the collection of repeat samples unless the department gives prior authorization. The purveyor shall contact the department to determine the best interim approach in this situation. The system shall collect no fewer than three repeat samples for each total coliform-positive sample found. The department may extend the twenty-four hour limit on a case-by-case basis if the system has a logistical problem in collecting the repeat samples within twenty-four hours that is beyond its control. Following the collection of repeat samples, and before the analytical results are known, the system may provide interim precautionary treatment or other means to protect public health.

(ii) The system shall collect all repeat samples on the same day, except the department may allow a system with a single connection to collect the required set of repeat samples over a three-day period or to collect a larger volume of repeat samples in one or more sample containers of any size, as long as the total volume collected is at least 300 ml.

(iii) The system shall collect an additional set of repeat samples in the manner specified in subsection (3)(f)(i) through (iii) of this section if one or more repeat samples in the current set of repeat samples is total coliform-positive. The system shall collect the additional set of repeat samples within twenty-four hours of being notified of the positive result, unless the department extends the time limit as provided in subsection (3)(f)(i) of this section. The system shall continue to collect additional sets of repeat samples until either total coliforms are not detected in one complete set of repeat samples or the system determines that a coliform treatment technique trigger specified in WAC 246-290-320 (2)(a) has been exceeded as a result of a repeat sample being total coliform-positive and notifies the department. If a treatment technique trigger identified in WAC 246-290-320 (2)(a) is exceeded as a result of a routine sample being total coliform-positive, the system is required to conduct only one round of repeat monitoring for each total coliform-positive routine sample.

(iv) After a system collects a routine sample and before it gets the results of the analysis of that sample, if it collects subsequent routine samples from within five adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent samples as a repeat sample instead of as a routine sample.

(v) Results of all routine and repeat samples taken under subsection (3)(e) and (f) of this section not invalidated by the department under subsection (3)(d) of this section must be used to determine whether a coliform treatment technique trigger specified in WAC 246-290-320 (2)(a) has been exceeded.

(g) *E. coli* testing.

(i) If any routine or repeat sample is total coliform-positive, the system shall analyze that total coliform-positive culture medium to determine if *E. coli* are present. If *E. coli* are present, the system shall notify the department by the end of the day when the system is notified of the test result.

(ii) The department may allow a system, on a case-by-case basis, to forgo *E. coli* testing on a total coliform-positive sample if the system assumes that the total coliform-positive sample is *E. coli*-positive. Accordingly, the system shall notify the department as specified in WAC 246-290-320 (1)(a).

(h) Triggered source water monitoring.

(i) All groundwater systems with their own groundwater sources must conduct triggered source water monitoring unless the following conditions exist:

(A) The system has submitted a project report and received department approval that it provides at least 4-log treatment of viruses using inactivation, removal, or a department-approved combination of 4-log virus inactivation and removal before or at the first customer for each groundwater source; and

(B) The system is conducting compliance monitoring under WAC 246-290-453(2).

(ii) Any groundwater source sample required under this subsection (3) must be collected at the source prior to any treatment unless otherwise approved by the department.

(iii) Any groundwater source sample collected under this subsection (3) must be at least 100 mL in size and must be analyzed for *E. coli* using one of the analytical methods under 40 C.F.R. 141.402(c).

(iv) Groundwater systems shall collect at least one sample from each groundwater source in use at the time a routine sample collected under subsection (3) of this section is total coliform-positive and not invalidated under subsection (3)(d) of this section. These source samples must be collected within twenty-four hours of notification of the total coliform-positive sample. The following exceptions apply:

(A) The twenty-four hour time limit may be extended if granted by the department and will be determined on a case-by-case basis. If an extension is granted, the system shall sample by the deadline set by the department.

(B) Systems with more than one groundwater source may meet the requirements of subsection (3)(h)(iv) of this section by sampling a representative groundwater source or sources. The system shall have a department-approved triggered source water monitoring plan that identifies one or

more groundwater sources that are representative of each monitoring site in the system's coliform monitoring plan under subsection (3)(b) of this section. The plan must be approved by the department before representative sampling will be allowed.

(v) Groundwater systems with an *E. coli* positive source water sample that is not invalidated under subsection (3)(h)(vii) of this section, shall:

(A) Notify the department by the end of the day when the system is notified of the test result.

(B) Provide Tier 1 public notice as required under Part 7, Subpart A of this chapter and special notification under WAC 246-290-71005 (4) and (5);

(C) If directed by the department, take corrective action as required under WAC 246-290-453(1); and

(D) Systems that are not directed by the department to take corrective action shall collect five additional samples from the same source within twenty-four hours of being notified of the *E. coli* positive source water sample. If any of the five additional samples are *E. coli* positive, the system shall take corrective action under WAC 246-290-453(1).

(vi) Any consecutive groundwater system that has a total coliform-positive routine sample collected under this subsection and not invalidated under subsection (3)(d) of this section shall notify each wholesale system it receives water from within twenty-four hours of being notified of the total coliform-positive sample and comply with subsection (3)(h) of this section.

(A) A wholesale groundwater system that receives notice from a consecutive system under subsection (3)(h)(vi) of this section shall conduct triggered source water monitoring under subsection (3)(h) of this section unless the department determines and documents in writing that the total coliform-positive sample collected was caused by a distribution system deficiency in the consecutive system.

(B) If the wholesale groundwater system source sample is *E. coli* positive, the wholesale system shall notify all consecutive systems served by that groundwater source within twenty-four hours of being notified of the results and shall meet the requirements of subsection (3)(h)(v) of this section.

(C) Any consecutive groundwater system receiving water from a source with an *E. coli* positive sample shall notify water system users as required under subsection (3)(h)(v)(B) of this section.

(vii) An *E. coli* positive groundwater source sample may be invalidated only if one of the following conditions apply:

(A) The system provides the department with written notice from the laboratory that improper sample analysis occurred; or

(B) The department determines and documents in writing that there is substantial evidence that the *E. coli* positive groundwater sample is not related to source water quality.

(viii) If the department invalidates an *E. coli* positive groundwater source sample, the system shall collect another source water sample within twenty-four hours of being notified by the department of its invalidation decision and have the sample analyzed using the same analytical method. The department may extend the twenty-four hour time limit as allowed under subsection (3)(h)(iv)(A) of this section.

(ix) Groundwater systems that fail to meet any of the monitoring requirements of subsection (3)(h) of this section shall conduct Tier 2 public notification under Part 7, Subpart A of this chapter.

(i) Assessment source water monitoring. If directed by the department, a groundwater system shall conduct assessment source water monitoring which may include, but is not limited to, the collection of at least one representative groundwater source sample each month the source provides groundwater to the public, for a minimum of twelve months.

(i) Sampling must be conducted as follows:

(A) Source samples must be collected at a location prior to any treatment. If the water system's configuration does not allow sampling at the source itself, the department may approve an alternative source sampling location representative of the source water quality.

(B) Source samples must be at least 100 mL in size and must be analyzed for *E. coli* using one of the analytical methods under 40 C.F.R. 141.402(c).

(ii) A groundwater system may use a triggered source water sample collected under subsection (3)(h) of this section to meet the requirements for assessment source water monitoring.

(iii) A groundwater system with an *E. coli* positive assessment source water sample that is not invalidated under subsection (3)(h)(vii) of this section, and consecutive systems receiving water from this source shall:

(A) Provide Tier 1 public notice under Part 7, Subpart A of this chapter and special notification under WAC 246-290-71005 (4) and (5); and

(B) Take corrective action as required under WAC 246-290-453(1).

(iv) A groundwater system that fails to conduct assessment source water monitoring as directed by the department shall provide Tier 2 public notice under Part 7, Subpart A of this chapter.

(4) Inorganic chemical and physical.

(a) A complete inorganic chemical and physical analysis shall consist of the primary and secondary chemical and physical substances.

(i) Primary chemical and physical substances are antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate (as N), nitrite (as N), selenium, sodium, thallium, and for unfiltered surface water, turbidity. (Except that the MCL for arsenic under WAC 246-290-310 does not apply to TNC systems.)

(ii) Secondary chemical and physical substances are chloride, color, hardness, iron, manganese, specific conductivity, silver, sulfate, total dissolved solids*, and zinc.

* Required only when specific conductivity exceeds seven hundred micromhos/centimeter.

(b) Purveyors shall monitor for all primary and secondary chemical and physical substances identified in Table ((~~4~~)) 5 and Table ((~~5~~)) 6. Samples shall be collected in accordance with the monitoring requirements referenced in 40 C.F.R. 141.23 introductory text, 141.23(a) through 141.23(j), ((~~excluding (i)(2),~~)) and 40 C.F.R. 143.4, except for composite samples for systems serving less than three thousand three hundred one persons. For these systems, compositing among different systems may be allowed if the systems are owned or

operated by a department-approved satellite management agency.

(c) Samples required by this subsection shall be taken at designated locations under 40 C.F.R. 141.23(a) through 141.23(j), ((~~excluding (i)(2),~~)) and 40 C.F.R. 143.4, and Table ((~~3~~)) 4 herein.

(i) Wellfield samples shall be allowed from department designated wellfields; and

(ii) Under 40 C.F.R. 141.23 (a)(3), alternate sampling locations may be used if approved by the department. The process for determining these alternate sites is described in department guidance. Purveyors of community and NTNC systems may ask the department to approve an alternate sampling location for multiple sources within a single system that are blended prior to entry to the distribution system. Alternate sampling plans shall address the following:

(A) Source vulnerability;

(B) Individual source characteristics;

(C) Previous water quality information;

(D) Status of monitoring waiver applications; and

(E) Other information deemed necessary by the department.

(d) Composite samples:

(i) Under 40 C.F.R. 141.23 (a)(4), purveyors may ask the certified lab to composite samples representing as many as five individual samples from within one system. Sampling procedures and protocols are outlined in department guidance; and

(ii) For systems serving a population of less than three thousand three hundred one, the department may approve composite sampling between systems when those systems are part of an approved satellite management agency.

(e) When the purveyor provides treatment for one or more inorganic chemical or physical contaminants, the department may require the purveyor to sample before and after treatment. The department shall notify the purveyor if and when this additional source sampling is required.

(f) Inorganic monitoring plans.

(i) Purveyors of community and NTNC systems shall prepare an inorganic chemical monitoring plan and base routine monitoring on the plan.

(ii) The purveyor shall:

(A) Keep the monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer reflects the monitoring requirements, procedures or sampling locations, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(g) Monitoring waivers.

(i) Purveyors may request in writing, a monitoring waiver from the department for any nonnitrate/nitrite inorganic chemical and physical monitoring requirements identified in this chapter.

(ii) Purveyors requesting a monitoring waiver shall comply with applicable subsections of 40 C.F.R. 141.23 (b)(3), and 141.23 (c)(3).

(iii) Purveyors shall update and resubmit requests for waiver renewals as applicable during each compliance cycle or period or more frequently as directed by the department.

(iv) Failure to provide complete and accurate information in the waiver application shall be grounds for denial of the monitoring waiver.

(h) The department may require the purveyor to repeat sample for confirmation of results.

(i) Purveyors with emergency and seasonal sources shall monitor those sources when they are in use.

(5) Lead and copper. Monitoring for lead and copper shall be conducted in accordance with 40 C.F.R. 141.86 (a) - (f), 141.87, and 141.88. All systems that have fewer than five drinking water taps used for human consumption shall collect at least one sample from each tap and then collect additional samples from those taps on different days during the monitoring period to meet the required number of samples as described in 40 C.F.R. 141.86(c).

(6) Disinfection byproducts (DBP), disinfectant residuals, and disinfection byproduct precursors (DBPP). Purveyors of community and NTNC systems providing water treated with chemical disinfectants and TNC systems using chlorine dioxide shall monitor as follows:

(a) General requirements.

(i) Systems shall collect samples during normal operating conditions.

(ii) All monitoring shall be conducted in accordance with the analytical requirements in 40 C.F.R. 141.131.

(iii) Systems may consider multiple wells drawing from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required, with department approval in accordance with department guidance.

(iv) Systems required to monitor under this subsection shall prepare and implement a monitoring plan in accordance with 40 C.F.R. 141.132(f) or 40 C.F.R. 141.622, as applicable.

(A) Community and NTNC surface water and GWI systems that deliver water that has been treated with a disinfectant other than ultraviolet light and serve more than three thousand three hundred people shall submit a monitoring plan to the department.

(B) The department may require submittal of a monitoring plan from systems not specified in subsection (6)(a)(iv)(A) of this section, and may require revision of any monitoring plan.

(C) Failure to monitor for TTHM, HAA5, or bromate will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages.

(D) Failure to monitor for chlorine and chloramine residuals will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the systems' failure to monitor makes it impossible to determine compliance with the MRDLs.

(b) Disinfection byproducts - **Community** and **NTNC** systems only.

(i) TTHMs and HAA5.

(A) Systems shall monitor for TTHM and HAA5 in accordance with 40 C.F.R. 141.132 (b)(1)(i) until the dates set in Table ((2)) 3. On and after the dates set in Table ((2)) 3, the systems shall monitor in accordance with 40 C.F.R. 141.620, 141.621, and 141.622.

Table ((2)) 3

Population Served	Routine Monitoring Start Date[1]
100,000 or more	April 1, 2012
50,000 - 99,999	October 1, 2012
10,000 - 49,999	October 1, 2013
Less than 10,000	October 1, 2013[2]
	October 1, 2014[3]

[1]Systems that have nonemergency interties with other systems must comply with the dates associated with the largest system in their combined distribution system.

[2]Surface water and GWI systems that did not have to do *Cryptosporidium* monitoring under 40 C.F.R. 141.701 (a)(4).

[3]Surface water and GWI systems that also did *Cryptosporidium* monitoring under 40 C.F.R. 141.701 (a)(4).

(B) With department approval, systems may reduce monitoring in accordance with 40 C.F.R. 141.132 (b)(1)(ii) and (iii), or 40 C.F.R. 141.623, as applicable.

(C) Systems on department-approved reduced monitoring schedules may be required to return to routine monitoring, or initiate increased monitoring in accordance with 40 C.F.R. 141.132 (b)(1)(iv), 40 C.F.R. 141.625, or 40 C.F.R. 141.627, as applicable.

(D) The department may return systems on increased monitoring to routine monitoring if, after one year, annual average results for TTHMs and HAA5 are less than or equal to 0.060 mg/L and 0.045 mg/L, respectively, or monitoring results are consistently below the MCLs indicating that increased monitoring is no longer necessary. After the dates set in Table ((2)) 3, systems must meet requirements of 40 C.F.R. 141.628 and 40 C.F.R. 141.625(c) to return to routine monitoring.

(E) After the dates set in Table ((2)) 3, systems must calculate operational evaluation levels each calendar quarter and take action, as needed, in accordance with 40 C.F.R. 141.626.

(F) NTNC systems serving ten thousand or more people and community systems must comply with the provisions of 40 C.F.R. Subpart U - Initial Distribution System Evaluation ((at)) under:

40 C.F.R. 141.600	General requirements.
40 C.F.R. 141.601	Standard monitoring.
40 C.F.R. 141.602	System specific studies.
40 C.F.R. 141.603	40/30 certification.
40 C.F.R. 141.604	Very small system waivers.
40 C.F.R. 141.605	Subpart V compliance monitoring location recommendations.

(ii) Chlorite - Only systems that use **chlorine dioxide.**

(A) Systems using chlorine dioxide shall conduct daily and monthly monitoring in accordance with 40 C.F.R. 141.132 (b)(2)(i) and additional chlorite monitoring in accordance with 40 C.F.R. 141.132 (b)(2)(ii).

(B) With department approval, monthly monitoring may be reduced in accordance with 40 C.F.R. 141.132 (b)(2)(iii)(B). Daily monitoring at entry to distribution required by 40 C.F.R. 141.132 (b)(2)(i)(A) may not be reduced.

(iii) Bromate - Only systems that use **ozone.**

(A) Systems using ozone for disinfection or oxidation must conduct bromate monitoring in accordance with 40 C.F.R. 141.132 (b)(3)(i).

(B) With department approval, monthly bromate monitoring may be reduced to once per quarter in accordance with 40 C.F.R. 141.132 (b)(3)(ii)(B).

(c) Disinfectant residuals.

(i) Chlorine and chloramines. Systems that deliver water continuously treated with chlorine or chloramines, including consecutive systems, shall monitor and record the residual disinfectant level in the distribution system under WAC 246-290-300 (2)(b), 246-290-451(((7))), 246-290-664(6), or 246-290-694(8)((, but in no case less than as required by 40 C.F.R. 141.74 (b)(6), 40 C.F.R. 141.74 (c)(3), 40 C.F.R. 141.132(c), or 40 C.F.R. 141.624)).

(ii) Chlorine dioxide. Community, NTNC, or TNC systems that use chlorine dioxide shall monitor in accordance with 40 C.F.R. 141.132 (c)(2) and record results.

(d) Disinfection byproducts precursors.

Community and NTNC surface water or GWI systems that use conventional filtration with sedimentation as defined in WAC 246-290-660(3) shall monitor under 40 C.F.R. 141.132(d), and meet the requirements of 40 C.F.R. 141.135.

(7) Organic chemicals.

(a) Purveyors of community and NTNC water systems shall comply with monitoring requirements under 40 C.F.R. 141.24 (a) - (d), 141.24 (f)(1) - (f)(15), 141.24 (f)(18) - (19), 141.24 (f)(21), 141.24 (g)(1) - (9), 141.24 (g)(12) - (14), 141.24 (h)(1) - (11), and 141.24 (h)(14) - (17).

(b) Sampling locations shall be as defined in 40 C.F.R. 141.24(f), 141.24(g), and 141.24(h).

(i) Wellfield samples shall be allowed from department designated wellfields; and

(ii) Under 40 C.F.R. 141.24 (f)(3) and 141.24 (h)(3), alternate sampling locations may be allowed if approved by the department. These alternate locations are described in department guidance. Purveyors may ask the department to approve an alternate sampling location for multiple sources within a single system that are blended prior to entry to the distribution system. The alternate sampling location shall consider the following:

(A) Source vulnerability;

(B) An updated organic monitoring plan showing location of all sources with current and proposed sampling locations;

(C) Individual source characteristics;

(D) Previous water quality information;

(E) Status of monitoring waiver applications; and

(F) Other information deemed necessary by the department.

(c) Composite samples:

(i) Purveyors may ask the certified lab to composite samples representing as many as five individual samples from within one system. Sampling procedures and protocols are outlined in department guidance;

(ii) For systems serving a population of less than three thousand three hundred one, the department may approve composite sampling between systems when those systems are part of an approved satellite management agency.

(d) The department may require the purveyor to sample both before and after treatment for one or more organic contaminants. The department shall notify the purveyor if and when this additional source sampling is required.

(e) Organic chemical monitoring plans.

(i) Purveyors of community and NTNC systems shall prepare an organic chemical monitoring plan and base routine monitoring on the plan.

(ii) The purveyor shall:

(A) Keep the monitoring plan on file with the system and make it available to the department for inspection upon request;

(B) Revise or expand the plan at any time the plan no longer reflects the monitoring requirements, procedures or sampling locations, or as directed by the department; and

(C) Submit the plan to the department for review and approval when requested and as part of the water system plan required under WAC 246-290-100.

(f) Monitoring waivers.

(i) Purveyors may request in writing, a monitoring waiver from the department for any organic monitoring requirement except those relating to unregulated VOCs;

(ii) Purveyors requesting a monitoring waiver shall comply with 40 C.F.R. 141.24 (f)(7), 141.24 (f)(10), 141.24 (h)(6), and 141.24 (h)(7);

(iii) Purveyors shall update and resubmit requests for waiver renewals as directed by the department; and

(iv) Failure to provide complete and accurate information in the waiver application shall be grounds for denial of the monitoring waiver.

(g) Purveyors with emergency and seasonal sources shall monitor those sources under the applicable requirements of this section when they are actively providing water to consumers.

(8) Radionuclides. Monitoring for radionuclides shall be conducted under 40 C.F.R. 141.26.

(9) *Cryptosporidium* and *E. coli* source monitoring. Purveyors with surface water or GWI sources shall monitor the sources in accordance with 40 C.F.R. 141.701 and 702.

(10) Other substances.

On the basis of public health concerns, the department may require the purveyor to monitor for additional substances.

TABLE ((3)) 4
MONITORING LOCATION

Sample Type	Sample Location
Asbestos	One sample from distribution system or if required by department, from the source.
Bacteriological	From representative points throughout distribution system.
Cryptosporidium and *E. coli* (Source Water) - WAC 246-290-630(16)	Under 40 C.F.R. 141.703.
Complete Inorganic Chemical & Physical	From a point representative of the source, after treatment, and prior to entry to the distribution system.
Lead/Copper	From the distribution system at targeted sample tap locations.
Nitrate/Nitrite	From a point representative of the source, after treatment, and prior to entry to the distribution system.
Disinfection Byproducts - TTHMs and HAA5 - WAC 246-290-300(6)	Under 40 C.F.R. 141.132 (b)(1) (Subpart L of the C.F.R.).
Disinfection Byproducts - TTHMs and HAA5 - WAC 246-290-300(6)	Under 40 C.F.R. 141.600 - 629 (IDSE and LRAA in Subparts U and V of the C.F.R.).
Disinfection Byproducts - Chlorite (Systems adding chlorine dioxide)	Under 40 C.F.R. 141.132 (b)(2).
Disinfection Byproducts - Bromate (Systems adding ozone)	Under 40 C.F.R. 141.132 (b)(3).
Disinfectant Residuals - Chlorine and Chloramines	Under 40 C.F.R. 141.132 (c)(1).
Disinfectant Residuals - Chlorine dioxide	Under 40 C.F.R. 141.132 (c)(2).
Disinfection Precursors - Total Organic Carbon (TOC)	Under 40 C.F.R. 141.132(d).
Disinfection Precursors - Bromide (Systems using ozone)	From the source before treatment.
Radionuclides	From a point representative of the source, after treatment and prior to entry to distribution system.
Organic Chemicals (VOCs & SOCs)	From a point representative of the source, after treatment and prior to entry to distribution system.
Other Substances (unregulated chemicals)	From a point representative of the source, after treatment, and prior to entry to the distribution system, or as directed by the department.

AMENDATORY SECTION (Amending WSR 09-21-045, filed 10/13/09, effective 1/4/10)

WAC 246-290-310 Maximum contaminant levels (MCLs) and maximum residual disinfectant levels (MRDLs). (1) General.

(a) The purveyor shall be responsible for complying with the standards of water quality identified in this section. If a substance exceeds its MCL or its maximum residual disinfectant level (MRDL), the purveyor shall take follow-up action under WAC 246-290-320.

(b) When enforcing the standards described under this section, the department shall enforce compliance with the primary standards as its first priority.

(2) Bacteriological.

(a) ((~~MCLs~~)) An *E. coli* MCL under this subsection ((~~shall be~~)) is considered a primary standard((~~s~~)).

(b) ((~~If coliform presence is detected in any sample, the purveyor shall take follow-up action under WAC 246-290-320(2).~~

~~(c) Acute~~)) *E. coli* MCL. An ((~~acute~~)) *E. coli* MCL ((~~for coliform bacteria~~)) violation occurs each month in which a system is required to monitor for total coliforms when there is:

(i) ((~~Fecal coliform presence in a repeat sample;~~

~~(ii)~~)) *E. coli* presence in a repeat sample following a total coliform presence routine sample; ((~~or~~

~~(iii)~~)) (ii) Total coliform presence in any repeat samples collected as a follow-up to a sample with ((~~fecal coliform or~~)) *E. coli* presence;

(iii) The system fails to take all required repeat samples following an *E. coli* presence routine sample; or

(iv) The system fails to test for *E. coli* when any repeat samples test positive for total coliform.

Note: For the purposes of the public notification requirements in Part 7, Subpart A of this chapter, an ((~~acute~~)) *E. coli* MCL is a violation that requires Tier 1 public notification.

(((~~(d) Nonacute MCL. A nonacute MCL for coliform bacteria occurs when:~~

~~(i) Systems taking less than forty routine samples during the month have more than one sample with coliform presence; or~~

~~(ii) Systems taking forty or more routine samples during the month have more than 5.0 percent with coliform presence.~~

~~(e) MCL compliance. The purveyor shall determine compliance with the coliform MCL for each month the system provides drinking water to the public. In determining MCL compliance, the purveyor shall:~~

~~(i) Include:~~

~~(A) Routine samples; and~~

~~(B) Repeat samples.~~

~~(ii) Not include:~~

~~(A) Samples invalidated under WAC 246-290-320 (2)(d); and~~

~~(B) Special purpose samples.~~))

(3) Inorganic chemical and physical.

(a) The primary and secondary MCLs are listed in Table ((~~4~~)) 5 and ((~~5~~)) 6:

TABLE ((~~4~~)) 5
INORGANIC CHEMICAL CHARACTERISTICS

Substance	Primary MCLs (mg/L)
Antimony (Sb)	0.006
Arsenic (As)	0.010*
Asbestos	7 million fibers/liter (longer than 10 microns)
Barium (Ba)	2.0
Beryllium (Be)	0.004
Cadmium (Cd)	0.005
Chromium (Cr)	0.1
Copper (Cu)	**
Cyanide (HCN)	0.2
Fluoride (F)	4.0
Lead (Pb)	**
Mercury (Hg)	0.002
Nickel (Ni)	0.1
Nitrate (as N)	10.0
Nitrite (as N)	1.0
Selenium (Se)	0.05
Sodium (Na)	**
Thallium (Tl)	0.002
Substance	**Secondary MCLs (mg/L)**
Chloride (Cl)	250.0
Fluoride (F)	2.0
Iron (Fe)	0.3
Manganese (Mn)	0.05
Silver (Ag)	0.1
Sulfate (SO_4)	250.0
Zinc (Zn)	5.0

Note* Does not apply to TNC systems.

Note** Although the state board of health has not established MCLs for copper, lead, and sodium, there is sufficient public health significance connected with copper, lead, and sodium levels to require inclusion in inorganic chemical and physical source monitoring. For lead and copper, the EPA has established distribution system related levels at which a system is required to consider corrosion control. These levels, called "action levels," are 0.015 mg/L for lead and 1.3 mg/L for copper and are applied to the highest concentration in ten percent of all samples collected from the distribution system. The EPA has also established a recommended level of twenty mg/L for sodium as a level of concern for those consumers that may be restricted for daily sodium intake in their diets.

TABLE ((5)) 6
PHYSICAL CHARACTERISTICS

Substance	Secondary MCLs
Color	15 Color Units
Specific Conductivity	700 umhos/cm
Total Dissolved Solids (TDS)	500 mg/L

(b) Compliance with the MCLs, except for nitrate and nitrite, in this subsection is determined by a running annual average at each sampling point. The system will not be considered in violation of the MCL until it has completed one year of quarterly sampling and at least one sampling point is in violation of the MCL. If one sampling point is in violation of the MCL, the system is in violation of the MCL.

(i) If any sample will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.

(ii) If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected.

(iii) If a sample result is less than the detection limit, zero will be used to calculate the running annual average.

(c) Compliance with the MCLs for nitrate and nitrite is determined based on one sample if the levels of these contaminants are below the MCLs as determined under Table ((4)) 5 of this section. If the levels of nitrate or nitrite exceed the MCLs in the initial sample, a confirmation sample is required under 40 C.F.R. 141.23 (f)(2), and compliance shall be determined based on the average of the initial and confirmation samples.

(4) Disinfection byproducts.

(a) The department shall consider standards under this subsection as primary standards. The MCLs in this subsection apply to monitoring required by WAC 246-290-300(6) and 40 C.F.R. 141.620 - 629.

(b) The MCLs for disinfection byproducts are as follows:

Disinfection Byproduct	MCL (mg/L)
Total Trihalomethanes (TTHMs)	0.080
Haloacetic acids (five) (HAA5)	0.060
Bromate	0.010
Chlorite	1.0

(c) Whether a system has exceeded the disinfection byproduct MCLs shall be determined in accordance with 40 C.F.R. 141.133. Beginning on the dates specified for compliance in 40 C.F.R. 141.620(c), compliance with the TTHMs and HAA5 MCLs shall be based on the LRAAs as required by 40 C.F.R. 141.64 (b)(2) and 40 C.F.R. 141.620(d). Compliance with the Bromate and Chlorite MCL will continue to be determined in accordance with 40 C.F.R. 141.133.

(5) Disinfectant residuals.

(a) The department shall consider standards under this subsection primary standards. The MRDLs in this subsection apply to monitoring required by WAC 246-290-300(6).

(b) The MRDL for disinfectants is as follows:

Disinfectant Residual	MRDL (mg/L)
Chlorine	4.0 (as Cl_2)
Chloramines	4.0 (as Cl_2)
Chlorine Dioxide	0.8 (as ClO_2)

(c) Whether a system has exceeded MRDLs shall be determined in accordance with 40 C.F.R. 141.133.

(6) Radionuclides.

(a) The department shall consider standards under this subsection primary standards.

(b) The MCLs for radium-226 and radium-228, gross alpha particle activity, beta particle and photon radioactivity, and uranium shall be as listed in 40 C.F.R. 141.66.

(7) Organic chemicals.

(a) The department shall consider standards under this subsection primary standards.

(b) VOCs.

(i) The MCLs for VOCs shall be as listed in 40 C.F.R. 141.61(a).

(ii) The department shall determine compliance with this subsection based on compliance with 40 C.F.R. 141.24(f).

(c) SOCs.

(i) MCLs for SOCs shall be as listed in 40 C.F.R. 141.61(c).

(ii) The department shall determine compliance with this subsection based on compliance with 40 C.F.R. 141.24(h).

(8) Other chemicals.

(a) The state board of health shall determine maximum contaminant levels for any additional substances.

(b) Purveyors may be directed by the department to comply with state advisory levels (SALs) for contaminants that do not have a MCL established in chapter 246-290 WAC. SALs shall be:

(i) MCLs that have been promulgated by the EPA, but which have not yet been adopted by the state board of health; or

(ii) State board of health adopted levels for substances recommended by the department and not having an EPA established MCL. A listing of these may be found in the department document titled *Procedures and References for the Determination of State Advisory Levels for Drinking Water Contaminants* dated June 1996, that has been approved by the state board of health and is available.

AMENDATORY SECTION (Amending WSR 11-17-062, filed 8/15/11, effective 10/1/11)

WAC 246-290-320 Follow-up action. (1) General.

(a) When an MCL or MRDL violation or exceedance occurs, the purveyor shall take follow-up action as described in this section.

(b) When a primary standard violation occurs, the purveyor shall:

(i) Notify the department under WAC 246-290-480;

(ii) Notify the consumers served by the system and the owner or operator of any consecutive system served in accordance with 40 C.F.R. 141.201 through 208, and Part 7, Subpart A of this chapter;

(iii) Determine the cause of the contamination; and

(iv) Take action as directed by the department.

(c) When a secondary standard violation occurs, the purveyor shall notify the department and take action as directed by the department.

(d) The department may require additional sampling for confirmation of results.

(2) Bacteriological. Coliform treatment technique triggers and assessment requirements for protection against potential fecal contamination.

(a) ((~~When coliform bacteria are present in any sample and the sample is not invalidated under (d) of this subsection, the purveyor shall ensure the following actions are taken:~~

~~(i) The sample is analyzed for fecal coliform or *E. coli*. When a sample with a coliform presence is not analyzed for *E. coli* or fecal coliforms, the sample shall be considered as having a fecal coliform presence for MCL compliance purposes;~~

~~(ii) Repeat samples are collected in accordance with (b) of this subsection;~~

~~(iii) Triggered source water monitoring is conducted in accordance with (g) of this subsection unless the department determines and documents in writing that the total coliform positive sample collected was caused by a distribution system deficiency;~~

~~(iv) The department is notified in accordance with WAC 246-290-480; and~~

~~(v) The cause of the coliform presence is determined and corrected.~~

~~(b) Repeat samples.~~

~~(i) The purveyor shall collect repeat samples in order to confirm the original sample results and to determine the cause of the coliform presence. Additional treatment, such as batch or shock chlorination, shall not be instituted prior to the collection of repeat samples unless prior authorization by the department is given. Following collection of repeat samples, and before the analytical results are known, there may be a need to provide interim precautionary treatment or other means to insure public health protection. The purveyor shall contact the department to determine the best interim approach in this situation.~~

~~(ii) The purveyor shall collect and submit for analysis a set of repeat samples for every sample in which the presence of coliforms is detected. A set of repeat coliform samples consists of:~~

~~(A) Four repeat samples for systems collecting one routine coliform sample each month; or~~

~~(B) Three repeat samples for all systems collecting more than one routine coliform sample each month.~~

~~(iii) The purveyor shall collect repeat sample sets according to Table 7;~~

~~(iv) The purveyor shall collect one set of repeat samples for each sample with a coliform presence. All samples in a set of repeat samples shall be collected on the same day and submitted for analysis within twenty-four hours after notification by the laboratory of a coliform presence, or as directed by the department.~~

~~(v) When repeat samples have coliform presence, the purveyor shall:~~

~~(A) Contact the department and collect a minimum of one additional set of repeat samples as directed by the department; or~~

~~(B) Collect one additional set of repeat samples for each sample where coliform presence was detected.~~

~~(vi) The purveyor of a system providing water to consumers via a single service shall collect repeat samples from the same location as the sample with a coliform presence. The set of repeat samples shall be collected:~~

~~(A) On the same collection date;~~

~~(B) Over consecutive days with one sample collected each day until the required samples in the set of repeat samples are collected; or~~

~~(C) As directed by the department.~~

~~(vii) If a sample with a coliform presence was collected from the first two or last two active services, the purveyor shall monitor as directed by the department;~~

~~(viii) The purveyor may change a previously submitted routine sample to a sample in a set of repeat samples when the purveyor:~~

~~(A) Collects the sample within five active adjacent service connections of the location from which the initial sample with a coliform presence was collected;~~

~~(B) Collects the sample after the initial sample with a coliform presence was submitted for analysis;~~

~~(C) Collects the sample on the same day as other samples in the set of repeat samples, except under (b)(iv) of this subsection; and~~

~~(D) Requests and receives approval from the department for the change.~~

~~(ix) The department may determine that sets of repeat samples specified under this subsection are not necessary during a month when a nonacute coliform MCL violation is determined for the system.~~

~~Table 7~~

~~REPEAT SAMPLE REQUIREMENTS~~

~~# OF ROUTINE SAMPLES COLLECTED EACH MONTH~~	~~# OF SAMPLES IN A SET OF REPEAT SAMPLES~~	~~LOCATIONS FOR REPEAT SAMPLES (COLLECT AT LEAST ONE SAMPLE PER SITE)~~
~~1~~	4	~~♦ Site of previous sample with a coliform presence~~ ~~♦ Within 5 active services upstream of site of sample with a coliform presence~~ ~~♦ Within 5 active services downstream of site of sample with a coliform presence~~

# OF ROUTINE SAMPLES COLLECTED EACH MONTH	# OF SAMPLES IN A SET OF REPEAT SAMPLES	LOCATIONS FOR REPEAT SAMPLES (COLLECT AT LEAST ONE SAMPLE PER SITE)
		♦ At any other active service or from a location most susceptible to contamination (i.e., well or reservoir)
more than 1	3	♦ Site of previous sample with a coliform presence ♦ Within 5 active services upstream of site of sample with a coliform presence ♦ Within 5 active services downstream of site of sample with a coliform presence

(c) Monitoring frequency following a coliform presence. Systems having one or more coliform presence samples that were not invalidated during the previous month shall collect and submit for analysis the minimum number of samples shown in the last column of Table 2.

(i) The purveyor may obtain a reduction in the monitoring frequency requirement when one or more samples with a coliform presence were collected during the previous month, if the purveyor proves to the satisfaction of the department;

(A) The cause of the sample with a coliform presence; and

(B) The problem is corrected before the end of the next month the system provides water to the public.

(ii) If the monitoring frequency requirement is reduced, the purveyor shall collect and submit at least the minimum number of samples required when no samples with a coliform presence were collected during the previous month.

(d) Invalid samples. Routine and repeat coliform samples may be determined to be invalid under any of the following conditions:

(i) A certified laboratory determines that the sample results show:

(A) Multiple tube technique cultures that are turbid without appropriate gas production;

(B) Presence absence technique cultures that are turbid in the absence of an acid reaction;

(C) Occurrence of confluent growth patterns or growth of TNTC (too numerous to count) colonies without a surface sheen using a membrane filter analytic technique;

(ii) The analyzing laboratory determines there is excess debris in the sample.

(iii) The analyzing laboratory establishes that improper sample collection or analysis occurred;

(iv) The department determines that a nondistribution system problem has occurred as indicated by:

(A) All samples in the set of repeat samples collected at the same location, including households, as the original coliform presence sample also are coliform presence; and

(B) All other samples from different locations (households, etc.) in the set of repeat samples are free of coliform.

(v) The department determines a coliform presence result is due to a circumstance or condition that does not reflect water quality in the distribution system.

(e) Follow-up action when an invalid sample is determined. The purveyor shall take the following action when a coliform sample is determined to be invalid:

(i) Collect and submit for analysis an additional coliform sample from the same location as each invalid sample within twenty-four hours of notification of the invalid sample; or

(ii) In the event that it is determined that the invalid sample resulted from circumstances or conditions not reflective of distribution system water quality, collect a set of samples in accordance with Table 7; and

(iii) Collect and submit for analysis samples as directed by the department.

(f) Invalidated samples shall not be included in determination of the sample collection requirement for compliance with this chapter.

(g) Triggered source water monitoring.

(i) All groundwater systems with their own groundwater source(s) must conduct triggered source water monitoring unless the following conditions exist:

(A) The system has submitted a project report and received approval that it provides at least 4-log treatment of viruses (using inactivation, removal, or a department approved combination of 4-log virus inactivation and removal) before or at the first customer for each groundwater source; and

(B) The system is conducting compliance monitoring under WAC 246-290-453(2).

(ii) Any groundwater source sample required under this subsection must be collected at the source prior to any treatment unless otherwise approved by the department.

(iii) Any source sample collected under this subsection must be at least 100 mL in size and must be analyzed for *E. coli* using one of the analytical methods under 40 C.F.R. 141.402(c).

(iv) Groundwater systems must collect at least one sample from each groundwater source in use at the time a routine sample collected under WAC 246-290-300(3) is total coliform-positive and not invalidated under (d) of this subsection. These source samples must be collected within twenty-four hours of notification of the total coliform-positive sample. The following exceptions apply:

(A) The twenty-four hour time limit may be extended if granted by the department and will be determined on a case-by-case basis. If an extension is granted, the system must sample by the deadline set by the department.

(B) Systems with more than one groundwater source may meet the requirements of (g)(iv) of this subsection by sampling a representative groundwater source or sources. The system must have an approved triggered source water monitoring plan that identifies one or more groundwater sources that are representative of each monitoring site in the system's coliform monitoring plan under WAC 246-290-300

~~(3)(b). This plan must be approved by the department before representative sampling will be allowed.~~

~~(C) Groundwater systems serving one thousand people or fewer may use a repeat sample collected from a groundwater source to meet the requirements of (b) and (g)(iv) of this subsection. If the repeat sample collected from the groundwater source is *E. coli* positive, the system must comply with (g)(v) of this subsection.~~

~~(v) Groundwater systems with an *E. coli* positive source water sample that is not invalidated under (g)(vii) of this subsection, must:~~

~~(A) Provide Tier 1 public notice under Part 7, Subpart A of this chapter and special notification under WAC 246-290-71005 (4) and (5);~~

~~(B) If directed by the department, take corrective action as required under WAC 246-290-453(1); and~~

~~(C) Systems that are not directed by the department to take corrective action must collect five additional samples from the same source within twenty-four hours of being notified of the *E. coli* positive source water sample. If any of the five additional samples are *E. coli* positive, the system must take corrective action under WAC 246-290-453(1).~~

~~(vi) Any consecutive groundwater system that has a total coliform-positive routine sample collected under WAC 246-290-300(3) and not invalidated under (d) of this subsection, must notify each wholesale system it receives water from within twenty-four hours of being notified of the total coliform-positive sample and comply with (g) of this subsection.~~

~~(A) A wholesale groundwater system that receives notice from a consecutive system under (g)(vi) of this subsection must conduct triggered source water monitoring under (g) of this subsection unless the department determines and documents in writing that the total coliform-positive sample collected was caused by a distribution system deficiency in the consecutive system.~~

~~(B) If the wholesale groundwater system source sample is *E. coli* positive, the wholesale system must notify all consecutive systems served by that groundwater source within twenty-four hours of being notified of the results and must meet the requirements of (g)(v) of this subsection.~~

~~(C) Any consecutive groundwater system receiving water from a source with an *E. coli* positive sample must notify all their consumers as required under (g)(v)(A) of this subsection.~~

~~(vii) An *E. coli* positive groundwater source sample may be invalidated only if the following conditions apply:~~

~~(A) The system provides the department with written notice from the laboratory that improper sample analysis occurred; or~~

~~(B) The department determines and documents in writing that there is substantial evidence that the *E. coli* positive groundwater sample is not related to source water quality.~~

~~(viii) If the department invalidates an *E. coli* positive groundwater source sample, the system must collect another source water sample within twenty-four hours of being notified by the department of its invalidation decision and have it analyzed using the same analytical method. The department may extend the twenty-four hour time limit under (g)(iv)(A) of this subsection.~~

~~(ix) Groundwater systems that fail to meet any of the monitoring requirements of (g) of this subsection must conduct Tier 2 public notification under Part 7, Subpart A of this chapter.~~)) Treatment technique triggers. Systems shall conduct assessments in accordance with (b) of this subsection after exceeding treatment technique triggers as follows:

(i) Level 1 treatment technique triggers.

(A) For systems taking forty or more routine samples per month, the system exceeds 5.0 percent total coliform-positive samples for the month.

(B) For systems taking fewer than forty routine samples per month, the system has two or more total coliform-positive samples in the same month.

(C) The system fails to take every required repeat sample after any single total coliform-positive routine sample.

(ii) Level 2 treatment technique triggers.

(A) An *E. coli* MCL violation, as specified in WAC 246-290-310 (2)(b).

(B) A second level 1 treatment technique trigger as defined in (a)(i) of this subsection within a rolling twelve-month period, unless the department has determined a likely reason that the samples that caused the first level 1 treatment technique trigger were total coliform-positive and has established that the system has corrected the problem.

(b) Requirements for assessments.

(i) Systems shall conduct level 1 and 2 assessments to identify the possible presence of sanitary defects and defects in distribution system coliform monitoring practices. Level 1 assessments must be conducted by the system operator or purveyor. Level 2 assessments must be conducted by the department or a party approved by the department which may include the system operator.

(ii) When conducting assessments, systems shall direct the assessor to evaluate minimum elements that include:

(A) Review and identification of atypical events that could affect distributed water quality or indicate that distributed water quality was impaired;

(B) Changes in distribution operation and maintenance that could affect distributed water quality, including water storage;

(C) Source and treatment considerations that bear on distributed water quality, where appropriate. For example, whether or not a groundwater system is disinfected;

(D) Existing water quality monitoring data;

(E) Inadequacies in sample sites, sampling protocol, and sample processing; and

(F) The system shall conduct the assessment consistent with any department directives that tailor specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system.

(iii) Level 1 assessments. A system shall conduct a level 1 assessment consistent with the requirements in subsection (2)(b) of this section if the system exceeds one of the treatment technique triggers in (a)(i) of this subsection.

(A) The system shall complete a level 1 assessment as soon as practical after any treatment technique trigger is met in (a)(i) of this subsection. The completed assessment must describe sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed. The assessment may also note that no

sanitary defects were identified. The system shall submit the completed level 1 assessment to the department within thirty days after the system learns that it has exceeded a treatment technique trigger.

(B) Upon completion and submission of the level 1 assessment by the system, the department shall determine if the system has identified a likely cause for the level 1 treatment technique trigger and has corrected the problem. If the system has not corrected the problem, the department shall determine if the proposed timetable for corrective action is sufficient.

(C) If after reviewing the completed level 1 assessment, the department determines the assessment is not sufficient, including any proposed timetable for any corrective actions not already completed, the department may require the system to submit a revised assessment to the department within thirty days from the date of department notification.

(iv) Level 2 assessments. A system shall conduct a level 2 assessment consistent with requirements in subsection (2)(b) of this section if the system exceeds one of the treatment technique triggers in (a)(ii) of this subsection. The system shall comply with any expedited actions or additional actions required by the department in the case of an *E. coli* MCL violation.

(A) A level 2 assessment must be conducted as soon as practical after any treatment technique trigger in (a)(ii) of this subsection and shall be conducted by either a water distribution manager 2, 3, or 4 certified in accordance with chapter 246-292 WAC, a licensed professional engineer that meets the requirements of WAC 246-290-040(1), a local health jurisdiction, or the department. The system shall submit a completed level 2 assessment to the department within thirty days after the system learns that it has exceeded a treatment technique trigger. The completed assessment must describe sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed in accordance with (d) of this subsection. The assessment may also note that no sanitary defects were identified.

(B) Upon completion and submission of the level 2 assessment by the system, the department shall determine if the system has identified a likely cause for the level 2 treatment technique trigger and has corrected the problem. If the system has not corrected the problem, the department shall determine if the proposed timetable for corrective action is sufficient.

(C) If after reviewing the submitted level 2 assessment, the department determines the assessment is not sufficient, including any proposed timetable for any corrective actions not already completed in accordance with (d) of this subsection, the department may require the system to submit a revised assessment within thirty days from the date of department notification.

(c) To achieve compliance with the MCL for *E. coli* under WAC 246-290-310 (2)(b), the following are identified as the best technology, treatment techniques, or other means available:

(i) Protection of wells from fecal contamination by appropriate placement and construction;

(ii) Maintenance of a disinfectant residual throughout the distribution system;

(iii) Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, cross-connection control, and continual maintenance of positive water pressure in all parts of the distribution system;

(iv) Filtration, disinfection, or both, of surface water, using the proper strength of oxidants such as chlorine, chlorine dioxide, or ozone; and

(v) For systems using groundwater, compliance with a wellhead protection program developed and implemented under WAC 246-290-135(3).

(d) Corrective action. Systems shall correct sanitary defects found through either a level 1 or level 2 assessment conducted under (b) of this subsection. For corrections not completed by the time of submission of the assessment to the department, the system shall complete the corrective actions in compliance with a timetable approved by the department in consultation with the system under (e) of this subsection. The system shall notify the department when each scheduled corrective action is completed.

(e) Consultation. At any time during the assessment or corrective action phase, the water system may request a consultation with the department to determine the appropriate actions to be taken. The system may consult with the department on all relevant information that may impact the system's ability to comply with the requirements of subsection (2) of this section, including the method of accomplishment, an appropriate time frame, and other relevant information.

(f) A treatment technique violation occurs when a system exceeds a treatment technique trigger specified in subsection (2)(a) of this section and then fails to conduct the required assessment or complete corrective actions within the time frame specified in subsection (2)(b) and (d) of this section.

(3) Inorganic chemical and physical follow-up monitoring shall be conducted in accordance with the following:

(a) For nonnitrate/nitrite primary inorganic chemicals, 40 C.F.R. 141.23 (a)(4), 141.23 (b)(8), 141.23 (c)(7), 141.23 (c)(9), 141.23 (f)(1), 141.23(g), 141.23(m) and 141.23(n);

(b) For nitrate, 40 C.F.R. 141.23 (a)(4), 141.23 (d)(2), 141.23 (d)(3), 141.23 (f)(2), 141.23(g), 141.23(m), 141.23(n), and 141.23(o);

(c) For nitrite, 40 C.F.R. 141.23 (a)(4), 141.23 (e)(3), 141.23 (f)(2), and 141.23(g); or

(d) The purveyor of any public water system providing service that has secondary inorganic MCL exceedances shall take follow-up action as required by the department. Follow-up action shall be commensurate with the degree of consumer acceptance of the water quality and their willingness to bear the costs of meeting the secondary standard. For new community water systems and new nontransient noncommunity water systems without active consumers, treatment for secondary contaminant MCL exceedances will be required.

(4) Lead and copper follow-up monitoring shall be conducted in accordance with 40 C.F.R. 141.85(c), 141.86 (d)(2), 141.86 (d)(3), 141.87(c), 141.87(d) and 141.88(b) through 141.88(d).

(5) Turbidity.

Purveyors monitoring turbidity in accordance with Part 6 of this chapter shall provide follow-up under WAC 246-290-634.

(6) Organic chemicals. Follow-up monitoring shall be conducted in accordance with the following:

(a) For VOCs, 40 C.F.R. 141.24 (f)(11) through 141.24 (f)(15), and 141.24 (f)(22); or

(b) For SOCs, 40 C.F.R. 141.24(b), 141.24(c) and 141.24 (h)(7) through 141.24 (h)(11), and 141.24 (h)(20).

(7) Radionuclide follow-up monitoring shall be conducted under 40 C.F.R. 141.26 (a)(2)(iv), 141.26 (a)(3)(ii) through (v), 141.26 (a)(4), 141.26 (b)(6), and 141.26 (c)(5).

(8) The department shall determine the purveyor's follow-up action when a substance not included in this chapter is detected.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-415 Operations and maintenance. (1) The purveyor shall ensure that the system is operated in accordance with the operations and maintenance program as established in the approved water system plan required under WAC 246-290-100 or the small water system management program under WAC 246-290-105.

(2) The operations and maintenance program shall include the following elements as applicable:

(a) Water system management and personnel;

(b) Operator certification;

(c) Comprehensive monitoring plan for all contaminants under WAC 246-290-300;

(d) Emergency response program;

(e) Cross-connection control program; and

(f) Maintenance of service reliability in accordance with WAC 246-290-420.

(3) Seasonal system startup.

(a) Seasonal systems shall submit a start-up procedure to the department for review and approval.

(b) Seasonal systems shall certify in accordance with WAC 246-290-480 (2)(f)(ii) that a department-approved start-up procedure, which may include a requirement for start-up sampling, was completed prior to serving water to the public.

(c) A treatment technique violation occurs when a seasonal system fails to complete a department-approved start-up procedure prior to serving water to the public.

(4) The purveyor shall ensure that the system is operated in accordance with good operations procedures such as those available in texts, handbooks, and manuals available from the following sources:

(a) American Water Works Association (AWWA)((~~, 6666 West Quincy Avenue, Denver, Colorado 80235~~));

(b) American Society of Civil Engineers (ASCE)((~~, 345 East 47th Street, New York, New York 10017-2398~~));

(c) Ontario Ministry of the Environment((~~, 135 St. Clair Avenue West, Toronto, Ontario M4V1B5, Canada~~));

(d) The Chlorine Institute((~~, 2001 "L" Street NW, Washington, D.C. 20036~~));

(e) California State University((~~, 600 "J" Street, Sacramento, California 95819~~));

(f) Health Research Inc.((~~, Health Education Services Division, P.O. Box 7126, Albany, New York 12224~~)); and

(g) Any other standards acceptable to the department.

(((~~4~~))) (5) The purveyor shall not establish or maintain a bypass to divert water around any feature of a treatment process, except by written approval from the department.

(((~~5~~))) (6) The purveyor shall take preventive or corrective action as directed by the department when results of an inspection conducted by the department indicate conditions which are currently or may become a detriment to system operation.

(((~~6~~))) (7) The purveyor of a system using surface water or GWI shall meet operational requirements specified in Part 6 of this chapter.

(((~~7~~))) (8) The purveyor shall have a certified operator if required under chapter 70.119 RCW and chapter 246-292 WAC.

(((~~8~~))) (9) The purveyor shall at all times employ reasonable security measures to assure the raw water intake facilities, water treatment processes, water storage facilities, and the distribution system are protected from possible damage or compromise by unauthorized persons, animals, vegetation, or similar intruding agents. Such measures include elements such as locks on hatches, fencing of facilities, screening of reservoir vents or openings, and other recommendations as may be found in the current edition of the *Recommended Standards for Water Works, A Committee Report of the Great Lakes - Upper Mississippi River Board of State Public Health and Environmental Managers.*

(((~~9~~))) (10) All purveyors utilizing groundwater wells shall monitor well levels from ground level to the static water level on a seasonal basis, including low demand and high demand periods, to document the continuing availability of the source to meet projected, long-term demands. Purveyors shall maintain this data and provide it to the department upon request.

(((~~10~~))) (11) All operation and maintenance practices shall conform to Part 5 of this chapter.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-416 Sanitary surveys. (1) All public water systems shall submit to a sanitary survey conducted by the department, or the department's designee, based upon the following schedule:

(a) For community water systems, every three years. In accordance with 40 C.F.R. 141.21 (d)(3), community water systems may qualify to be surveyed every five years if the system meets the following criteria:

(i) Provides at least 4-log treatment of viruses (using inactivation, removal, or a department-approved combination of 4-log inactivation and removal) before or at the first customer for all its groundwater sources; or

(ii) Has no total coliform or *E. coli* MCL violations since the last sanitary survey;

(iii) Has no coliform treatment technique violations for failure to conduct the required assessment or complete cor-

rective actions in response to a treatment technique trigger since the last sanitary survey;

(iv) Has no more than one total coliform monitoring violation since the last sanitary survey; and

((~~(iv)~~)) (v) Has no unresolved significant deficiencies from the current sanitary survey.

(b) For transient noncommunity and nontransient noncommunity water systems, every five years.

(c) For community water systems that use a surface water or GWI source, every three years. Sanitary surveys may be reduced to every five years upon written approval from the department.

(d) The department may schedule a sanitary survey or increases the frequency of surveys if it determines a public health threat exists or is suspected.

(2) All public water system purveyors shall be responsible for:

(a) Ensuring cooperation in scheduling sanitary surveys with the department, or its designee;

(b) At the department's request, provide any existing information that will enable the department to conduct a sanitary survey;

(c) Ensuring the unrestricted availability of all facilities and records at the time of a sanitary survey or special purpose investigation; and

(d) Taking preventive or corrective action as directed by the department when results of a sanitary survey indicate conditions which are currently or may become a detriment to system operation or public health.

(3) All public water systems that use a surface water or GWI source shall, within forty-five days following receipt of a sanitary survey report that identifies significant deficiencies, identify in writing to the department how the system will correct the deficiencies and propose a schedule to complete the corrections. The department may modify the schedule if necessary to protect the health of water system users.

(4) A groundwater system with significant deficiencies must meet the treatment technique requirements of WAC 246-290-453(1) and the special notification requirements under WAC 246-290-71005 (4) and (5) except where the department determines that the significant deficiency is in a portion of the distribution system that is served solely by surface water or GWI.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-451 Disinfection of drinking water. (1) No portion of a public water system containing potable water shall be put into service, nor shall service be resumed until the facility has been effectively disinfected.

(a) In cases of new construction, drinking water shall not be furnished to the consumer until satisfactory bacteriological samples have been analyzed by a laboratory certified by the state; ((~~and~~))

(b) In cases of existing water mains, when the integrity of the main is lost resulting in a significant loss of pressure that places the main at risk to ((~~cross-connection~~)) contamination, the purveyor shall use standard industry practices ((~~such as flushing, disinfection, and/or bacteriological sampling~~)) to ensure adequate and safe water quality prior to the return of the line to service((~~:~~)), including at least one of the following:

(i) Flushing;

(ii) Disinfection; or

(iii) Bacteriological sampling.

(c) If a cross-connection is confirmed, the purveyor shall satisfy the reporting requirements as described under WAC 246-290-490(8).

(2) The procedure used for disinfection shall conform to standards published by the American Water Works Association, or other industry standards acceptable to the department.

(3) The purveyor of a system using surface water or GWI shall meet disinfection requirements specified in Part 6 of this chapter.

(4) If the department determines that any of the following conditions apply, the purveyor ((~~of a system using groundwater~~)) shall provide continuous disinfection of the source and meet the requirements under subsection (6) of this section ((~~if required by the department to disinfect for any of the following reasons~~)):

(a) ((~~Determination that the~~)) A groundwater source is in hydraulic connection to surface water under WAC 246-290-640(4);

(b) A history of unsatisfactory ((~~source~~)) total coliform sampling results for a groundwater source; ((~~or~~))

(c) A ((~~microbiological~~)) microbial contaminant threat within ((~~the~~)) a groundwater source sanitary control area as defined in WAC 246-290-135;

(d) A microbial contaminant threat to a source, as documented in a susceptibility assessment, a sanitary survey, or a special purpose investigation which includes, but is not limited to, the following conditions:

(i) A poorly constructed source;

(ii) An inadequate surface seal;

(iii) High groundwater;

(iv) Lack of confining layers in the aquifer;

(v) A shallow source;

(vi) A drilled well in fractured bedrock; or

(vii) A source at risk of flooding.

(e) Desalination of a seawater water source by reverse osmosis.

(5) ((~~The purveyor of a groundwater system that is required to disinfect as a result of becoming a SSNC due to repeated total coliform MCL or major repeat violations shall meet the requirements under subsection (7) of this section.~~)) If the department determines that any of the following conditions apply, the purveyor shall provide continuous disinfection of the distribution system and meet the requirements under subsection (7) of this section:

(a) *E. coli* MCL violations;

(b) Level 1 or level 2 assessment treatment technique triggers;

(c) Failure to complete level 1 or level 2 assessments as required under WAC 246-290-320 (2)(b);

(d) Failure to complete corrective actions required under WAC 246-290-320 (2)(d); or

(e) Facility failures that threaten to degrade water quality in the distribution system.

(6) If disinfection is required under subsection (4) of this section, the following requirements must be met:

(a) Provide ((~~a minimum contact time at or before the first customer of:~~

~~(i) Thirty minutes if 0.2 mg/L free chlorine residual is maintained;~~

~~(ii) Ten minutes if 0.6 mg/L free chlorine residual is maintained; or~~

~~(iii)~~)) any combination of free chlorine residual concentration (C), measured in mg/L at or before the first customer and contact time (T), measured in minutes between the location of chlorine treatment and residual measurement, that result in a CT product (C x T) of greater than or equal to six((~~; and~~

~~(b) Maintain a detectable residual disinfectant concentration in all active parts of the distribution system, measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide.~~

~~(c)~~)) without exceeding the chlorine MRDL in WAC 246-290-310(5).

(b) The department may require the purveyor to provide longer contact times, higher chlorine residuals, or additional treatment to protect the health of consumers served by the water system.

(((~~(d)~~))) (c) To demonstrate the required level of treatment is maintained, the purveyor shall:

(i) Monitor the residual disinfectant concentration at the point of entry to the distribution system, or at a department-approved location, at least once ((~~every Monday through Friday (except holidays)~~))) per day, five days per week or each day that water is supplied by the treatment plant if it operates less than daily;

(ii) ((~~Calculate the daily CT value at or before the first customer~~)) Identify the number of days each month that the treatment process failed to meet the disinfection treatment requirement in this subsection; and

(iii) Submit monthly ((~~groundwater~~)) water treatment reports to the department using a department-approved form by the tenth day of the following month.

(((~~(e)~~))) (d) All analyses required in this subsection shall be conducted in accordance with an EPA ((~~standard methods~~)) approved method. A diethyl-p-phenylenediamine (DPD) colorimetric field test kit relying on a visual color comparison to a visual standard may not be used by a purveyor to comply with the requirements of this subsection.

(((~~(f) The purveyor may be required~~)) (e) The department may require the purveyor to monitor the residual disinfectant concentration each calendar day water is supplied to the distribution system if the department considers source treatment operation ((~~is~~)) unreliable.

(((~~(g)~~))) (f) The department may require the use of continuous residual analyzers and recorders to assure adequate monitoring of residual concentrations.

(7) ((~~If disinfection is required under subsection (5) of this section, or a chemical disinfectant is added to a groundwater source for any other reason, the following requirements must be met:~~)) A purveyor that adds free chlorine, total chlorine, combined chlorine, or chlorine dioxide to the distribution system on a continuous basis shall:

(a) Monitor residual disinfectant concentration at:

(i) Representative points ((~~throughout~~)) in the distribution system at least once ((~~each~~)) per day, ((~~excluding weekends and holidays, and at the same time and location of routine and repeat coliform sample collection. Frequency of disinfection residual monitoring may be reduced upon written request to the department if it can be shown that disinfection residuals can be maintained on a reliable basis without the provision of daily monitoring~~)) five days per week, unless upon written request, the department approves less frequent monitoring; and

(ii) The same time and location of routine and repeat coliform sample collection.

(b) Maintain a detectable residual disinfectant concentration in all active parts of the distribution system, ((~~measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide. Water in the distribution system with an HPC level less than or equal to 500 organisms/mL is considered to have a detectable residual disinfectant concentration.~~

~~(c) The department may require the purveyor to provide higher chlorine residuals, or additional treatment to protect the health of consumers served by the water system~~)) unless the department approves a written request to use a lower value. At a minimum, the request to use a lower value must identify the instrument used to measure the residual disinfectant concentration and include the manufacturer's documentation of the instrument's accuracy to measure the lower value.

(c) Submit monthly water treatment reports to the department using a department-approved form by the tenth day of the following month.

(d) Conduct all analyses required in this subsection ((~~shall be conducted~~)):

(i) In accordance with an EPA ((~~standard methods.~~

~~(c)~~)) approved method; or

(ii) Using a diethyl-p-phenylenediamine (DPD) colorimetric field test kit unless not allowed by the department.

(e) Colorimetric test strips may not be used by a purveyor to comply with the residual disinfectant concentration monitoring requirements of this subsection.

(f) The department may require the use of continuous residual analyzers and recorders to assure adequate monitoring of residual concentrations.

(g) The department may require the purveyor to provide higher disinfectant residuals, or additional treatment to protect the health of consumers served by the water system.

(h) If a chemical disinfectant is added to the distribution system for purposes other than continuous disinfection and the treatment purposes and procedures are identified in a treatment design approved under WAC 246-290-110 and 246-290-120, the system shall be exempt from the requirements of this section.

(8) Violations.

(a) Failure to provide treatment that meets the applicable requirements of subsection (6) or (7) of this section in two or more calendar days per month in which residual disinfectant concentration monitoring was conducted is a treatment technique violation;

(b) Failure to perform monitoring that meets the applicable requirements of subsection (6) or (7) of this section is a monitoring violation; or

(c) Failure to submit a monthly water treatment plant report to the department using a department-approved form by the tenth day of the following month in accordance with the requirements of subsection (6) or (7) of this section is a reporting violation.

(9) Purveyors that add free chlorine, total chlorine, combined chlorine, or chlorine dioxide to a source or the distribution system for any reason shall, in addition to any other applicable monitoring requirements of this section, measure residual disinfectant concentrations in samples collected at the same time and location that routine or repeat coliform samples are collected, unless the department determines that more frequent monitoring is necessary to protect public health.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-453 ((~~Treatment techniques for groundwater systems.~~)) Corrective action under the GWR. (1) Groundwater systems with significant deficiencies identified under WAC 246-290-416, or source fecal contamination as determined under WAC 246-290-320 (2)(g)(v)(C) or 246-290-300 (3)(e), or as directed by the department under WAC 246-290-320 (2)(g)(v)(B) must:

(a) Take one or more of the following corrective actions:

(i) Correct all significant deficiencies;

(ii) Provide an alternate source of water;

(iii) Eliminate the source of contamination; or

(iv) Provide treatment that reliably achieves at least 4-log treatment of viruses (using inactivation, removal, or a department-approved combination of 4-log virus inactivation and removal) before or at the first customer for the groundwater source.

(b) Consult with the department regarding appropriate corrective action within thirty days unless otherwise directed by the department to implement a specific corrective action.

(c) Complete corrective action as directed by the department or be in compliance with an approved corrective action plan within one hundred twenty days (or earlier if directed by the department) of receiving written notice from the department of a significant deficiency or source fecal contamination under this subsection. Any modifications of a corrective action plan must be approved by the department.

(2) When treatment is installed to provide at least 4-log treatment of viruses under subsection (1)(a)(iv) of this section, compliance monitoring must be conducted and reported as follows:

(a) For chemical disinfection, conduct compliance monitoring under 40 C.F.R. 141.403 (b)(3)(i).

(i) For groundwater systems serving greater than three thousand three hundred people, conduct compliance monitoring under 40 C.F.R. 141.403 (b)(3)(i)(A).

(ii) For groundwater systems serving three thousand three hundred or fewer people, conduct compliance monitoring under 40 C.F.R. 141.403 (b)(3)(i)(B).

(b) For membrane filtration, conduct compliance monitoring under 40 C.F.R. 141.403 (b)(3)(ii).

(c) For alternative treatment, conduct compliance monitoring under 40 C.F.R. 141.403 (b)(3)(iii).

(d) For new sources, conduct compliance monitoring under 40 C.F.R. 141.403 (b)(2)(i) and (ii).

(e) Submit monthly groundwater treatment plant reports to the department using a department-approved form by the tenth day of the following month in accordance with 40 C.F.R. 141.31.

(3) A groundwater system may discontinue 4-log treatment of viruses installed under subsection (1)(a)(iv) of this section or WAC 246-290-451(4) if the department determines and documents in writing that 4-log treatment of viruses is no longer necessary for that groundwater source. A system that discontinues 4-log treatment of viruses is subject to the triggered source water monitoring requirements under WAC 246-290-320 (2)(g).

(4) Failure to meet the compliance monitoring requirements under subsection (2) of this section is a monitoring violation and requires Tier 3 public notification under Part 7, Subpart A of this chapter.

(5) Failure to submit a monthly groundwater treatment plant report to the department using a department-approved form by the tenth day of the following month is a reporting violation.

(6) Failure to provide 4-log treatment of viruses under subsection (1)(a)(iv) of this section is a treatment technique violation if the failure is not corrected within four hours of the time the purveyor determines that at least 4-log treatment of viruses is not maintained and requires Tier 2 public notification under Part 7, Subpart A of this chapter.

((~~(6)~~)) (7) Failure to complete corrective action as directed by the department or be in compliance with an approved corrective action plan within one hundred twenty days (or earlier if directed by the department) of receiving notice from the department of a significant deficiency or an *E. coli* positive groundwater sample that is not invalidated under WAC 246-290-320 (2)(g)(vii) is a treatment technique violation and requires Tier 2 public notification under Part 7, Subpart A of this chapter.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-480 Recordkeeping and reporting. (1) Records. The purveyor shall keep the following records of operation and water quality analyses:

(a) Bacteriological and turbidity analysis results shall be kept for five years. Chemical analysis results shall be kept for as long as the system is in operation. Records of source meter readings shall be kept for ten years. Other records of operation and analyses required by the department shall be kept for three years. All records shall bear the signature of the operator in responsible charge of the water system or his or her representative. Systems shall keep these records available for inspection by the department and shall send the records to the department if requested. Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided the following information is included:

(i) The date, place, and time of sampling, and the name of the person collecting the sample;

(ii) Identification of the sample type (routine distribution system sample, repeat sample, source or finished water sample, or other special purpose sample);

(iii) Date of analysis;

(iv) Laboratory and person responsible for performing analysis;

(v) The analytical method used; and

(vi) The results of the analysis.

(b) The purveyor shall maintain documentation of any level 1 or level 2 assessment regardless of who conducts the assessment, and documentation of corrective actions completed as a result of the assessments, or other summary documentation of the sanitary defects and corrective actions taken under WAC 246-290-320(2) for department review. The documentation must be maintained by the purveyor for a period of not less than five years after completion of the assessment or corrective action.

(c) For consecutive systems, documentation of notification to the wholesale systems of total coliform-positive samples that are not invalidated under WAC 246-290-300 (3)(d) must be kept for a period of not less than five years.

(d) Records of action taken by the system to correct violations of primary drinking water standards. For each violation, records of actions taken to correct the violation, and copies of public notifications shall be kept for no less than ten years after the last corrective action taken.

((~~(e)~~)) (e) Copies of any written reports, summaries, or communications relating to sanitary surveys or SPIs of the system conducted by system personnel, by a consultant or by any local, state, or federal agency, shall be kept for ten years after completion of the sanitary survey or SPI involved.

((~~(d)~~)) (f) Copies of project reports, construction documents and related drawings, inspection reports and approvals shall be kept for the life of the facility.

((~~(e)~~)) (g) Where applicable, records of the following shall be kept for a minimum of three years:

(i) Chlorine residual;

(ii) Fluoride level;

(iii) Water treatment plant performance including, but not limited to:

(A) Type of chemicals used and quantity;

(B) Amount of water treated;

(C) Results of analyses; and

(iv) Other information as specified by the department.

((~~(f)~~)) (h) The purveyor shall retain copies of public notices made under Part 7, Subpart A of this chapter and certifications made to the department under 40 C.F.R. 141.33(e) for a period of at least three years after issuance.

((~~(g)~~)) (i) Purveyors using conventional, direct, or in-line filtration that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes within their treatment plant shall, beginning no later than June 8, 2004, collect and retain on file the following information for review and evaluation by the department:

(i) A copy of the recycle notification and information submitted to the department under WAC 246-290-660 (4)(a)(i).

(ii) A list of all recycle flows and the frequency with which they are returned.

(iii) Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes.

(iv) Typical filter run length and a written summary of how filter run length is determined.

(v) The type of treatment provided for the recycle flow.

(vi) Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed, if applicable.

((~~(h)~~)) (j) Purveyors required to conduct disinfection profiling and benchmarking under 40 C.F.R. 141.530 through 141.544 shall retain the results on file indefinitely.

((~~(i)~~)) (k) Copies of monitoring plans developed under this chapter shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under (a) of this subsection.

((~~(j)~~)) (l) Purveyors using surface water or GWI sources must keep the records required by 40 C.F.R. 141.722.

(2) Reporting.

(a) Unless otherwise specified in this chapter, the purveyor shall report to the department within forty-eight hours the failure to comply with any national primary drinking water regulation (including failure to comply with any monitoring requirements) as set forth in this chapter. For violations assigned to Tier 1 in WAC 246-290-71001, the department must be notified as soon as possible, but no later than twenty-four hours after the violation is known.

(b) The purveyor shall submit to the department reports required by this chapter, including tests, measurements, and analytic reports. Monthly reports are due before the tenth day of the following month, unless otherwise specified in this chapter.

(c) The purveyor shall submit to the department copies of any written summaries or communications relating to the status of monitoring waivers during each monitoring cycle or as directed by the department.

(d) Source meter readings shall be made available to the department.

(e) Water facilities inventory form (WFI).

(i) Purveyors of **community** and **NTNC** systems shall submit an annual WFI update to the department;

(ii) Purveyors of **TNC** systems shall submit an updated WFI to the department as requested;

(iii) Purveyors shall submit an updated WFI to the department within thirty days of any change in name, category, ownership, or responsibility for management of the water system, or addition of source or storage facilities; and

(iv) At a minimum the completed WFI shall provide the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system.

(f) Bacteriological. ((~~The purveyor shall notify the department of the presence of:~~))

(i) The purveyor shall notify the department of the presence of total coliform in a sample((~~,~~)) within ten days of notification by the laboratory; ((~~and~~

~~(ii) Fecal coliform or *E. coli* in a sample, by the end of the business day in which the purveyor is notified by the laboratory. If the purveyor is notified of the results after normal close of business, then the purveyor shall notify the department before the end of the next business day.~~))

(ii) Prior to serving water to the public, a seasonal system shall submit a certification to the department demonstrating that the system has complied with the department-approved start-up procedure; and

(iii) The system shall report treatment technique violations identified under WAC 246-290-320 (2)(f) to the department no later than the end of the next business day after the violation is known.

(g) Systems monitoring for disinfection byproducts under WAC 246-290-300(6) shall report information to the department as specified in (a) and (b) of this subsection, and 40 C.F.R. 141.134(b).

(h) Systems monitoring for disinfectant residuals under WAC 246-290-300(6) shall report information to the department as specified in (a) and (b) of this subsection, and 40 C.F.R. 141.134(c).

(i) Systems required to monitor for disinfection byproduct precursor removal under WAC 246-290-300(6) shall report information to the department as specified in (a) and (b) of this subsection, and 40 C.F.R. 141.134(d).

(j) Systems required to monitor for disinfection byproducts under WAC 246-290-300(6) shall report information to the department as specified in (a) and (b) of this subsection, and 40 C.F.R. 141.600 - 629.

(k) Systems subject to the enhanced treatment requirements for *Cryptosporidium* under WAC 246-290-630(4) shall report information to the department as specified in 40 C.F.R. 141.706 and 141.721.

(l) Systems that use acrylamide and epichlorohydrin in the treatment of drinking water, must certify annually in writing to the department that the combination (or product) of dose and monomer level does not exceed the levels specified in (l)(i) and (ii) of this subsection. Certifications shall reference maximum use levels established by an ANSI-accredited listing organization approved by the department.

(i) Acrylamide = 0.05 percent dosed at 1 ppm (or equivalent); and

(ii) Epichlorohydrin = 0.01 percent dosed at 20 ppm (or equivalent).

(m) Use of products that exceed the specified levels constitutes a treatment technique violation and the public must be notified under the public notice requirements under Part 7, Subpart A of this chapter.

(n) Systems shall submit to the department, in accordance with 40 C.F.R. 141.31(d), a certification that the system has complied with the public notification regulations (Part 7, Subpart A of this chapter) when a public notification is required. Along with the certification, the system shall submit a representative copy of each type of notice.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-630 General requirements. (1) The purveyor shall ensure that treatment is provided for surface and GWI sources consistent with the treatment technique requirements specified in Part 6 of chapter 246-290 WAC.

(2) The purveyor shall install and properly operate water treatment processes to ensure at least:

(a) 99.9 percent (3-log) removal and/or inactivation of *Giardia lamblia* cysts;

(b) 99.99 percent (4-log) removal and/or inactivation of viruses; and

(c) 99 percent (2-log) removal of *Cryptosporidium* oocysts if required to filter.

(3) The purveyor shall ensure that the requirements of subsection (2) of this section are met between a point where the source water is not subject to contamination by untreated surface water and a point at or before the first consumer.

(4) The department may require higher levels of removal and/or inactivation of *Giardia lamblia* cysts, *Cryptosporidium* oocysts, and viruses than specified in subsection (2) of this section if deemed necessary to protect the health of consumers served by the system.

(5) The purveyor shall ensure that personnel operating a system subject to Part 6 of chapter 246-290 WAC meet the requirements under chapter 70.119 RCW and chapter 246-292 WAC.

(6) The purveyor of a **Group A community** system serving water from a surface or GWI source to the public before January 1, 1991, shall comply with applicable minimum treatment requirements. The purveyor shall meet either:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662 respectively;

(b) The criteria to remain unfiltered under WAC 246-290-690 and the disinfection requirements under WAC 246-290-692; or

(c) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(7) The purveyor of a **Group A noncommunity** system serving water from a surface or GWI source, shall meet either:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662, respectively; or

(b) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(8) The purveyor of a **Group A** system first serving water from a surface or GWI source to the public after December 31, 1990, shall meet either:

(a) The filtration and disinfection requirements under WAC 246-290-660 and 246-290-662, respectively; or

(b) The criteria to provide a limited alternative to filtration under WAC 246-290-691 and the disinfection requirements under WAC 246-290-692.

(9) The purveyor of a system required to install filtration may choose to provide a limited alternative to filtration or abandon the surface or GWI source as a permanent or seasonal source and develop an alternate, department-approved source. Purveyors that develop alternate groundwater sources or purchase water from a department-approved public water system using a groundwater source shall no longer be subject to Part 6 of chapter 246-290 WAC, once the alternate source is approved by the department and is on line.

(10) A purveyor that chooses to provide a limited alternative to filtration shall submit an application to the department that contains the information necessary to determine whether the source can meet the criteria.

(11) If a limited alternative to filtration is provided, then the purveyor shall install and properly operate treatment processes to ensure greater removal and/or inactivation efficiencies of *Giardia lamblia* cysts, viruses, or other pathogenic organisms of public health concern (including *Cryptosporidium* oocysts) than would be achieved by the combination of filtration and chlorine disinfection.

(12) Systems that were required to develop a disinfection profile under 40 C.F.R. 141.172 shall provide that profile and a calculated disinfection benchmark, as described in 40 C.F.R. 141.172 (c)(2) and (3), along with other project information specified in WAC 246-290-110, when proposing any change to the disinfection treatment system. The proposal for change shall include an analysis of how the proposed change will affect the current level of disinfection. The profile must also be available for inspection during routine sanitary surveys conducted under WAC 246-290-416.

(13) Community and nontransient noncommunity systems serving less than ten thousand persons must meet the disinfection profiling and benchmarking provisions required under 40 C.F.R. 141.530 through 141.544.

(14) Systems required to develop a disinfection profile under 40 C.F.R. 141.530 shall provide that profile and a calculated disinfection benchmark, as described in 40 C.F.R. 141.543 along with other project information specified in WAC 246-290-110, when proposing any change to the disinfection treatment system. The proposal for change shall include an analysis of how the proposed change will affect the current level of disinfection. The profile must also be available for inspection during routine sanitary surveys conducted under WAC 246-290-416.

(15) A system using conventional, direct, or in-line filtration that must arrange for the conduct of a CPE, under 40 C.F.R. 141.175 (b)(4) or 40 C.F.R. 141.563, may be required to arrange for CTA. The department will determine the need for CTA on a case-by-case basis.

(16) Water systems subject to the requirements of Part 6 of this chapter must also comply with the enhanced treatment requirements for *Cryptosporidium* under 40 C.F.R. Subpart W. The requirements are in addition to the requirements of Part 6 of this chapter and include:

(a) General requirements under 40 C.F.R. 141.700;

(b) Source monitoring requirements under 40 C.F.R. 141.701-707;

(c) Disinfection profiling and benchmarking requirements under 40 C.F.R. 141.708-709;

(d) Treatment technique requirements under 40 C.F.R. 141.710-714;

(e) Requirements for microbial toolbox components under 40 C.F.R. 141.715-720; and

(f) Reporting and recordkeeping requirements under 40 C.F.R. 141.721-722.

(17) Water systems using UV reactors to obtain treatment credit for *Cryptosporidium* ((~~removal~~)) inactivation must:

(a) Validate the reactors using the validation testing procedures specified under 40 C.F.R. 141.720 (d)(2); or

(b) Validate the reactor under Austrian ONORM Standards or German DVGW Standards.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-638 Analytical requirements. (1) The purveyor shall ensure that only qualified persons conduct measurements for pH, temperature, turbidity, and residual disinfectant concentrations. In this section, qualified ((~~shall~~)) means:

(a) A person certified under chapter 246-292 WAC;

(b) An analyst, with experience conducting these measurements, from the state public health laboratory or another laboratory certified by the department; ((~~or~~))

(c) A state or local health ((~~agency~~)) jurisdiction professional experienced in conducting these measurements; or

(d) For the purpose of monitoring distribution system residual disinfectant concentration only, a person designated by and under the direct supervision of a waterworks operator certified under chapter 246-292 WAC.

(2) The purveyor shall ensure that measurements for temperature, turbidity, pH, and residual disinfectant concentration are made in accordance with "standard methods," or other EPA approved methods.

(3) The purveyor shall ensure that samples for coliform and HPC analysis are:

(a) Collected and transported in accordance with department-approved methods; and

(b) Submitted to the state public health laboratory or another laboratory certified by the department to conduct the analyses.

(4) Turbidity monitoring.

(a) The purveyor shall equip the system's water treatment facility laboratory with a:

(i) Bench model turbidimeter; and

(ii) Continuous turbidimeter and recorder if required under WAC 246-290-664 or 246-290-694.

(b) The purveyor shall ensure that bench model and continuous turbidimeters are:

(i) Designed to meet the criteria in "standard methods," EPA Method 180.1, Hach FilterTrak Method 10133, or Great Lakes Instruments Method 2; and

(ii) Properly operated, calibrated, and maintained at all times in accordance with the manufacturer's recommendations.

(c) The purveyor shall validate continuous turbidity measurements for accuracy as follows:

(i) Calibrate turbidity equipment based upon a primary standard in the expected range of measurements; and

(ii) Verify continuous turbidimeter performance on a weekly basis, not on consecutive days, with grab sample measurements made using a properly calibrated bench model turbidimeter.

(d) When continuous turbidity monitoring equipment fails, the purveyor shall measure turbidity on grab samples collected at least every four hours from the combined filter effluent and individual filters while the system serves water

to the public and the equipment is being repaired or replaced. The purveyor shall have continuous monitoring equipment online within five working days of failure.

(5) Purveyors shall verify instruments used for continuous monitoring of free and total chlorine residual at least every five days with a grab sample measurement or with a protocol approved by the department as required under 40 C.F.R. 141.74 (a)(2).

(6) Purveyors monitoring for *Cryptosporidium* or *E. coli* as required under 40 C.F.R. 141.701 shall collect samples and have them analyzed under 40 C.F.R. 141.704 and 141.705.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-654 Treatment criteria for filtered systems. (1) The purveyor shall operate filters so that maximum flow rates do not exceed those specified in Table 10. The purveyor may operate filters at higher flow rates, if the purveyor demonstrates to the department's satisfaction that filtration at the higher rate consistently achieves at least 99 percent (2-log) removal of *Giardia lamblia* cysts and 99 percent (2-log) removal of *Cryptosporidium* oocysts and meets the turbidity performance requirements of Table 11.

Table 10

FILTRATION OPERATION CRITERIA

FILTRATION TECHNOLOGY/MEDIA	MAXIMUM FILTRATION RATE (gpm/ft²)
Conventional, Direct and In-Line	
Gravity Filters with Single Media	3
Gravity Filters with Deep Bed, Dual or Mixed Media	6
Pressure Filters with Single Media	2
Pressure Filters with Deep Bed, Dual or Mixed Media	3
Slow Sand	0.1
Diatomaceous Earth	1.0

(2) The purveyor using conventional, direct or in-line filtration shall ensure that effective coagulation is in use at all times the water treatment facility produces water served to the public.

(3) The purveyor using conventional, direct, or in-line filtration shall demonstrate treatment effectiveness for *Giardia lamblia* cyst and *Cryptosporidium* oocyst removal by one of the following methods:

(a) Turbidity reduction method.

(i) The purveyor shall make source and filtered water turbidity measurements in accordance with WAC 246-290-664 (2) and (3) respectively.

(ii) The purveyor shall achieve:

(A) The turbidity performance requirements specified in WAC 246-290-660(1) and at least an eighty percent reduction in source turbidity based on an average of the daily turbidity reductions measured in a calendar month; or

(B) An average daily filtered water turbidity less than or equal to 0.1 NTU.

(b) Particle counting method. The purveyor shall:

(i) Use a particle counting protocol acceptable to the department; and

(ii) Demonstrate at a frequency acceptable to the department at least the following log reduction of particles in the size range of five to fifteen microns (*Giardia lamblia* cyst-sized particles) and three to five microns (*Cryptosporidium* oocyst-sized particles), as applicable:

(A) 2.5-log reduction in *Giardia lamblia* cyst-sized particles and a 2-log reduction in *Cryptosporidium* particles for systems using conventional filtration; or

(B) 2.0 log reduction for systems using direct or in-line filtration.

(c) Microscopic particulate analysis method. The purveyor shall:

(i) Use a protocol acceptable to the department; and

(ii) Demonstrate at a frequency acceptable to the department at least the following log reduction of *Giardia lamblia* cysts and *Cryptosporidium* oocysts or *Giardia lamblia* cyst and *Cryptosporidium* oocyst surrogate indicators as applicable:

(A) 2.5-log reduction in *Giardia lamblia* cysts or surrogates and a 2-log reduction in *Cryptosporidium* oocyst or surrogates for systems using conventional filtration; and

(B) 2.0 log reduction for systems using direct or in-line filtration.

(d) Other methods acceptable to the department.

(4) The purveyor shall ensure continuous disinfection of all water delivered to the public and shall:

(a) Maintain an adequate supply of disinfection chemicals and keep back-up system components and spare parts on hand;

(b) Develop, maintain, and post at the water treatment facility a plan detailing:

(i) How water delivered to the public will be continuously and adequately disinfected; and

(ii) The elements of an emergency notification plan to be implemented whenever the residual disinfectant concentration at entry to distribution falls below 0.2 mg/L for more than one hour.

(c) Implement the plan during an emergency affecting disinfection.

(5) Operations program.

(a) For each water treatment facility treating a surface or GWI source, the purveyor shall develop an operations program and make it available to the department for review upon request.

(b) The program shall be submitted to the department as an addendum to the purveyor's water system plan (WAC 246-290-100) or small water system management program (WAC 246-290-105).

(c) The program shall detail how the purveyor will produce optimal filtered water quality at all times the water treatment facility produces water to be served to the public.

(d) The purveyor shall operate the water treatment facility in accordance with the operations program.

(e) The operations program shall include, but not be limited to, a description of:

(i) For conventional, direct or in-line filtration, procedures used to determine and maintain optimized coagulation as demonstrated by meeting the requirements of WAC 246-290-654(3);

(ii) Procedures used to determine chemical dose rates;

(iii) How and when each unit process is operated;

(iv) Unit process equipment maintenance program;

(v) Treatment plant performance monitoring program;

(vi) Laboratory procedures;

(vii) Records;

(viii) Reliability features; and

(ix) Response plans for water treatment facility emergencies, including disinfection failure and watershed emergencies.

(f) The purveyor shall ensure the operations program is:

(i) Readily available at the water treatment facility for use by operators and for department inspection;

(ii) Consistent with department guidelines for operations procedures such as those described in department guidance on surface water treatment and water system planning; and

(iii) Updated as needed to reflect current water treatment facility operations.

(6) Pressure filters. Purveyors using pressure filters shall:

(a) Inspect and evaluate the filters, at least every six months, for conditions that would reduce their effectiveness in removing *Giardia lamblia* cysts;

(b) Maintain, and make available for department review, a written record of pressure filter inspections; and

(c) Be prepared to conduct filter inspections in the presence of a department representative, if requested.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-660 Filtration. (1) Turbidity performance requirements.

(a) The purveyor shall ensure that the turbidity level of representative filtered water samples:

(i) Complies with the performance standards in Table 11;

(ii) Never exceeds 5.0 NTU for any system using slow sand, diatomaceous earth;

(iii) Never exceeds 1.0 NTU for any system using conventional, direct, or in-line filtration; and

(iv) Never exceeds the maximum allowable turbidity determined by the department on a case-by-case basis for any system using an alternative filtration technology approved under WAC 246-290-676 (2)(b).

Table 11
TURBIDITY PERFORMANCE STANDARDS

Filtration Technology	Filtered water turbidity (in NTUs) shall be less than or equal to this value in at least 95% of the measurements made each calendar month
Conventional, Direct and In-line	0.30
Slow Sand	1.0
Diatomaceous Earth	1.0
Alternative Technology	As determined by the department through case-by-case approval of technology, under WAC 246-290-676 (2)(b).

(b) The department may allow the turbidity of filtered water from a system using slow sand filtration to exceed 1.0 NTU, but never 5.0 NTU, if the system demonstrates to the department's satisfaction that the higher turbidity level will not endanger the health of consumers served by the system. As a condition of being allowed to produce filtered water with a turbidity exceeding 1.0 NTU, the purveyor may be required to monitor one or more parameters in addition to the parameters specified under WAC 246-290-664. The department shall notify the purveyor of the type and frequency of monitoring to be conducted.

(2) *Giardia lamblia, Cryptosporidium,* and virus removal credit.

(a) The department shall notify the purveyor of the removal credit granted for the system's filtration process. The department shall specify removal credit for:

(i) Existing filtration facilities based on periodic evaluations of performance and operation; and

(ii) New or modified filtration facilities based on results of pilot plant studies or full scale operation.

(b) Conventional, direct, and in-line filtration.

(i) The removal credit the department may grant to a system using conventional, direct, or in-line filtration and demonstrating effective treatment is as follows:

	Percent Removal Credit (log)					
Filtration Technology	*Giardia*		Virus		*Cryptosporidium*	
	Percent	log	Percent	log	Percent	log
Conventional	99.7	2.5	99	2.0	99	2.0
Direct and in-line	99	2.0	90	1.0	99	2.0

(ii) A system using conventional, direct, or in-line filtration shall be considered to provide effective treatment, if the purveyor demonstrates to the satisfaction of the department that the system meets the:

(A) Turbidity performance requirements under subsection (1) of this section; and

(B) Operations requirements of WAC 246-290-654.

(iii) The department shall not grant removal credit to a system using conventional, direct, or in-line filtration that:

(A) Fails to meet the minimum turbidity performance requirements under subsection (1) of this section; or

(B) Fails to meet the operating requirements under WAC 246-290-654.

(c) Slow sand filtration.

The department may grant a system using slow sand filtration 99 percent (2-log) *Giardia lamblia* cyst and *Cryptosporidium* oocyst removal credit and 99 percent (2-log) virus removal credit, if the system meets the department design requirements under WAC 246-290-676 and meets the minimum turbidity performance requirements in subsection (1) of this section.

(d) Diatomaceous earth filtration.

The department may grant a system using diatomaceous earth filtration 99 percent (2-log) *Giardia lamblia* cyst and *Cryptosporidium* oocyst removal credit and 90 percent (1 log) virus removal credit, if the system meets the department design requirements under WAC 246-290-676 and meets the minimum turbidity performance requirements in subsection (1) of this section.

(e) Alternative filtration technology.

The department shall grant, on a case-by-case basis, *Giardia lamblia* cyst, *Cryptosporidium* oocyst, and virus removal credit for systems using alternative filtration technology based on results of product testing acceptable to the department.

(f) The purveyor granted no *Giardia lamblia* cyst removal credit and no *Cryptosporidium* oocyst removal credit shall:

(i) Provide treatment under WAC 246-290-662 (2)(d); and

(ii) Within ninety days of department notification regarding removal credit, submit an action plan to the department for review and approval. The plan shall:

(A) Detail how the purveyor plans to comply with the turbidity performance requirements in subsection (1) of this section and operating requirements of WAC 246-290-654; and

(B) Identify the proposed schedule for implementation.

(iii) Be considered in violation of the treatment technique specified in WAC 246-290-632 (2)(a)(i) and shall take follow-up action specified in WAC 246-290-634.

(g) Higher level removal credit.

(i) The department may grant a higher level of *Giardia lamblia*, *Cryptosporidium*, and virus removal credit than listed under (b) through (e) of this subsection, if the purveyor demonstrates to the department's satisfaction that the higher level can be consistently achieved.

(ii) As a condition of maintaining the maximum removal credit, purveyors may be required to periodically monitor one or more parameters not routinely monitored under WAC 246-290-664. The department shall notify the purveyor of the type and frequency of monitoring to be conducted.

(3) Disinfection ((~~by-product~~)) byproduct precursor removal requirements.

(a) Conventional systems using sedimentation shall meet the treatment technique requirements for control of disinfection ((~~by-product~~)) byproduct precursors specified in 40 C.F.R. 141.135.

(i) Applicability of this requirement shall be determined in accordance with 40 C.F.R. 141.135(a).

(ii) Enhanced coagulation and enhanced softening shall be provided in accordance with 40 C.F.R. 141.135(b), if applicable.

(iii) Compliance with the treatment technique requirements for control of disinfection ((~~by-product~~)) byproduct precursors shall be determined in accordance with 40 C.F.R. 141.135(c).

(b) For the purposes of compliance with (a) of this subsection, sedimentation shall be considered applicable when:

(i) Surface overflow rates and other design parameters are in conformance with traditionally accepted industry standards and textbook values, such as those prescribed in nationally accepted standards, including the most recent version of the *Recommended Standards for Water Works, A Committee Report of the Great Lakes - Upper Mississippi River Board of State Public Health and Environmental Managers*; and

(ii) The system has received pathogen removal credit for the sedimentation basin.

(4) Filter backwash recycling requirements.

(a) ((~~By no later than December 8, 2003,~~)) Purveyors using conventional, direct, or in-line filtration must **report** to the department, in writing, whether they recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes within the treatment plant. ((~~(i)~~)) Purveyors that **do** recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes must also report the following information:

((~~(A)~~)) (i) A plant schematic showing the origin of all flows that are recycled (including, but not limited to, spent filter backwash water, thickener supernatant, and liquids from dewatering processes), the hydraulic conveyance (i.e., pipe, open channel) used to transport them, and the location where they are reintroduced back into the treatment plant.

((~~(B)~~)) (ii) Typical recycle flow in gallons per minute (gpm), the highest observed plant flow experienced in the previous year (gpm), design flow for the treatment plant (gpm), and the approved operating capacity for the plant.

(b) ((~~By no later than June 8, 2004,~~)) Purveyors using conventional, direct, or in-line filtration that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes within the treatment plant shall:

(i) Return the recycled flow prior to, or concurrent with the location where primary coagulant is introduced into the flow stream.

(ii) By no later than June 8, 2006, complete any capital improvements (physical modifications requiring engineering planning, design, and construction) necessary to meet the requirements of (b)(i) of this subsection.

(iii) On a case-by-case basis, the department may approve an alternate location for the return of recycle flows.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

WAC 246-290-662 Disinfection for filtered systems. (1) General requirements.

(a) The purveyor shall provide continuous disinfection to ensure that filtration and disinfection together achieve, at all times the system serves water to the public, at least the following:

(i) 99.9 percent (3-log) inactivation and removal of *Giardia lamblia* cysts; and

(ii) 99.99 percent (4-log) inactivation and/or removal of viruses.

(b) Where sources receive sewage discharges and/or agricultural runoff, purveyors may be required to provide greater levels of removal and inactivation of *Giardia lamblia* cysts and viruses to protect the health of consumers served by the system.

(c) Regardless of the removal credit granted for filtration, purveyors shall, at a minimum, provide continuous disinfection to achieve at least 68 percent (0.5-log) inactivation of *Giardia lamblia* cysts and 99 percent (2-log) inactivation of viruses.

(2) Establishing the level of inactivation.

(a) The department shall establish the level of disinfection (log inactivation) to be provided by the purveyor.

(b) The required level of inactivation shall be based on source quality and expected levels of *Giardia lamblia* cyst and virus removal achieved by the system's filtration process.

(c) Based on periodic reviews, the department may adjust, as necessary, the level of disinfection the purveyor shall provide to protect the health of consumers served by the system.

(d) Systems granted no *Giardia lamblia* cyst removal credit and no *Cryptosporidium* oocyst removal credit shall:

(i) Unless directed otherwise by the department, provide interim disinfection to:

(A) Ensure compliance with the monthly coliform MCL under WAC 246-290-310;

(B) Achieve at least 99.9 percent (3-log) inactivation of *Giardia lamblia* cysts; and

(C) Maintain a detectable residual disinfectant concentration, or an HPC level less than 500 organisms/ml, within the distribution system in accordance with subsection (6) of this section. The department may approve a written request to use a lower value. At a minimum, the request to use a lower value must identify the instrument used to measure the residual disinfectant concentration and include the manufacturer's documentation on the instrument's accuracy to measure the lower value.

(ii) Comply with the interim disinfection requirements until the system can demonstrate to the department's satisfaction that it complies with the operating requirements and turbidity performance requirements under WAC 246-290-654 and 246-290-660(1), respectively.

(3) Determining the level of inactivation.

(a) Unless the department has approved a reduced CT monitoring schedule for the system, each day the system serves water to the public, the purveyor, using procedures and CT values acceptable to the department such as those presented in department guidance of surface water treatment, shall determine:

(i) CTcalc values using the system's treatment parameters and calculate the total inactivation ratio achieved by disinfection; and

(ii) Whether the system's disinfection process is achieving the minimum levels of inactivation of *Giardia lamblia* cysts and viruses required by the department.

(b) The department may allow a purveyor to determine the level of inactivation using lower CT values than those specified in (a) of this subsection, provided the purveyor demonstrates to the department's satisfaction that the required levels of inactivation of *Giardia lamblia* cysts and viruses can be achieved.

(4) Determining compliance with the required level of inactivation.

(a) A purveyor shall be considered in compliance with the inactivation requirement when a total inactivation ratio equal to or greater than 1.0 is achieved.

(b) Failure to provide the required level of inactivation on more than one day in any calendar month shall be considered a treatment technique violation.

(5) Residual disinfectant concentration entering the distribution system.

(a) The purveyor shall ensure that all water entering the distribution system contains a residual disinfectant concentration, measured as free or combined chlorine, of at least 0.2 mg/L at all times the system serves water to the public; and

(b) Failure to provide a 0.2 mg/L residual at entry to distribution for more than four hours on any day shall be considered a treatment technique violation.

(6) Residual disinfectant concentration within the distribution system.

(a) The purveyor shall ensure that the residual disinfectant concentration in the distribution system, measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide, is detectable in at least ninety-five percent of the samples taken each calendar month.

(b) Water in the distribution system with an HPC less than or equal to 500 organisms/ml is considered to have a detectable residual disinfectant concentration for the purposes of compliance with WAC 246-290-662 (6)(a).

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-664 Monitoring for filtered systems. (1) Source coliform monitoring.

(a) The purveyor shall ensure that source water samples of each surface or GWI source are:

(i) Collected before the first point of disinfectant application and before coagulant chemical addition; and

(ii) Analyzed for fecal coliform density in accordance with methods acceptable to the department.

(b) At a minimum, the purveyor shall ensure source samples are collected for fecal coliform analysis at a frequency equal to ten percent of the number of routine coliform samples collected within the distribution system each month under WAC 246-290-300, or once per calendar month, whichever is greater up to a maximum of one sample per day.

(c) With written approval from the department, purveyors of filtered water systems serving less than ten thousand people may collect twenty-six consecutive monthly fecal coliform samples instead of collecting *E. coli* samples every two weeks for twelve months as specified in 40 C.F.R. 141.701 (a)(3)(i). The fecal coliform levels that will trigger *Cryptosporidium* monitoring will be the same as the *E. coli* levels specified in 40 C.F.R. 141.701 (a)(4)(i), (ii), or (iv).

(2) Source turbidity monitoring.

(a) The purveyor using conventional, direct, or in-line filtration shall measure source turbidity at least once per day on a representative sample collected before disinfection and coagulant addition.

(b) Grab sampling or continuous turbidity monitoring and recording may be used to meet the requirement specified in (a) of this subsection.

(c) Purveyors using continuous turbidity monitoring shall record continuous turbidity measurements at equal intervals, at least every four hours, in accordance with a department-approved sampling schedule.

(d) Purveyors using an approved alternative filtration technology may be required to monitor source water turbidity at least once per day on a representative sample as determined by the department.

(3) Filtered water turbidity monitoring.

(a) The purveyor using direct, conventional, or in-line filtration shall:

(i) Continuously monitor turbidity on representative samples from each individual filter unit and from the system's combined filter effluent, prior to clearwell storage;

(ii) For systems serving at least ten thousand people, record continuous turbidity measurements from each individual filter unit at equal intervals of at least every fifteen minutes, and for all systems, from the combined filter effluent at equal intervals of at least every four hours, in accordance with a department-approved sampling schedule;

(iii) ((~~Beginning January 14, 2005,~~)) Systems serving less than ten thousand people shall record continuous turbidity measurements from each individual filter unit at equal intervals of at least every fifteen minutes;

(iv) Systems serving less than ten thousand people and consisting of two or fewer filters may record continuous turbidity measurements from the combined filter effluent at equal intervals of at least fifteen minutes in lieu of recording individual filter turbidity measurements; and

(v) Conduct monitoring in accordance with the analytical techniques under WAC 246-290-638.

(b) The purveyor using slow sand or diatomaceous earth filtration shall:

(i) Continuously monitor turbidity on representative samples from each individual filter unit and from the system's combined filter effluent, prior to clearwell storage;

(ii) Record continuous turbidity measurements from the combined filter effluent at equal intervals of at least every four hours in accordance with a department-approved sampling schedule; and

(iii) Conduct monitoring in accordance with the analytical techniques under WAC 246-290-638.

(c) Purveyors using an alternative filtration technology approved under WAC 246-290-676 shall provide monitoring in accordance with the technology-specific approval conditions determined by the department.

(d) Purveyors using slow sand filtration or an alternative filtration technology may reduce filtered water turbidity monitoring to one grab sample per day with department approval. Reduced turbidity monitoring shall be allowed only where the purveyor demonstrates to the department's satisfaction that a reduction in monitoring will not endanger the health of consumers served by the water system.

(4) Monitoring the level of inactivation and removal.

(a) Each day the system is in operation, the purveyor shall determine the total level of inactivation and removal of *Giardia lamblia* cysts, viruses, and *Cryptosporidium* oocysts achieved.

(b) The purveyor shall determine the total level of inactivation and removal based on:

(i) *Giardia lamblia* cyst, *Cryptosporidium* oocyst, and virus removal credit granted by the department for filtration; and

(ii) Level of inactivation of *Giardia lamblia* cysts and viruses achieved through disinfection.

(c) At least once per day, purveyors shall monitor the following to determine the level of inactivation achieved through disinfection:

(i) Temperature of the disinfected water at each residual disinfectant concentration sampling point used for CT calculations; and

(ii) If using chlorine, pH of the disinfected water at each chlorine residual disinfectant concentration sampling point used for CT calculations.

(d) Each day during peak hourly flow (based on historical information), the purveyor shall:

(i) Determine disinfectant contact time, T, to the point at which C is measured; and

(ii) Measure the residual disinfectant concentration, C, of the water at the point for which T is calculated. The C measurement point shall be located before or at the first consumer.

(e) The department may reduce CT monitoring requirements for purveyors that demonstrate to the department's satisfaction that the required levels of inactivation are consistently exceeded. Reduced CT monitoring shall only be allowed where the purveyor demonstrates to the department's satisfaction that a reduction in monitoring will not endanger the health of consumers.

(5) Monitoring the residual disinfectant concentration entering the distribution system.

(a) Systems serving more than thirty-three hundred people per month.

(i) The purveyor shall continuously monitor and record the residual disinfectant concentration of water entering the distribution system and report the lowest value each day.

(ii) If the continuous monitoring equipment fails, the purveyor shall measure the residual disinfectant concentration on grab samples collected at least every four hours at the entry to the distribution system while the equipment is being repaired or replaced. The purveyor shall have continuous monitoring equipment back online within five working days following failure.

(b) Systems serving thirty-three hundred or less people per month.

(i) The purveyor shall collect grab samples or use continuous monitoring and recording to measure the residual disinfectant concentration entering the distribution system.

(ii) Purveyors of **community** systems choosing to take grab samples shall collect:

(A) Samples at the following minimum frequencies:

Population Served			Number/day
25	-	500	1
501	-	1,000	2
1,001	-	2,500	3
2,501	-	3,300	4

(B) At least one of the grab samples at peak hourly flow; and

(C) The remaining samples evenly spaced over the time the system is disinfecting water that will be delivered to the public.

(iii) Purveyors of **noncommunity** systems choosing to take grab samples shall collect samples for disinfectant residual concentration entering the distribution system as directed by the department.

(iv) When grab samples are collected and the residual disinfectant concentration at the entry to distribution falls below 0.2 mg/L, purveyors shall collect a grab sample every four hours until the residual disinfectant concentration is 0.2 mg/L or more.

(6) Monitoring residual disinfectant concentrations within the distribution system.

(a) The purveyor shall measure the residual disinfectant concentration at representative points within the distribution system on a daily basis or as otherwise approved by the department.

(b) At a minimum, the purveyor shall measure the residual disinfectant concentration within the distribution system at the same time and location that a routine or repeat coliform sample is collected under WAC 246-290-300((~~(3) or 246-290-320(2)~~)) (3)(e) through (g).

(c) The purveyor may measure HPC within the distribution system in lieu of measuring the residual disinfectant concentration under this subsection.

AMENDATORY SECTION (Amending WSR 99-07-021, filed 3/9/99, effective 4/9/99)

WAC 246-290-668 Watershed control. (1) The purveyor shall, to the extent possible, exercise surveillance over conditions and activities in the watershed affecting source water quality. The purveyor shall develop and implement a department-approved watershed control program.

(2) The purveyor shall ((~~ensure that an~~)) include a current evaluation of the watershed ((~~is completed at least every six years. Watershed evaluations shall be performed such that results of the survey are included in the purveyor's~~)) as part of the watershed control program within the water system plan ((~~in accordance with~~)) under WAC 246-290-100 or small water system management program ((~~in accordance with~~)) under WAC 246-290-105, whichever is applicable.

(3) ((~~A professional engineer registered in the state of Washington shall direct the conduct of the watershed evaluation and develop a watershed evaluation report.~~

~~(4) The purveyor shall submit the report to the department within sixty days of completion of the watershed evaluation.~~

~~(5) The report shall describe the watershed, characterize the watershed hydrology, and discuss the purveyor's watershed control program. The report shall also describe:~~)) The watershed evaluation must include a description of:

(a) Conditions/activities in the watershed that are adversely affecting source water quality;

(b) Changes in the watershed that could adversely affect source water quality that have occurred since the last watershed evaluation;

(c) Sample results from the monitoring program the purveyor uses to assess the adequacy of watershed protection ((~~including an evaluation of sampling results~~)); and

(d) Recommendations for improved watershed control.

AMENDATORY SECTION (Amending WSR 03-08-037, filed 3/27/03, effective 4/27/03)

WAC 246-290-672 Interim treatment requirements. (1) Purveyors of existing unfiltered systems installing filtration shall provide interim disinfection treatment to:

(a) Ensure compliance with the monthly coliform MCL under WAC 246-290-310;

(b) Achieve inactivation levels of *Giardia lamblia* cysts on a daily basis each month the system serves water to the public as directed by the department; and

(c) Maintain a detectable residual disinfectant concentration in the distribution system, measured as total chlorine, free chlorine, or combined chlorine in 95 percent or more of the samples taken each calendar month. The department may approve a written request to use a lower value. At a minimum, the request to use a lower value must identify the instrument used to measure the residual disinfectant concentration and include the manufacturer's documentation on the instrument's accuracy to measure the lower value.

(d) Water in the distribution system with an HPC level less than or equal to 500 organisms/ml is considered to have a detectable residual disinfectant concentration for the purposes of compliance with this subsection.

(2) Failure to provide the required level of inactivation in subsection (1)(b) of this section on more than one day in any calendar month shall be considered a treatment technique violation.

(3) The department may require the purveyor to provide higher levels of treatment than specified in subsection (1)(b) of this section when necessary to protect the health of consumers served by the public water system.

(4) Interim treatment requirements shall be met in accordance with a schedule acceptable to the department.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-676 Filtration technology and design criteria. (1) General.

(a) The purveyor proposing to construct new water treatment facilities or to make additions to existing water treatment facilities for surface and GWI sources shall ensure that the facilities comply with the treatment, design, and reliability requirements of Part 6 of chapter 246-290 WAC.

(b) The purveyor shall submit an engineering report to the department describing how the treatment facilities will be

designed to comply with the requirements specified in Subparts A, B, and C of Part 6 of chapter 246-290 WAC.

(2) Filtration technology.

(a) The purveyor shall select a filtration technology acceptable to the department using criteria such as those outlined in department guidance on surface water treatment. The following filtration technologies are considered acceptable:

(i) Conventional;

(ii) Direct;

(iii) Diatomaceous earth; and

(iv) Slow sand.

(b) In addition to the technologies specified in subsection (2)(a) of this section, alternative filtration technologies may be acceptable, if the purveyor demonstrates to the department's satisfaction all of the following:

(i) Through acceptable third party testing, that system components do not leach or otherwise add substances to the finished water that would violate drinking water standards, or otherwise pose a threat to public health;

(ii) The technology's effectiveness in achieving at least 99 percent (2-log) removal of *Giardia lamblia* cysts or cyst surrogate particles, and at least 99 percent (2-log) removal of *Cryptosporidium* oocysts or oocyst surrogate particles. The purveyor shall further demonstrate the technology's removal capability through research conducted:

(A) By a party acceptable to the department; and

(B) In accordance with protocol and standards acceptable to the department.

(iii) Through on-site pilot plant studies or other means, that the filtration technology:

(A) In combination with disinfection treatment consistently achieves 99.9 percent (3-log) removal and inactivation of *Giardia lamblia* cysts and 99.99 percent (4-log) removal and inactivation of viruses; and

(B) Meets the applicable turbidity performance requirements as determined by the department for the specific treatment process being considered, but in no case to exceed 1.0 NTU for the finished water.

(3) Pilot studies.

(a) The purveyor shall ensure pilot studies are conducted for all proposed filtration facilities, except where waived based on engineering justification acceptable to the department.

(b) The purveyor shall obtain department approval for the pilot study plan before the pilot filter is constructed and before the pilot study is undertaken.

(c) The pilot study plan shall identify at a minimum:

(i) Pilot filter design;

(ii) Water quality and operational parameters to be monitored;

(iii) Type of data to be collected, frequency of data collection, and length of pilot study; and

(iv) Pilot plant operator qualifications.

(d) The purveyor shall ensure that the pilot study is:

(i) Conducted to simulate proposed full-scale design conditions;

(ii) Conducted over a time period that will demonstrate the effectiveness and reliability of the proposed treatment system during changes in seasonal and climatic conditions; and

(iii) Designed and operated in accordance with good engineering practices and that ANSI/NSF standards 60 and 61 are considered.

(e) When the pilot study is complete, the purveyor shall submit a project report to the department for approval under WAC 246-290-110.

(4) Design criteria.

(a) The purveyor shall ensure that water treatment facilities for surface and GWI sources are designed and constructed in accordance with good engineering practices documented in references such as those identified in WAC 246-290-200.

(b) Filtration facilities.

(i) The purveyor shall ensure that all new filtration facilities and improvements to any existing filtration facilities (excluding disinfection) are designed to achieve at least 99 percent (2-log) removal of *Giardia lamblia* cysts, and 99 percent (2-log) removal of *Cryptosporidium* oocysts; and

(ii) The purveyor shall ensure that all new filtration facilities contain provisions for filtering to waste with appropriate measures for backflow prevention.

(c) The purveyor shall ensure that disinfection systems for new filtration facilities or improvements to existing disinfection facilities are designed to meet the requirements of WAC 246-290-662.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-690 Criteria to remain unfiltered. (1) For a system not using the "limited alternative to filtration" option to remain unfiltered, the purveyor using a surface water or GWI source shall meet the source water quality and site-specific conditions under this section, as demonstrated through monitoring conducted in accordance with WAC 246-290-694.

(2) Source water quality conditions necessary to remain unfiltered.

(a) Coliform limits.

(i) The purveyor shall ensure that representative source water samples taken before the first point of disinfection have a fecal coliform density less than or equal to 20/100 ml in ninety percent or more of all samples taken during the six previous calendar months the system served water to the public. Samples collected on days when source water turbidity exceeds 1.0 NTU shall be included when determining compliance with this requirement.

(ii) The purveyor shall submit a written report to the department if no source fecal coliform data has been submitted for days when source turbidity exceeded 1.0 NTU. The report shall document why sample results are not available and shall be submitted with the routine monitoring reports for the month in which the sample results are not available.

(b) Turbidity limits.

(i) The purveyor shall ensure that the turbidity level in representative source water samples taken before primary disinfection does not exceed 5.0 NTU.

(ii) A system failing to meet the turbidity requirements in (b)(i) of this subsection may remain unfiltered, if:

(A) The purveyor demonstrates to the department's satisfaction that the most recent turbidity event was caused by unusual and unpredictable circumstances; and

(B) Including the most recent turbidity event, there have not been more than:

(I) Two turbidity events in the twelve previous calendar months the system served water to the public; or

(II) Five turbidity events in the one-hundred-twenty previous calendar months the system served water to the public.

(iii) The purveyor of a system experiencing a turbidity event shall submit a written report to the department documenting why the turbidity event(s) occurred. The purveyor shall submit the report with the routine monitoring reports for the month in which the turbidity event(s) occurred.

(iv) The purveyor of a system with alternate, department-approved sources or sufficient treated water storage may avoid a turbidity event by implementing operational adjustments to prevent water with a turbidity exceeding 5.0 NTU from being delivered to consumers.

(v) When an alternate source or treated water storage is used during periods when the turbidity of the surface or GWI source exceeds 5.0 NTU, the purveyor shall not put the surface or GWI source back online, until the source water turbidity is 5.0 NTU or less.

(3) Site-specific conditions to remain unfiltered.

(a) Level of inactivation.

(i) The purveyor shall ensure that the *Giardia lamblia* cyst and virus inactivation levels required under WAC 246-290-692(1) are met in at least eleven of the twelve previous calendar months that the system served water to the public.

(ii) A system failing to meet the inactivation requirements during two of the twelve previous calendar months that the system served water to the public may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that at least one of the failures was caused by unusual and unpredictable circumstances.

(iii) To make a demonstration, the purveyor shall submit to the department a written report documenting the reasons for the failure. The purveyor shall submit the report with the routine monitoring reports for the month in which the failure occurred.

(b) Redundant disinfection components or automatic shutoff.

The purveyor shall ensure that the requirement for redundant disinfection system components or automatic shutoff of water to the distribution system under WAC 246-290-692(3) is met at all times the system serves water to the public.

(c) Disinfectant residual entering the distribution system.

(i) The purveyor shall ensure that the requirement for having a residual entering the distribution system under WAC 246-290-692(4) is met at all times the system serves water to the public.

(ii) A system failing to meet the disinfection requirement under (c)(i) of this subsection may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that the failure was caused by unusual and unpredictable circumstances.

(iii) To make a demonstration, the purveyor shall submit to the department a written report documenting the reasons for the failure. The purveyor shall submit the report with the routine monitoring reports for the month in which the failure occurred.

(d) Disinfectant residuals within the distribution system.

(i) The purveyor shall ensure that the requirement for maintaining a residual within the distribution system under WAC 246-290-692(5) is met on an ongoing basis.

(ii) A system failing to meet the disinfection requirements under (d)(i) of this subsection may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that the failure was caused by something other than a deficiency in source water treatment.

(iii) To make a demonstration, the purveyor shall submit to the department a written report documenting the reasons for the failure. The purveyor shall submit the report with the routine monitoring reports for the month in which the failure occurred.

(e) Watershed control.

(i) The purveyor shall develop and implement a department-approved watershed control program.

(ii) The purveyor shall monitor, limit, and control all facilities and activities in the watershed affecting source quality to preclude degradation of the physical, chemical, microbiological (including viral contamination and contamination by *Cryptosporidium* oocysts), and radiological quality of the source. The purveyor shall demonstrate, through ownership and/or written agreements acceptable to the department, control of all human activities that may adversely impact source quality.

(iii) At a minimum, the purveyor's watershed control program shall:

(A) Characterize the watershed hydrology and land ownership;

(B) Identify watershed characteristics and activities that may adversely affect source water quality; and

(C) Monitor the occurrence of activities that may adversely affect source water quality.

(iv) If the department determines significant changes have occurred in the watershed, the purveyor shall submit, within ninety days of notification, an updated watershed control program to the department for review and approval.

(v) The department may require an unfiltered system to conduct additional monitoring to demonstrate the adequacy of the watershed control program.

(vi) A purveyor shall be considered out of compliance when failing to:

(A) Have a department-approved watershed control program;

(B) Implement the watershed control program to the satisfaction of the department; or

(C) Conduct additional monitoring as directed by the department.

(f) On-site inspections.

(i) The department shall conduct on-site inspections to assess watershed control and disinfection treatment.

(ii) The department shall conduct annual inspections unless more frequent inspections are deemed necessary to protect the health of consumers served by the system.

(iii) For a system to remain unfiltered, the on-site inspection shall indicate to the department's satisfaction that the watershed control program and disinfection treatment comply with (e) of this subsection and WAC 246-290-692, respectively.

(iv) The purveyor with unsatisfactory on-site inspection results shall take action as directed by the department in accordance with a department-established schedule.

(g) Waterborne disease outbreak.

(i) To remain unfiltered, a system shall not have been identified by the department as the cause of a waterborne disease outbreak attributable to a failure in treatment of the surface or GWI source.

(ii) The purveyor of a system identified by the department as the cause of a waterborne disease outbreak may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that system facilities and/or operations have been sufficiently modified to prevent another waterborne disease outbreak.

(h) ((~~Total coliform~~)) *E. coli* MCL.

(i) For a system to remain unfiltered, the purveyor shall ensure that the MCL for ((~~total coliform~~)) *E. coli* under WAC 246-290-310 is met in at least eleven of the twelve previous calendar months the system served water to the public.

(ii) A system failing to meet the criteria in (i) of this subsection, may remain unfiltered, if the purveyor demonstrates to the department's satisfaction that the ((~~total coliform~~)) *E. coli* MCL violations were not caused by a deficiency in source water treatment.

(iii) The department shall determine the adequacy of source water treatment based on results of total coliform monitoring at the entry to the distribution system in accordance with WAC 246-290-694(3).

(i) Disinfectant residuals MRDL and disinfection ((~~by-products~~)) byproducts MCLs - Monitoring and compliance.

For a system to remain unfiltered, the purveyor shall comply with the monitoring and MCL requirements under WAC 246-290-300(6) and 246-290-310 (5) and (6), respectively.

(j) Laboratory services.

(i) For a system to remain unfiltered, the purveyor shall retain the services of the public health laboratory or another laboratory certified by the department to analyze samples for total and fecal coliform. Laboratory services shall be available on an as needed basis, seven days a week, including holidays. The purveyor shall identify in the annual comprehensive report required under WAC 246-290-696 the certified laboratory providing these services.

(ii) The department may waive this requirement, if the purveyor demonstrates to the department's satisfaction that an alternate, department-approved source is used when the turbidity of the surface or GWI source exceeds 1.0 NTU.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-692 Disinfection for unfiltered systems. (1) General requirements.

(a) The purveyor without a limited alternative to filtration shall:

(i) Provide continuous disinfection treatment to ensure at least 99.9 percent (3-log) inactivation of *Giardia lamblia* cysts and 99.99 percent (4-log) inactivation of viruses at all times the system serves water to the public.

(ii) Failure to provide the required inactivation level on more than one day in any calendar month shall be considered a treatment technique violation.

(b) The purveyor with a limited alternative to filtration shall meet the treatment requirements in WAC 246-290-630(11) at all times the system serves water to the public.

(c) The purveyor may be required to provide greater levels of inactivation of *Giardia lamblia* cysts, other pathogenic microorganisms of public health concern, and viruses to protect the health of consumers.

(2) Determining the level of inactivation.

(a) Each day the system without a limited alternative to filtration serves water to the public, the purveyor, using procedures and $CT_{99.9}$ values specified in 40 C.F.R. 141.74, Vol. 54, No. 124, (published June 29, 1989), shall determine:

(i) CT values using the system's treatment parameters and calculate the total inactivation ratio achieved by disinfection; and

(ii) Whether the system's disinfection treatment process is achieving the minimum levels of inactivation of *Giardia lamblia* cysts and viruses required by the department. For purposes of determining compliance with the inactivation requirements specified in subsection (1) of this section, no credit shall be granted for disinfection applied to a source water with a turbidity greater than 5.0 NTU.

(b) Each day the system with a limited alternative to filtration serves water to the public, the purveyor, using appropriate guidance, shall determine:

(i) CT values using the system's treatment parameters and calculate the total inactivation ratio achieved by disinfection; and

(ii) Whether the system's treatment process is achieving the minimum levels of inactivation of *Giardia lamblia* cysts, viruses, or other pathogenic organisms of health concern including *Cryptosporidium* oocysts that would be greater than what would be expected from the combination of filtration plus chlorine disinfection.

(c) The purveyor shall be considered in compliance with the daily inactivation requirement when a total inactivation ratio equal to or greater than 1.0 is achieved.

(d) The purveyor of a system using a disinfectant or combination of disinfectants may use CT values lower than those specified in (a) of this subsection, if the purveyor demonstrates to the department's satisfaction that the required levels of inactivation of *Giardia lamblia* cysts, viruses, and, if providing a limited alternative to filtration, any other pathogenic organisms of public health concern including *Cryptosporidium* oocysts, can be achieved using the lower CT values.

(e) The purveyor of a system using preformed chloramines or adding ammonia to the water before chlorine shall demonstrate to the department's satisfaction that the system achieves at least 99.99 percent (4-log) inactivation of viruses.

(3) The purveyor using either unfiltered or "limited alternative to filtration" treated sources shall ensure that disinfection facilities provide either:

(a) Redundant components, including an auxiliary power supply with automatic start up and alarm, to ensure continuous disinfection. Redundancy shall ensure that both the minimum inactivation requirements and the requirement for a 0.2 mg/L residual disinfectant concentration at entry to the distribution system are met at all times water is delivered to the distribution system; or

(b) Automatic shutoff of delivery of water to the distribution system when the residual disinfectant concentration in the water is less than 0.2 mg/L. Automatic shutoff shall be allowed only in systems where the purveyor demonstrates to the department's satisfaction that automatic shutoff will not endanger health or interfere with fire protection.

(4) Disinfectant residual entering the distribution system.

(a) The purveyor shall ensure that water entering the distribution system contains a residual disinfectant concentration, measured as free or combined chlorine, of at least 0.2 mg/L at all times the system serves water to the public; and

(b) Failure to provide a 0.2 mg/L residual at entry to distribution for more than four hours on any day shall be considered a treatment technique violation.

(5) Disinfectant residuals within the distribution system.

(a) The purveyor shall ensure that the residual disinfectant concentration in the distribution system, measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide, is detectable in at least ninety-five percent of the samples taken each calendar month. The department may approve a written request to use a lower value. At a minimum, the request to use a lower value must identify the instrument used to measure the residual disinfectant concentration and include the manufacturer's documentation on the instrument's accuracy to measure the lower value.

(b) The purveyor of a system that purchases completely treated surface or GWI water as determined by the department shall comply with the requirements specified in (a) of this subsection.

(c) Water in the distribution system with an HPC level less than or equal to 500 organisms/ml is considered to have a detectable residual disinfectant concentration.

AMENDATORY SECTION (Amending WSR 09-21-045, filed 10/13/09, effective 1/4/10)

WAC 246-290-694 Monitoring for unfiltered systems. (1) Source coliform monitoring for systems without a limited alternative to filtration.

(a) The purveyor shall ensure that source water samples of each surface or GWI source are representative and:

(i) Collected before the first point of disinfectant application; and

(ii) Analyzed for fecal coliform density in accordance with methods acceptable to the department.

(b) The purveyor shall ensure source samples are collected for fecal coliform analysis each week the system serves water to the public based on the following schedule:

Population Served	Minimum Number/week*
25 - 500	1
501 - 3,300	2
3,301 - 10,000	3
10,001 - 25,000	4
>25,000	5

*Must be taken on separate days.

(c) Each day the system serves water to the public and the turbidity of the source water exceeds 1.0 NTU, the purveyor shall ensure one representative source water sample is collected before the first point of disinfectant application and analyzed for fecal coliform density. This sample shall count toward the weekly source coliform sampling requirement.

(d) The purveyor using a surface water or GWI source and that meets the criteria to remain unfiltered under WAC 246-290-690, shall collect at least one routine sample near the first service connection each day the turbidity level of the source water, measured as specified under WAC 246-290-694, exceeds 1 NTU. This sample must be analyzed for the presence of total coliform. When one or more turbidity measurements in any day exceed 1 NTU, the system must collect this coliform sample within twenty-four hours of the first exceedance, unless the department determines that the system, for logistical reasons outside the system's control, cannot have the sample analyzed within thirty hours of collection. Sample results from this coliform monitoring must be included in determining compliance with the *E. coli* MCL ((~~for total coliforms~~)) under WAC 246-290-310 (2)(b) and exceeding treatment technique triggers under WAC 246-290-320 (2)(a).

(e) A purveyor shall not be considered in violation of (c) of this subsection, if the purveyor demonstrates to the department's satisfaction that, for valid logistical reasons outside the purveyor's control, the additional fecal coliform sample could not be analyzed within a time frame acceptable to the department.

(2) Source coliform monitoring for systems with a limited alternative to filtration.

(a) The purveyor shall ensure that source water samples of each surface or GWI source are:

(i) Collected before the first point of primary disinfection; and

(ii) Analyzed for fecal coliform density in accordance with methods acceptable to the department.

(b) At a minimum, the purveyor shall ensure source samples are collected for fecal coliform analysis at a frequency equal to ten percent the number of routine coliform samples collected within the distribution system each month under WAC 246-290-300, or once per calendar month, whichever is greater, up to a maximum of one sample per day.

(3) Coliform monitoring at entry to distribution for systems without a limited alternative to filtration.

(a) The purveyor shall collect and have analyzed one coliform sample at the entry point to the distribution system each day that a routine or repeat coliform sample is collected within the distribution system under WAC ((~~246-290-300(3)~~

~~or 246-290-320(2), respectively~~)) 246-290-300 (3)(e) through (g).

(b) The purveyor shall use the results of the coliform monitoring at entry to distribution along with inactivation ratio monitoring results to demonstrate the adequacy of source treatment.

(4) Source turbidity monitoring for systems without a limited alternative to filtration.

(a) The purveyor shall continuously monitor and record turbidity:

(i) On representative source water samples before the first point of primary disinfectant application; and

(ii) In accordance with the analytical techniques in WAC 246-290-638.

(b) If source water turbidity is not the same as the turbidity of water delivered to consumers, the purveyor shall continuously monitor and record turbidity of water delivered.

(5) Source turbidity monitoring for systems with a limited alternative to filtration. The purveyor shall:

(a) Continuously monitor turbidity on representative source samples before the first point of primary disinfection application;

(b) Record continuous turbidity measurements at equal intervals, of at least four hours, in accordance with a department-approved sampling schedule; and

(c) Conduct monitoring in accordance with the analytical techniques under WAC 246-290-638.

(6) Monitoring the level of inactivation.

(a) Each day the system is in operation, the purveyor shall determine the total level of inactivation of *Giardia lamblia* cysts, viruses, and, if providing a limited alternative to filtration, any other pathogenic organisms of health concern including *Cryptosporidium* oocysts, achieved through disinfection.

(b) At least once per day, the purveyor shall monitor the following parameters to determine the total inactivation ratio achieved through disinfection:

(i) Temperature of the disinfected water at each residual disinfectant concentration sampling point used for CT calculations; and

(ii) If using chlorine, pH of the disinfected water at each chlorine residual disinfectant concentration sampling point used for CT calculations.

(c) Each day during peak hourly flow, the purveyor shall:

(i) Determine disinfectant contact time, T, to the point at which C is measured; and

(ii) Measure the residual disinfectant concentration, C, of the water at the point for which T is calculated. The C measurement point must be before or at the first consumer.

(7) Monitoring the residual disinfectant concentration entering the distribution system for either unfiltered systems, or systems using a limited alternative to filtration.

(a) Systems serving more than thirty-three hundred people.

(i) The purveyor shall continuously monitor and record the residual disinfectant concentration of water entering the distribution system and report the lowest value each day.

(ii) If the continuous monitoring equipment fails, the purveyor shall measure the residual disinfectant concentration on grab samples collected at least every four hours at the entry to the distribution system while the equipment is being repaired or replaced. The purveyor shall have continuous monitoring equipment back online within five working days following failure.

(b) Systems serving thirty-three hundred or less people.

(i) The purveyor shall collect grab samples or use continuous monitoring and recording to measure the residual disinfectant concentration entering the distribution system.

(ii) A purveyor choosing to take grab samples shall collect:

(A) Samples at the following minimum frequencies:

Population Served	Number/day
25 - 500	1
501 - 1,000	2
1,001 - 2,500	3
2,501 - 3,300	4

(B) At least one of the grab samples at peak hourly flow based on historical flows for the system; and

(C) The remaining sample or samples at intervals evenly spaced over the time the system is disinfecting water that will be delivered to the public.

(iii) When grab samples are collected and the residual disinfectant concentration at the entry to distribution falls below 0.2 mg/L, the purveyor shall collect a grab sample every four hours until the residual disinfectant concentration is 0.2 mg/L or more.

(8) Monitoring residual disinfectant concentration within the distribution system for either unfiltered systems, or systems using a limited alternative to filtration.

(a) The purveyor shall measure the residual disinfectant concentration within the distribution system at the same time and location that a routine or repeat coliform sample is collected under WAC ((~~246-290-300(3) or 246-290-320(2)~~)) 246-290-300 (3)(e) through (g) or once per day, whichever is greater.

(b) The purveyor of a system that purchases completely treated surface or GWI water as determined by the department shall comply with the requirements of (a) of this subsection or as otherwise directed by the department under WAC 246-290-300(2). At a minimum, the purveyor shall measure the residual disinfectant concentration within the distribution system at the same time and location that a routine or repeat coliform sample is collected under WAC ((~~246-290-300(3) or 246-290-320(2)~~)) 246-290-300 (3)(e) through (g).

(c) The purveyor may measure HPC within the distribution system in lieu of measuring the residual disinfectant concentration under this subsection.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-71001 Public notification. (1) The purveyor shall notify the water system users and the owner or operator of any consecutive water system served in accordance with 40 C.F.R. 141.201 through 208. Notice is to be provided when the system violates a National Primary Drink-

ing Water Regulation and when any of the situations listed in Table 1 of 40 C.F.R. 141.201 occur, except for (a)(3)(ii). Public notifications for violations and other situations are categorized into the following Tiers:

(a) Tier 1 as described in Table 1 of 40 C.F.R. 141.202 (a);

(b) Tier 2 as described in Table 1 of 40 C.F.R. 141.203 (a); or

(c) Tier 3 as described in Table 1 of 40 C.F.R. 141.204 (a).

(2) The purveyor shall initiate consultation with the department as soon as possible, but no later than twenty-four hours after they learn their system has a Tier 1 violation or situation in order to determine if additional public notice is required. The purveyor shall comply with any additional public notification requirements established as a result of the consultation.

(3) The purveyor shall notify the water system users when the system:

(a) Is issued a department order;

(b) Fails to comply with a department order; or

(c) Is issued a category red operating permit.

AMENDATORY SECTION (Amending WSR 09-21-045, filed 10/13/09, effective 1/4/10)

WAC 246-290-72001 Purpose and applicability of the consumer confidence report requirements. WAC 246-290-72001 through 246-290-72012 establishes minimum requirements for the content of annual reports that community water systems must deliver to their customers. WAC 246-290-72013 establishes additional requirements for the content of annual reports that community water systems using groundwater must deliver to their customers. These reports must contain information on the quality of the water delivered by the systems and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner.

(1) This section applies only to community water systems.

(2) For the purpose of WAC 246-290-72001 through ((~~246-290-72012~~)) 246-290-72013:

(a) "Customers" means billing units or service connections to which water is delivered by a community water system.

(b) "Detected" means at or above the levels prescribed by WAC 246-290-300(4) for inorganic contaminants, at or above the levels prescribed by WAC 246-290-300(7) for organic contaminants, at or above the levels prescribed by 40 C.F.R. 141.131 (b)(2)(iv) for disinfection byproducts, and at or above the levels prescribed by 40 C.F.R. 141.25(c) for radioactive contaminants.

AMENDATORY SECTION (Amending WSR 00-15-080, filed 7/19/00, effective 8/19/00)

WAC 246-290-72004 Report contents—Definitions. (1) Each report must include the following definitions:

(a) Maximum contaminant level goal or MCLG: The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(b) Maximum contaminant level or MCL: The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.

(2) A report for a community water system operating under a variance or an exemption issued under WAC 246-290-060 must include the following definition: Variances and exemptions: State or EPA permission not to meet an MCL or a treatment technique under certain conditions.

(3) A report that contains data on contaminants that the Environmental Protection Agency regulates using any of the following terms must include the applicable definitions:

(a) Treatment technique: A required process intended to reduce the level of a contaminant in drinking water.

(b) Action level: The concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

(c) Maximum residual disinfectant level goal or MRDLG: The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(d) Maximum residual disinfectant level or MRDL: The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(4) A report that contains level 1 or level 2 assessment information must include the applicable definitions:

(a) Level 1 assessment: A level 1 assessment is a study of the water system to identify potential problems and determine, if possible, why total coliform bacteria have been found in our water system.

(b) Level 2 assessment: A level 2 assessment is a very detailed study of the water system to identify potential problems and determine, if possible, why an *E. coli* MCL violation has occurred and, if applicable, why total coliform bacteria have been found in our water system on multiple occasions.

AMENDATORY SECTION (Amending WSR 09-21-045, filed 10/13/09, effective 1/4/10)

WAC 246-290-72005 Report contents—Information on detected contaminants. (1) This section specifies the requirements for information to be included in each report for contaminants subject to mandatory monitoring. It applies to:

(a) Contaminants subject to an MCL, action level, maximum residual disinfectant level or treatment technique (regulated contaminants);

(b) Detected unregulated contaminants for which monitoring is required under WAC 246-290-300(10) and 40 C.F.R. 140.40; and

(c) Disinfection byproducts for which monitoring is required by WAC 246-290-300(6) and 40 C.F.R. 141.142 or microbial contaminants for which monitoring is required by WAC 246-290-300(3) and 40 C.F.R. 141.143, except as provided under WAC 246-290-72006(1), and which are detected in the finished water.

(2) The data relating to these contaminants must be displayed in one table or in several adjacent tables. Any additional monitoring results which a community water system chooses to include in its report must be displayed separately.

(3) The data must be derived from data collected to comply with EPA and state monitoring and analytical requirements during the previous calendar year except that:

(a) Where a system is allowed to monitor for regulated contaminants less than once a year, the table(s) must include the date and results of the most recent sampling and the report must include a brief statement indicating that the data presented in the report are from the most recent testing done in accordance with the regulations. No data older than five years need be included.

(b) Results of monitoring in compliance with 40 C.F.R. 141.142 and 40 C.F.R. 141.143 need only be included for five years from the date of last sample or until any of the detected contaminants becomes regulated and subject to routine monitoring requirements, whichever comes first.

(4) For detected regulated contaminants listed in WAC 246-290-72012, the table(s) must contain:

(a) The MCL for that contaminant expressed as a number equal to or greater than 1.0 (as provided in WAC 246-290-72012);

(b) The MCLG for that contaminant expressed in the same units as the MCL;

(c) If there is no MCL for a detected contaminant, the table must indicate that there is a treatment technique, or specify the action level, applicable to that contaminant, and the report must include the definitions for treatment technique and/or action level, as appropriate, specified in WAC 246-290-72004;

(d) For contaminants subject to an MCL, except turbidity ((~~and~~)), total coliform((~~s~~)), and *E. coli*, the highest contaminant level used to determine compliance with a National Primary Drinking Water Regulation and the range of ((~~detected levels~~)) results, as follows:

(i) When compliance with the MCL is determined annually or less frequently: The highest detected level at any sampling point and the range of ((~~detected levels~~)) results expressed in the same units as the MCL.

(ii) When compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point: The highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL. For the TTHM and HAA5 MCLs determined on the basis of the LRAA, systems must include the highest LRAA for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one location exceeds the TTHM or HAA5 MCL, the system must include the LRAA for all locations that exceed the MCL.

(iii) When compliance with the MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points: The average and range of detection expressed in the same units as the MCL. The system is required to include individual sample results for the IDSE conducted under WAC 246-290-300 (6)(b)(i)(F) when determining the range of TTHM and HAA5 results to be reported in the annual consumer confidence report for the calendar year that the IDSE samples were taken.

(iv) Note to WAC 246-290-72005 (4)(d): When rounding of results to determine compliance with the MCL is allowed by the regulations, rounding should be done prior to multiplying the results by the factor listed in WAC 246-290-72012;

(e) For turbidity.

(i) When it is reported under chapter 246-290 WAC Part 6, Subpart C: The highest average monthly value.

(ii) When it is reported under the requirements of chapter 246-290 WAC Part 6, Subpart D: The highest monthly value. The report should include an explanation of the reasons for measuring turbidity.

(iii) When it is reported under chapter 246-290 WAC Part 6, Subpart B: The highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in chapter 246-290 WAC Part 6, Subpart B for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity;

(f) For lead and copper: The 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the action level;

(g) For ((~~total coliform:~~

~~(i) The highest monthly number of positive samples for systems collecting fewer than 40 samples per month; or~~

~~(ii) The highest monthly percentage of positive samples for systems collecting at least 40 samples per month;~~

~~(h) For fecal coliform~~)) *E. coli* analytical results under WAC 246-290-300 (3)(e) through (g): The total number of positive samples; and

(((~~(i)~~))) (h) The likely source(s) of detected contaminants to the best of the purveyor's knowledge. Specific information regarding contaminants may be available in sanitary surveys and source water assessments, and should be used when available to the purveyor. If the purveyor lacks specific information on the likely source, the report must include one or more of the typical sources for that contaminant listed in WAC 246-290-72012 which are most applicable to the system.

(5) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table should contain a separate column for each service area and the report should identify each separate distribution system. Alternatively, systems could produce separate reports tailored to include data for each service area.

(6) The table(s) must clearly identify any data indicating violations of MCLs, MRDLs, or treatment techniques and the report must contain a clear and readily understandable explanation of the violation including: The length of the violation, the potential adverse health effects, and actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language of WAC 246-290-72012.

(7) For detected unregulated contaminants for which monitoring is required, the table(s) must contain the average and range at which the contaminant was detected. The report may include a brief explanation of the reasons for monitoring for unregulated contaminants.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-72007 Report contents—Compliance with National Primary Drinking Water Regulations. In addition to the requirements of WAC 246-290-72005(6), the report must note any violation that occurred during the year covered by the report of a requirement listed below, and include a clear and readily understandable explanation of the violation, any potential adverse health effects, and the steps the system has taken to correct the violation.

(1) Monitoring and reporting of compliance data;

(2) Filtration and disinfection prescribed by chapter 246-290 WAC, Part 6. For systems which have failed to install adequate filtration or disinfection equipment or processes, or have had a failure of the equipment or processes which constitutes a violation, the report must include the following language as part of the explanation of potential adverse health effects: Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

(3) Lead and copper control requirements prescribed by WAC 246-290-025, specifically 40 C.F.R. 141.80 through 141.91: For systems which fail to take one or more actions prescribed by WAC 246-290-025, specifically 40 C.F.R. 141.80 through 141.84, the report must include the applicable language of WAC 246-290-72012 for lead, copper, or both.

(4) Treatment techniques for Acrylamide and Epichlorohydrin prescribed by WAC 246-290-480 (2)(k). For systems which violate the requirements of WAC 246-290-480 (2)(k), the report must include the relevant language from WAC 246-290-72012.

(5) Recordkeeping of compliance data.

(6) Special monitoring requirements prescribed under WAC 246-290-310(3); and

(7) Violation of the terms of a variance, an exemption, or an administrative or judicial order.

AMENDATORY SECTION (Amending WSR 10-20-068, filed 9/29/10, effective 11/1/10)

WAC 246-290-72012 Regulated contaminants.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Microbiological Contaminants						
Total Coliform Bacteria	((~~MCL: (systems that collect ≥ 40 samples/ month) more than 5% of monthly samples are positive; (systems that collect < 40 samples/ month) 2 or more positive samples per monthly sampling period~~)) TT	-	((~~MCL: (systems that collect ≥ 40 samples/ month) more than 5% of monthly samples are positive; (systems that collect < 40 samples/ month) 2 or more positive samples per monthly sampling period~~)) TT	((θ)) N/A	Naturally present in the environment	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially((-)) harmful, ((~~bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems~~)) waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments.
((~~Fecal coliform and~~)) *E. coli*	((θ)) Routine and repeat samples are total coliform-positive and either is *E. coli*-positive or system fails to take repeat samples following *E. coli*-positive routine sample or system fails to analyze total coliform-positive repeat	-	((θ)) Routine and repeat samples are total coliform-positive and either is *E. coli*-positive or system fails to take repeat samples following *E. coli*-positive routine sample or system fails	0	Human and animal fecal waste	((~~Fecal coliforms and~~)) *E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. ((~~Microbes~~)) Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a ((~~special~~)) greater health risk for infants, young children, ((~~some of~~)) the elderly, and people with severely-compromised immune systems.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
	sample for *E. coli*.		to analyze total coliform-positive repeat sample for *E. coli*.			
Fecal indicators (*E. coli*)	TT	-	TT	N/A	Human and animal fecal waste	Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.
Total organic carbon (ppm)	TT	-	TT	N/A	Naturally present in the environment	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection ((~~by-products~~)) byproducts. These ((~~by-products~~)) byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these ((~~by-products~~)) byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.
Turbidity (NTU)	TT	-	TT	N/A	Soil runoff	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.
Giardia lamblia Viruses *Cryptosporidium*	TT	-	TT	N/A	Human and animal fecal waste	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
Heterotrophic plate count (HPC) bacteria	TT	-	TT	N/A	HPC measures a range of bacteria that are naturally present in the environment	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
Legionella	TT	-	TT	N/A	Found naturally in water; multiplies in heating systems	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.
Radioactive Contaminants						
Beta/photon emitters (mrem/yr)	4 mrem/yr	-	4	N/A 0	Decay of natural and man-made deposits	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
						years may have an increased risk of getting cancer.
Alpha emitters (pCi/l)	15 pCi/l	-	15	N/A 0	Erosion of natural deposits	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
Combined radium (pCi/l)	5 pCi/l	-	5	N/A 0	Erosion of natural deposits	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
Uranium (pCi/l)	30 micro g/l	-	30	0	Erosion of natural deposits	Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.
Inorganic Contaminants						
Antimony (ppb)	.006	1000	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
Arsenic (ppb) ((~~*Effective 1/23/06~~))	((~~.05~~)) 0.010 ((~~0.010~~))	1000 ((~~1000~~))	((~~50~~)) 10 ((~~10~~))	((~~N/A~~)) 0 ((~~0~~))	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
Asbestos (MFL)	7 MFL	-	7	7	Decay of asbestos cement water mains; Erosion of natural deposits	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
Barium (ppm)	2	-	2	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
Beryllium (ppb)	.004	1000	4	4	Discharge from metal refineries and coal-burning factories; Discharge from electrical, aerospace, and defense industries	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
Cadmium (ppb)	.005	1000	5	5	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; Runoff from waste batteries and paints	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
Chromium (ppb)	.1	1000	100	100	Discharge from steel and pulp mills; Erosion of natural deposits	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Copper (ppm)	AL = 1.3	-	AL = 1.3	1.3	Corrosion of household plumbing systems; Erosion of natural deposits	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Cyanide (ppb)	.2	1000	200	200	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
Fluoride (ppm)	4	-	4	4	Erosion of natural deposits; Water additive which promotes strong teeth; Discharge from fertilizer and aluminum factories	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums.
Lead (ppb)	AL = .015	1000	AL = 15	0	Corrosion of household plumbing systems; Erosion of natural deposits	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.
Mercury [inorganic] (ppb)	.002	1000	2	2	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
Nitrate (ppm)	10	-	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Nitrite (ppm)	1	-	1	1	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
Selenium (ppb)	.05	1000	50	50	Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Thallium (ppb)	.002	1000	2	0.5	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
Synthetic Organic Contaminants including Pesticides and Herbicides						
2,4-D (ppb)	.07	1000	70	70	Runoff from herbicide used on row crops	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
2,4,5-TP [Silvex](ppb)	.05	1000	50	50	Residue of banned herbicide	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
Acrylamide	TT	-	TT	0	Added to water during sewage/ wastewater treatment	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
Alachlor (ppb)	.002	1000	2	0	Runoff from herbicide used on row crops	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.
Atrazine (ppb)	.003	1000	3	3	Runoff from herbicide used on row crops	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
Benzo(a)pyrene [PAH] (nanograms/l)	.0002	1,000,000	200	0	Leaching from linings of water storage tanks and distribution lines	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.
Carbofuran (ppb)	.04	1000	40	40	Leaching of soil fumigant used on rice and alfalfa	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
Chlordane (ppb)	.002	1000	2	0	Residue of banned termiticide	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.
Dalapon (ppb)	.2	1000	200	200	Runoff from herbicide used on rights of way	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
Di(2-ethylhexyl) adipate (ppb)	.4	1000	400	400	Discharge from chemical factories	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience toxic effects or reproductive difficulties.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Di(2-ethylhexyl) phthalate (ppb)	.006	1000	6	0	Discharge from rubber and chemical factories	Some people who drink water containing di (2-ethylhexyl) phthalate well in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
Dibromochloropropane (ppt)	.0002	1,000,000	200	0	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive problems and may have an increased risk of getting cancer.
Dinoseb (ppb)	.007	1000	7	7	Runoff from herbicide used on soybeans and vegetables	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
Diquat (ppb)	.02	1000	20	20	Runoff from herbicide use	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
Dioxin [2,3,7,8-TCDD] (ppq)	.00000003	1,000,000,000	30	0	Emissions from waste incineration and other combustion; Discharge from chemical factories	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
Endothall (ppb)	.1	1000	100	100	Runoff from herbicide use	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
Endrin (ppb)	.002	1000	2	2	Residue of banned insecticide	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
Epichlorohydrin	TT	-	TT	0	Discharge from industrial chemical factories; An impurity of some water treatment chemicals	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.
Ethylene dibromide (ppt)	.00005	1,000,000	50	0	Discharge from petroleum refineries	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
Glyphosate (ppb)	.7	1000	700	700	Runoff from herbicide use	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
Heptachlor (ppt)	.0004	1,000,000	400	0	Residue of banned pesticide	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
Heptachlor epoxide (ppt)	.0002	1,000,000	200	0	Breakdown of heptachlor	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Hexachlorobenzene (ppb)	.001	1000	1	0	Discharge from metal refineries and agricultural chemical factories	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
Hexachlorocyclo-pentadiene (ppb)	.05	1000	50	50	Discharge from chemical factories	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.
Lindane (ppt)	.0002	1,000,000	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
Methoxychlor (ppb)	.04	1000	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
Oxamyl [Vydate] (ppb)	.2	1000	200	200	Runoff/leaching from insecticide used on apples, potatoes and tomatoes	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
PCBs [Polychlorinated biphenyls] (ppt)	.0005	1,000,000	500	0	Runoff from landfills; Discharge of waste chemicals	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
Pentachlorophenol (ppb)	.001	1000	1	0	Discharge from wood preserving factories	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
Picloram (ppb)	.5	1000	500	500	Herbicide runoff	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
Simazine (ppb)	.004	1000	4	4	Herbicide runoff	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
Toxaphene (ppb)	.003	1000	3	0	Runoff/leaching from insecticide used on cotton and cattle	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
Volatile Organic Contaminants						
Benzene (ppb)	.005	1000	5	0	Discharge from factories; Leaching from gas storage tanks and landfills	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
Bromate (ppb)	.010	1000	10	0	((~~By-product~~)) Byproduct of drinking water disinfection	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Carbon tetrachloride (ppb)	.005	1000	5	0	Discharge from chemical plants and other industrial activities	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
Chloramines (ppm)	MRDL = 4	-	MRDL = 4	MRDLG = 4	Water additive used to control microbes	Some people who use drinking water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
Chlorine (ppm)	MRDL = 4	-	MRDL = 4	MRDLG = 4	Water additive used to control microbes	Some people who use drinking water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.
Chlorite (ppm)	1	-	1	0.8	((~~By-product~~)) Byproduct of drinking water disinfection	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
Chlorine dioxide (ppb)	MRDL = .8	1000	MRDL = 800	MRDLG = 800	Water additive used to control microbes	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.
Chlorobenzene (ppb)	.1	1000	100	100	Discharge from chemical and agricultural chemical factories	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
o-Dichlorobenzene (ppb)	.6	1000	600	600	Discharge from industrial chemical factories	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
p-Dichlorobenzene (ppb)	.075	1000	75	75	Discharge from industrial chemical factories	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
1,2-Dichloroethane (ppb)	.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
1,1-Dichloroethylene (ppb)	.007	1000	7	7	Discharge from industrial chemical factories	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
cis-1,2-Dichloroethylene (ppb)	.07	1000	70	70	Discharge from industrial chemical factories	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
trans-1,2-Dichloroethylene (ppb)	.1	1000	100	100	Discharge from industrial chemical factories	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
Dichloromethane (ppb)	.005	1000	5	0	Discharge from pharmaceutical and chemical factories	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
1,2-Dichloropropane (ppb)	.005	1000	5	0	Discharge from industrial chemical factories	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
Ethylbenzene (ppb)	.7	1000	700	700	Discharge from petroleum refineries	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.
Haloacetic Acids (HAA) (ppb)	.060	1000	60	n/a	((~~By-product~~)) Byproduct of drinking water disinfection	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.
Styrene (ppb)	.1	1000	100	100	Discharge from rubber and plastic factories; Leaching from landfills	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
Tetrachloroethylene (ppb)	.005	1000	5	0	Discharge from factories and dry cleaners	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
1,2,4-Trichlorobenzene (ppb)	.07	1000	70	70	Discharge from textile-finishing factories	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
1,1,1-Trichloroethane (ppb)	.2	1000	200	200	Discharge from metal degreasing sites and other factories	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
1,1,2-Trichloroethane (ppb)	.005	1000	5	3	Discharge from industrial chemical factories	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
Trichloroethylene (ppb)	.005	1000	5	0	Discharge from metal degreasing sites and other factories	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
TTHMs [Total trihalomethanes] (ppb)	.080	1000	80	N/A	((~~By-product~~)) Byproduct of drinking water disinfection	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.
Toluene (ppm)	1	-	1	1	Discharge from petroleum factories	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.

Contaminant (units)	traditional MCL in mg/L	to convert for CCR, multiply by	MCL in CCR units	MCLG	Major Sources in Drinking Water	Health Effects Language
Vinyl Chloride (ppb)	.002	1000	2	0	Leaching from PVC piping: Discharge from plastics factories	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
Xylenes (ppm)	10	-	10	10	Discharge from petroleum factories; Discharge from chemical factories	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.
Treatment Technique Violations						
Groundwater rule TT violations	TT	-	TT	N/A	-	Inadequately treated or inadequately protected water may contain disease-causing organisms. These organisms can cause symptoms such as diarrhea, nausea, cramps, and associated headaches.

Key

AL = Action Level

MCL = Maximum Contaminant Level

MCLG = Maximum Contaminant Level Goal

MFL = million fibers per liter

MRDL = Maximum Residual Disinfectant Level

MRDLG = Maximum Residual Disinfectant Level Goal

mrem/year = millirems per year (a measure of radiation absorbed by the body)

N/A = Not Applicable

NTU = Nephelometric Turbidity Units (a measure of water clarity)

pCi/1 = picocuries per liter (a measure of radioactivity)

ppm = parts per million, or milligrams per liter (mg/1)

ppb = parts per billion, or micrograms per liter (((~~g/1~~))) (ug/L)

ppt = parts per trillion, or nanograms per liter

ppq = parts per quadrillion, or picograms per liter

TT = Treatment Technique

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 07-02-025B, filed 12/22/06, effective 1/22/07)

WAC 246-290-810 Water use efficiency program. (1) Water system plans and small water system management programs submitted for approval for the first year after the effective date of this rule, must describe the municipal water supplier's existing water use efficiency program. The municipal water supplier must continue existing levels of water use efficiency.

(2) Subsections (3) and (4) of this section apply to:

(a) Water system plans submitted to the department for approval under WAC 246-290-100 one year after the effective date of this rule.

(b) Small water system management programs developed and implemented or submitted to the department for approval one year after the effective date of this rule.

(3) Municipal water suppliers shall develop and implement a water use efficiency program which includes sufficient cost-effective water use efficiency measures to meet the water use efficiency goals developed under WAC 246-290-830.

(4) Municipal water suppliers shall complete the following items in the water use efficiency program:

(a) Describe the current water use efficiency program;

(b) For systems serving one thousand or more total connections, estimate the amount of water saved through implementation of the water use efficiency program over the ((~~last~~)) prior six or more years; the estimate may include the entire approval period of the most recent water system plan required under WAC 246-290-100;

(c) Describe the chosen water use efficiency goals and document the goals were established in accordance with WAC 246-290-830;

(d) Evaluate water use efficiency measures to determine if they are cost-effective as follows:

(i) Evaluate or implement, at a minimum, the number of water use efficiency measures specified in Table ((~~1~~)) 13 based on the system's total number of connections.

(ii) Evaluate or implement water use efficiency measures from the following categories of measures if they are applica-

ble: Indoor residential, outdoor, and industrial/commercial/institutional.

(iii) For systems serving less than one thousand total connections, describe the evaluation process used to select water use efficiency measures.

(iv) For systems serving one thousand or more total connections, include the following criteria when evaluating water use efficiency measures:

(A) Quantitatively evaluate water use efficiency measures to determine if they are cost-effective from the system's perspective including the marginal costs of producing water.

(B) Address whether the water use efficiency measures are cost-effective if the costs are shared with other entities.

(C) Quantitatively or qualitatively evaluate water use efficiency measures to determine if they are cost-effective from the societal perspective.

Table ((~~1~~)) 13

Number of connections	Less than 500	500-999	1,000-2,499	2,500-9,999	10,000-49,999	50,000 or more
Water use efficiency measures	1	4	5	6	9	12

(e) Describe all water use efficiency measures to be implemented ((~~within~~)) over the next six or more years, including a schedule and a budget that demonstrates how the water use efficiency measures will be funded. Purveyors may submit a schedule and budget for the entire water system plan approval period, if the approval period is longer than six years;

(f) Describe how consumers will be educated on water use efficiency practices;

(g) Estimate projected water savings from selected water use efficiency measures;

(h) Describe how the water use efficiency program will be evaluated for effectiveness;

(i) Evaluate water distribution system leakage as follows:

(i) Include distribution system leakage totals in accordance with WAC 246-290-820 for the past six or more years. Purveyors shall submit distribution system leakage totals for the entire water system plan approval period if the approval period is longer than six years.

(ii) If necessary, include a copy of the water loss control action plan in accordance with WAC 246-290-820(4).

(iii) If all or portions of transmission lines are excluded when determining distribution system leakage, estimate the amount of leakage from the excluded portion of the transmission mains and describe how it is maintained to minimize leakage.

AMENDATORY SECTION (Amending WSR 08-03-061, filed 1/14/08, effective 2/14/08)

WAC 246-290-820 Distribution system leakage standard. (1) Municipal water suppliers shall determine distribution system leakage annually under subsection (2) of this section or an alternative methodology under subsection (3) of this section.

(a) Municipal water suppliers shall include (i), (ii), or (iii) of this subsection in water use efficiency performance reports developed under WAC 246-290-840 and water use efficiency programs developed under WAC 246-290-810:

(i) Distribution system leakage totals calculated under subsection (2) of this section shall be recorded in annual percent and volume;

(ii) Distribution system leakage totals calculated under subsection (3) of this section shall include annual figures and the approved alternative methodology's numerical standard(s); and

(iii) For systems not fully metered, the status of meter installation and any actions taken to minimize leakage.

(b) Municipal water suppliers will be considered in compliance with this section if any of the following conditions are satisfied:

(i) Distribution system leakage calculated in accordance with subsection (2) of this section is ten percent or less for the last three-year average;

(ii) Distribution system leakage calculated under subsection (3) of this section meets the numerical standards for the approved alternative methodology for the last three-year average;

(iii) For systems serving less than five hundred total connections, distribution system leakage calculated in accordance with subsection (2) of this section is twenty percent or less for the last three-year average and the steps outlined in subsection (5) of this section are completed; or

(iv) A water loss control action plan has been developed and implemented under subsection (4) of this section and the system is meeting the implementation schedule.

(2) Calculate the percent of distribution system leakage annually using the following equation:

$$DSL = [(TP - AC)/(TP)] \times 100$$

Where:

DSL	=	Percent of Distribution System Leakage (%)
TP	=	Total Water Produced and Purchased
AC	=	Authorized Consumption

(a) Total water produced and purchased, and authorized consumption must be calculated using data from meters installed under WAC 246-290-496. Elements of authorized consumption that cannot be metered, such as fire flow, must be estimated.

(b) All or portions of transmission lines may be excluded when determining distribution system leakage.

(c) Any water that cannot be accounted for shall be considered distribution system leakage.

(3) Municipal water suppliers may use an alternative methodology to calculate distribution system leakage if both (a) and (b) of this subsection are satisfied.

(a) The alternative methodology is contained in published standards or specifications of the department, Environmental Protection Agency, American Water Works Associa-

tion, American Public Works Association, or American Society of Civil Engineers.

(b) The alternative methodology is approved for statewide use by the department, to provide a better evaluation of distribution system leakage than percent of total water produced and purchased, is appropriate for the system requesting to use it, and uses numerical standards so that compliance and action levels can be determined.

(4) If the average distribution system leakage for the last three years does not meet the standard calculated under subsection (1)(b)(i), (ii), or (iii) of this section, the municipal water supplier shall develop and implement a water loss control action plan. Municipal water suppliers shall submit the water loss control action plan to the department as part of a water use efficiency program under WAC 246-290-810 and upon request by the department. The control methods described in a water loss control action plan shall be commensurate with the level of leakage reported. The following items shall be included in the water loss control action plan:

(a) The control methods necessary to achieve compliance with the distribution system leakage standard;

(b) An implementation schedule;

(c) A budget that demonstrates how the control methods will be funded;

(d) Any technical or economic concerns which may affect the system's ability to implement a program or comply with the standard including past efforts and investments to minimize leakage;

(e) If the average distribution system leakage calculated under subsection (2) of this section is greater than ten and less than twenty percent of total water produced and purchased, the water loss control action plan must assess data accuracy and data collection;

(f) If the average distribution system leakage calculated under subsection (2) of this section is between twenty and twenty-nine percent of total water produced and purchased, the water loss control action plan must include elements listed under (e) of this subsection and implementation of field activities such as actively repairing leaks or maintaining meters within twelve months of determining standard exceedance;

(g) If the average distribution system leakage calculated under subsection (2) of this section is at thirty percent or above the total water produced and purchased, the water loss control action plan must include elements listed under (e) and (f) of this subsection and include implementation of additional control methods to reduce leakage within six months of determining standard exceedance; and

(h) If the average distribution system leakage calculated under subsection (3) of this section is over the approved alternative methodology's numerical standard, the department will take appropriate compliance actions and work collaboratively with the municipal water supplier to ensure the control methods and level of activity are commensurate with the level of leakage.

(5) Systems serving less than five hundred total connections may submit a request to the department for approval of an average distribution system leakage up to twenty percent. The following information must be submitted to the department with the request:

(a) Production volume;

(b) Distribution system leakage volume;

(c) Evidence documenting that:

(i) A leak detection survey using best available technologies has been completed on the system within the past six years for purveyors required to develop a small water system management program under WAC 246-290-105 or within the approval period of the most recent water system plan for purveyors required to submit a water system plan under WAC 246-290-100;

(ii) All leaks found have been repaired;

(iii) The system is unable to locate additional leaks; and

(iv) Ongoing efforts to minimize leakage are included as part of the system's water use efficiency program; and

(d) Any technical concerns or economic concerns, or other system characteristics justifying the higher distribution system leakage.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 08-12-019, filed 5/28/08, effective 7/1/08)

WAC 246-290-830 Water use efficiency goal setting. (1) The elected governing board or governing body of the public water system shall establish water use efficiency goals within one year of the effective date of this rule for systems serving one thousand or more total connections, and within two years of the effective date of this rule for systems serving less than one thousand total connections.

(2) Water use efficiency goals must be designed to enhance the efficient use of water by the water system's consumers.

(3) If a municipal water supplier determines that further reductions over current consumption levels are not reasonably achievable, the municipal water supplier shall provide justification that considers historic water use efficiency performance and investment and any other factors that support that determination. Justification must be provided in water use efficiency programs developed under WAC 246-290-810 and in water use efficiency performance reports developed under WAC 246-290-840.

(4) Municipal water suppliers must provide documentation when requested by the department and in water use efficiency programs developed under WAC 246-290-810 that demonstrates the following goal setting requirements have been met:

(a) Goals shall be set in a public forum that provides opportunity for consumers and the public to participate and comment on the water use efficiency goals;

(b) Public notice must occur at least two weeks prior to the public forum. Public notice must include the purpose, date, time, and place of the forum, and where materials supporting the rationale for the proposed goals can be reviewed;

(c) The elected governing board or governing body of the public water system shall review and consider all comments received;

(d) The following must be made available to the public for the purpose of fully documenting the basis for each goal:

(i) The information listed under WAC 246-290-810(4);

(ii) Annual water use efficiency performance reports prepared under WAC 246-290-840;

(iii) Water supply characteristics description in accordance with WAC 246-290-100 (4)(f)(iii)(B) or source description in accordance with WAC 246-290-105 (4)(f); and

(iv) A summary of the comments received and how they were considered.

(5) Existing public processes may be used if all requirements listed under subsection (4) of this section are met.

(6) Water use efficiency goals must include:

(a) Consideration of the system's forecasted demand and water supply characteristics;

(b) Measurable outcomes in terms of reduced or maintained water production or usage. Outcomes may be expressed on a per capita, per connection, total system, or other basis as deemed appropriate by the municipal water supplier;

(c) A schedule for achieving the water use efficiency goals; and

(d) Implementation schedule for each water use efficiency measure selected under WAC 246-290-810(4).

(7) The elected governing board or governing body of the public water system shall evaluate and reestablish water use efficiency goals following the process identified in subsection (4) of this section at least every six years ((~~and as part of a water system plan approval under WAC 246-290-100 or~~)) for purveyors required to develop a small water system management program ((~~approval~~)) under WAC 246-290-105 or as part of developing or updating a water system plan for purveyors required to submit a water system plan under WAC 246-290-100.

(8) Water use efficiency goals may be changed at any time in accordance with subsection (4) of this section. Changes to goals must be identified in the next performance report.

(9) Water use efficiency programs must be modified if any water use efficiency goal is not met. Program modifications must be designed to achieve the system's water use efficiency goals.

WSR 16-17-141
PROPOSED RULES
GAMBLING COMMISSION

[Filed August 23, 2016, 4:48 p.m.]

Supplemental Notice to WSR 16-12-108.

Preproposal statement of inquiry was filed as WSR 16-06-130.

Title of Rule and Other Identifying Information: Amending WAC 230-13-075 Assigning and reporting group numbers of authorized amusement games, 230-13-170 Recordkeeping for commercial amusement games, 230-13-005 Amusement games authorized, and 230-07-125 Recordkeeping requirements for lower volume charitable or nonprofit organizations.

Hearing Location(s): Heathman Lodge Vancouver, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, on September 8-9, 2016; and at the DoubleTree by Hilton Spokane Center, 322 North Spokane Falls Court, Spokane, WA 99201, on October 13 or 14, 2016, at 11:00 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at 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: October 13 or 14, 2016.

Submit Written Comments to: Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, e-mail rules.coordinator@wsgc.wa.gov, fax (360) 486-3625 by October 1, 2016.

Assistance for Persons with Disabilities: Contact Julie Anderson by October 1, 2016, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In July 2015, the commissioners authorized group 12 amusement games to be played by persons twenty-one and over. These rules address recordkeeping and the nontransferability of tokens. Currently, amusement game operators are only required to notify us once a year of the amusement games they have. They are also only required to report their overall amusement game gross receipts. These rule changes will help staff know where group 12 amusement games are being operated and the gross receipts they are bringing in. The rule changes also address not commingling coupons, tickets, tokens or tokens on an electronic token card to other gambling related redemption systems to help ensure cash is not indirectly awarded as prizes. At the July meeting, the commissioners voted to file additional changes to three of the rules.

- **Recordkeeping for commercial amusement games.** WAC 230-13-170 (1)(a) and (2)(a)-(c) no longer strike the word "gambling" from the rules and adding the word "gambling" to WAC 230-07-125 (2)(a). Gross gambling receipts is defined in WAC 230-06-150. Without these changes, a new rule to define "gross receipts" would be needed; and
- **Recordkeeping for commercial amusement games.** WAC 230-13-170 (1)(a)(i)-(ii) clarifies that licensees would need to track group 12 amusement game gross gambling receipts separately from the combined gross gambling receipts from groups 1 through 11; and
- **Amusement games authorized.** WAC 230-13-005 (4)(b)(iii) allows licensees to electronically store coupons, tickets, tokens or tokens on an electronic token card onto an amusement game accounting system as long as three conditions are met, one of which is they cannot be commingled with any tracking, reward, or other gambling related redemption system.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0201.

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: Tina Griffin, Assistant Director, Lacey, (360) 486-3546; Implementation: David Trujillo, Director, Lacey, (360) 486-

3512; and Enforcement: Josh Stueckle, Acting Agent-in-Charge, Lacey, (509) 325-7909.

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

Small Business Economic Impact Statement

Proposed Changes to Rules: WAC 230-13-075 Assigning and reporting group numbers of authorized amusement games, 230-13-170 Recordkeeping for commercial amusement games, 230-07-125 Recordkeeping requirements for lower volume charitable or nonprofit organizations, and 230-13-005 Amusement games authorized.

This rules package would:

- Require licensees to notify us within thirty days of putting into play and removing from play a group 12 amusement game in the format we require.
- Require licensees record gross gambling receipts received from players for group 12 amusement games separately from the gross gambling receipts from groups 1 through 11.
- Allow coupons, tickets, tokens or tokens on an electronic token card dispensed from a group 12 amusement game to be stored for redemption under this rule on a system that does not commingle the coupons, tickets, tokens or tokens on an electronic token card with anything else.

Involvement of Small Businesses: We filed the code revisor's [reviser's] CR-101 on March 2, 2016, under WSR 16-06-130.

In July 2015, the commissioners approved a new type of amusement game, group 12 amusement games with the passage of a new rule.

In October 2015, operators began putting group 12 amusement games into play and a number of questions arose regarding the operation, licensure, recordkeeping, and regulatory controls for this new type of amusement game. In an effort to address the questions and get information out to stakeholders timely, we started posting information on our web site under Breaking News on group 12 amusement games.

On November 9, 2015, we sent an e-mail to the Class B and above amusement game licensees that we had e-mail addresses for informing them that we had drafted rules for discussion on a number of different issues concerning group 12 amusement games. (These rules did not include this rule change.)

On November 12, 2015, we asked stakeholders that attended the study session, which is open to the general public, to submit any comments or rule change language, not limited to the rules staff drafted, to address the issues surrounding group 12 amusement games to commission staff by November 30, 2015.

On December 24, 2015, we sent notice to all commercial and amusement game licensees of the updated rule proposals based [on] the feedback we received during the comment period. We also posted the draft rules on our web site.

In February 2016, while other group 12 amusement game rules were being considered, staff put this rules package together, which included this specific rule, to address some other regulatory concerns with group 12 amusement games.

At least one week prior to the March 11, 2016, commission meeting, we posted this rules package on our web site.

On March 25, 2016, we posted information on this rules package as filed by the commissioners at their March 11, 2016, commission meeting in the special "Breaking News" section of our web site for group 12 amusement games. We also posted that we would be holding a stakeholder meeting to discuss all group 12 amusement game rules pending on April 9, 2016, to include this rules package, which included this specific rule.

On April 9, 2016, we held a stakeholder meeting to discuss all group 12 amusement game rules, which included all rules in this package, which included this specific rule.

At least one week prior to the April 14, 2016, commission meeting, we posted this rules package on our web site, which included this specific rule.

On April 15, 2016, we posted in the special section of our web site for group 12 amusement games a summary of the rules discussed and action taken by the commissioners at the April commission meeting.

At least one week prior to the May 12, 2016, commission meeting, we posted this rules package on our web site, which included this specific rule.

At the May 12, 2016, study session, stakeholders were asked what costs they would incur if the rule proposal went into effect. Stakeholders provided feedback as indicated below.

A meeting was held on May 19, 2016, with the stakeholder that wanted to explore possible options to the rule language being proposed.

In summary, the proposed rule changes were discussed at study sessions on the following dates: March 11, 2016, April 14, 2016, and May 12, 2016. It will also be discussed at the study session on July 14/15, 2016. The rule proposal was discussed and public comment taken at the commission meetings on March 11, 2016, April 14, 2016, and May 12, 2016. It will also be discussed and public comment will be taken at the July 14/15, 2016, commission meeting. The proposed changes were discussed at a stakeholder meeting on April 9, 2016, and with one stakeholder on May 19, 2016, to discuss possible changes to the proposed language.

This process provided small businesses opportunities in the development of the new rule.

1. Description of the Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule: In July 2015, the commissioners authorized group 12 amusement games to be played by persons twenty-one and over with the passage of one rule. Since this time, numerous questions and concerns have been raised surrounding the operation and regulation of group 12 amusement games. We have discovered that more rules were needed with the new activity.

Reporting requirement - this rules package requires amusement game licensees to notify us within thirty days of placing a group 12 amusement game into play or removing it from play.

Currently, amusement game licensees are only required to report to us the amusement games they have in play once a year. Without this rule change, we have no way of knowing

where these games, which have been of great interest and have been controversial, are placed. This will allow us to know, within a thirty day window, where and how many group 12 amusement games are in the state.

Recordkeeping requirement - this rules package requires licensees that operate group 12 amusement games to record gross gambling receipts of group 12 games separate from the gross gambling receipts of group 1 through 11 amusement games.

Currently, amusement game licensees must record the combined gross gambling receipts of amusement games regardless of the group or type of amusement game they operate.

Nontransferability of tokens awarded on group 12 amusement games - this rule package allows coupons, tickets, tokens or tokens on an electronic token card dispensed from a group 12 amusement game to be stored for redemption on a system that does not commingle the coupons, tickets, tokens or tokens on an electronic token card with anything else.

This will prevent group 12 amusement game licensees from circumventing the prohibition against gift cards/cash by allowing cash/gift cards to be awarded through a player tracking or customer reward system. By not allowing operators to transfer tokens awarded from a group 12 amusement game, licensees will be required to follow the redemption and operation requirements set out in RCW 9.46.0201 and WAC 230-13-005.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply: Small businesses should not need any additional professional services other than those accounting services that may be currently used to assist with current reporting and recordkeeping requirements.

Reporting requirement - professional services will not be needed for small businesses to comply with this portion of the rule change. Licensees can provide the required information through the commission's My Account, which licensees are required to use to renew their license. My Account is an online account, customized for each licensee. For those licensees that do not have a computer, they will have to submit a form. The information required to be submitted to the commission to comply with this rule will likely be the name of licensee, name and address of the licensed location where the game is physically located, the approved group 12 amusement game(s) placed or removed, the date the game(s) was placed or removed, and the number of approved group 12 amusement games placed or removed.

Recordkeeping requirement - rules already require commercial and nonprofit amusement game licensees to record and report amusement game gross receipts. Licensees record and report the combined gross receipts from all group 1 through 11 amusement games they operate. Licensees may be using professional services to comply with the current rule. The proposed rule would require licensees to add to their records a separate line item for group 12 gross receipts and report that to us separate from their total group 1 through 11 amusement game gross receipts.

Nontransferability of tokens awarded from group 12 amusement games - professional services will not be required for group 12 amusement game operators to comply with this rule proposal. This portion of the rules package allow[s] coupons, tickets, tokens or tokens on an electronic token card dispensed from a group 12 amusement game to be stored for redemption under this rule on a system that does not commingle the coupons, tickets, tokens or tokens on an electronic token card with anything else. Conversely, it will not allow group 12 amusement game operators to transfer coupons, tickets, tokens or tokens on an electronic storage card awarded from a group 12 amusement game to another system, such as a player tracking or customer rewards system. Group 12 amusement game operators will have to redeem the actual coupons, tickets, tokens or tokens on an electronic storage card dispensed from the game.

The rule already requires group 12 amusement games to dispense coupons, tickets, tokens or tokens on an electronic token card to be redeemed for merchandise prizes. No modifications to the amusement games would be required to comply with this rule.

3. The Actual Costs to Small Businesses of Compliance, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs: Cost should be minimal, if any, to small businesses.

Reporting - the cost for complying with this portion of the rule change will be labor costs to do the reporting and any mailing costs if the licensee does not have a computer. The information most likely required to be reported will be the name of licensee, name and address of the licensed location where the game is physically located, the approved group 12 amusement game(s) placed or removed, the date the game(s) was placed or removed, and the number of approved group 12 amusement games placed or removed.

Small business licensees should be familiar with their obligations to report certain business information to us within thirty days from the event. All reporting will be done through My Account, a free online program that all licensees must use for other reporting and to renew their licenses. Those licensees that do not have a computer or that find it easier to fill out a form can do so and mail it in to us.

Recordkeeping - There should be minimal increased administrative costs to develop a new line item and record the gross receipts for group 12 amusement games separately from the group 1 through 11 amusement games they operate. Small business licensees already must track and record the gross receipts from group 12 activity with the other amusement game gross receipts for other state agencies. There should also be minimal increased administrative costs to report the total group 12 amusement game gross receipts. Small business licensees already must track and report all amusement game gross receipts to us. This rule change solely requires them to separate group 12 gross receipts from receipts from groups 1-11.

Nontransferability of coupons, tickets, tokens or tokens on an electronic token card dispensed by a group 12 amusement game - there should be no additional costs for compliance with the rule proposal. Currently, our rules require all group 12 amusement games to dispense coupons, tickets, tokens or tokens on an electronic token card. This rule proposal would allow coupons, tickets, tokens or tokens on an electronic token card dispensed from a group 12 amusement

game to be stored for redemption under this rule on a system that does not commingle the coupons, tickets, tokens or tokens on an electronic token card with anything else.

4. Whether Compliance with the Rule, Based on Feedback Received from Licensees, Will Cause Businesses to Lose Sales or Revenue: This rule should not cause a small business to lose sales or revenue. One small business licensee with forty-nine group 12 amusement games in operation at ten licensed locations in Washington indicated that he spent at least $7,500 on a software program allowing him to store group 12 amusement game tokens on his player tracking system. This licensee indicated he will close down all of his group 12 amusement games in the state if this rule is passed. However, he did not share how sales or revenue would be affected by this rule change.

No other small business stakeholders indicated any possible loss of sales or revenue at the April 9, 2016, stakeholder meeting; the April 14, 2016, study session or commission meeting; or at the May 12, 2016, study session or commission meeting.

5. A Determination of Whether the Proposed Rule Will Have a Disproportionate Impact on Small Businesses: This rule should not have a disproportionate impact on small businesses. All licensees with group 12 amusement games in play will have to comply with this rule regardless of the size of their business.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So. Agencies "must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:"

a. **Reducing, Modifying, or Eliminating Substantive Regulatory Requirements:** Group 12 amusement games were approved by the commissioners in July 2015 with the passage of one rule to allow the games. Since that time, we have determined that more rules are necessary to regulate the activity.

The commission kept the reporting timeline, thirty days from placing into or removing from play, the same as it has for all other reportable information. We also will make the form available on our My Account to make reporting as easy as possible for licensees.

Licensees could allow coupons, tickets, tokens or tokens on an electronic token card dispensed from a group 12 amusement game to be stored for redemption under this rule on a system that does not commingle the coupons, tickets, tokens or tokens on an electronic token card with anything else.

b. **Simplifying, Reducing, or Eliminating Record-keeping and Reporting Requirements:** The commission is only requiring licensees to separately report group 12 amusement game gross receipts. The reporting requirement is simplified by allowing group 12 gross receipts to be reported online through My Account, which is available to licensees when they report their amusement game gross receipts now. Licensees are still allowed to report their combined group 1 through 11 gross receipts.

Additionally, reporting the placement or removal of group 12 amusement games can simply be done online through My Account. The commission is only requiring limited information, such as the name of licensee, name and address of the licensed location where the game is physically located, the approved group 12 amusement game(s) placed or removed, the date the game(s) was placed or removed, and the number of approved group 12 amusement games placed or removed.

c. **Reducing the Frequency of Inspections:** This rule will not require additional inspections. Verification of compliance with these rules can be done during routine inspections to verify licensure, identification stamp, and other operational requirements.

d. **Delaying Compliance Timetables:** Delaying compliance is unnecessary because the cost for compliance is minimal and these rules are necessary for monitoring and regulating these new electronic amusement games.

e. **Reducing Or Modifying Fine Schedules for Noncompliance:** There is no fine schedule related to this rule. Any finding of noncompliance with this rule would likely be handled like all other amusement game violations, which is a progressive enforcement model that includes verbal warnings, written warnings, fines, suspension, and revocation. Our goal is to seek voluntary compliance with our licensees through education and training.

f. **Any Other Mitigation Techniques Including Those Suggested by Small Businesses or Small Business Advocates:** Only one small business licensee has requested or suggested any mitigation techniques for the implementation of this rule change. This licensee's suggestion was to withdraw the rule change regarding nontransferability of tokens dispensed from a group 12 amusement game. The licensee did not suggest an alternative rule that would mitigate any cost the rule would have to his small business.

The commission considered changes to the original proposed rule language and has changed the language to allow coupons, tickets, tokens or tokens on an electronic token card dispensed from a group 12 amusement game to be stored for redemption under this rule on a system that does not commingle the coupons, tickets, tokens or tokens on an electronic token card with anything else.

The commission has a responsibility to prevent amusement game licensees from circumventing the prohibition against gift cards/cash by allowing cash/gift cards to be awarded through a player tracking or customer reward system. By not allowing operators to transfer tokens awarded from a group 12 amusement game, licensees will be required to follow the redemption and operation requirements set out in RCW 9.46.0201 and WAC 230-13-005.

7. A Description of How the Gambling Commission Will Involve Small Businesses in the Development of the Rule: On November 9, 2015, we sent an e-mail to the Class B and above amusement game licensees that we had e-mail addresses for informing them that we had drafted rules for discussion on a number of different issues concerning group 12 amusement games. (These rules did not include this rule change.)

On November 12, 2015, we asked stakeholders that attended the study session, which is open to the general public, to submit any comments or rule change language, not limited to the rules staff drafted, to address the issues surround-

ing group 12 amusement games to commission staff by November 30, 2015.

On December 24, 2015, we sent notice to all commercial and amusement game licensees of the updated rule proposals based [on] the feedback we received during the comment period. We also posted the draft rules on our web site.

In February 2016, while other group 12 amusement game rules were being considered, staff put this rules package together to address some other regulatory concerns with group 12 amusement games.

At least one week prior to the March 11, 2016, commission meeting, we posted this rules package on our web site.

On March 25, 2016, we posted information on this rules package as filed by the commissioners at their March 11, 2016, commission meeting in the special section of our web site for group 12 amusement games. We also posted that we would be holding a stakeholder meeting to discuss all group 12 amusement game rules pending on April 9, 2016, to include this rules package.

On April 9, 2016, we held a stakeholder meeting to discuss all group 12 amusement game rules, which included all rules in this package and this specific rule.

At least one week prior to the April 14, 2016, commission meeting, we posted this rules package on our web site, which included this specific rule.

On April 15, 2016, we posted in the special section of our web site for group 12 amusement games a summary of the rules discussed and action taken by the commissioners at the April commission meeting.

At least one week prior to the May 12, 2016, commission meeting, we posted this rules package on our web site, which included this specific rule.

At the May 12, 2016, study session, stakeholders were asked what costs they would incur if the rule proposal went into effect.

A meeting was held on May 19, 2016, with the stakeholder that provided an e-mail in opposition to one of the rule changes.

8. A List of Industries That Will Be Required to Comply with the Rule: 7132. *(Leave this number here)*

9. An Estimate of the Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule: There is only evidence that one full-time and one part-time job will be lost as a result of the proposed rule changes. One small business licensee that has forty-nine group 12 amusement games in operation at ten licensed locations in Washington and spent at least $7,500 on a software program to store tokens dispensed on the player tracking system indicated that they will stop operating all of their group 12 amusement games in the state. This action will result in the loss of one full-time bookkeeper, a part-time technician, and it will terminate the use of an on-call technician that flies in from California when his service is needed.

No other small business licensees have indicated that any jobs would be created or lost as a result of compliance with this proposed rule change.

A copy of the statement may be obtained by contacting Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, phone (360) 486-3447, fax (360) 486-3625, e-mail rules.coordinator@wsgc.wa.gov.

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 23, 2016
Michelle Rancour
Acting Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-10-032, filed 4/24/07, effective 1/1/08)

WAC 230-07-125 Recordkeeping requirements for lower volume charitable or nonprofit organizations. (1) Organizations operating without a license under RCW 9.46.0315 or 9.46.0321 and lower volume charitable or nonprofit licensees must keep a set of permanent monthly records of the gambling activities. Lower volume licensees include:

(a) Fund-raising events;

(b) Bingo (Classes A, B, and C);

(c) Raffles (Classes A, B, C, and D);

(d) Amusement games (Classes A, B, C, and D); and

(e) Card games (Classes A, B, and C).

(2) The monthly records must include, at least:

(a) The gross gambling receipts from each activity;

(b) The gross gambling receipts from group 12 amusement games;

(c) The total amount of cash prizes actually paid out;

((~~(c)~~)) (d) The total of the cost to the licensee of all merchandise prizes actually paid out for each activity;

((~~(d)~~)) (e) A summary of all expenses related to each of the activities; and

((~~(e)~~)) (f) The net income received from the activity, the purpose(s) for which the net income was raised, and the amount paid to each recipient.

(3) Licensees must keep these records for three years from the end of the license year for which the record was created.

(4) Organizations operating under RCW 9.46.0315 or 9.46.0321 must maintain their records for one year.

AMENDATORY SECTION (Amending WSR 16-09-045, filed 4/15/16, effective 7/15/16)

WAC 230-13-005 Amusement games authorized. (1) We authorize the approved groups of amusement games set forth in this chapter. Operators must only operate amusement games that meet the standards of at least one of the authorized groups.

(2) Commercial businesses or nonprofit or charitable organizations may apply for licenses for amusement games.

(3) Charitable or nonprofit organizations also may conduct group 1 through 11 amusement games without a license when authorized to do so under RCW 9.46.0321 and 9.46.0331.

(4) Operators must operate amusement games as either:

(a) An attended amusement game.

(i) An "attended amusement game" means an amusement game that requires the presence or assistance of a person (attendant) in the regular operation of the game; and

(ii) These games must award a merchandise prize to players if players achieve the objective with one cost of play; and

(iii) An attendant accepts cash, check, tickets or scrip to play the amusement game. The tickets and scrip are not redeemable for cash and must show the name of the operator or sponsor; or

(b) A coin or token activated amusement game.

(i) A "coin or token activated amusement game" means an amusement game that uses a mechanical, electronic, or electro-mechanical machine to allow the player to activate the game by inserting coins, cash, tokens, or tokens on an electronic token card; and

(ii) These games may dispense merchandise prizes, or coupons, tickets, tokens, or tokens onto an electronic token card redeemable for merchandise prizes; and

(iii) Coupons, tickets, tokens or tokens on an electronic token card can be electronically stored for redemption under this section as long as the coupons, tickets, tokens or tokens on an electronic token card are:

(A) Deposited into, and tracked on, a separate amusement game accounting system; and

(B) Not commingled with any tracking, reward, or other gambling related redemption systems; and

(C) Redeemed only for merchandise prizes.

(5) Amusement games must not:

(a) Award additional plays as prizes; or

(b) Allow coupons, tickets, tokens or tokens on electronic token cards that are awarded to be replayed; or

(c) Result in any cash payment being awarded.

(6) Amusement games must only award merchandise prizes.

(a) Merchandise prizes mean noncash prizes including toys, novelties, retail items such as electronic goods, clothing, accessories, as well as food, beverages and other items sold by the operator as a normal part of their business in compliance with all other state laws and regulations, except as provided in (b) of this subsection.

(b) Pull-tabs and other gambling activities, gift certificates or gift cards do not constitute merchandise prizes.

(7) Electronic token card means a card issued by the operator that stores purchased credits available to play the amusement game separate from the coupons, tickets, or tokens awarded or dispensed as prizes from the play of the amusement game. Coupons, tickets, or tokens awarded as prizes cannot be used to play amusement games and must only be redeemed for merchandise prizes.

AMENDATORY SECTION (Amending WSR 07-15-064, filed 7/16/07, effective 1/1/08)

WAC 230-13-075 Assigning and reporting group numbers of authorized amusement games. (1) Amusement game licensees must determine the authorized group number of each game and prepare a list of all games they plan to operate during each license year. They must submit this list to us with their activity report. The list must contain, at least, the name and group number of each game.

(2) Amusement game licensees must notify us within thirty days of putting into play and removing from play a group 12 amusement game. Reporting must be in the format we require.

AMENDATORY SECTION (Amending WSR 07-15-064, filed 7/16/07, effective 1/1/08)

WAC 230-13-170 Recordkeeping for commercial amusement games. (1) Amusement game licensees must prepare a detailed record for each location where they operate games. They must retain the records for at least three years. The records must include details necessary to determine:

(a) Gross gambling receipts received from players((~~,~~ ~~and~~)) from:

(i) Group 1 through 11 amusement games; and

(ii) Group 12 amusement games; and

(b) Value of prizes awarded to winners.

(2) Records must include, at least:

(a) The gross gambling receipts collected from amusement games at each location, with receipting records; and

(b) An entry for each withdrawal of receipts from the games. Coin or token activated amusement games only require an entry of the ending meter reading, the number of plays, and gross gambling receipts at the end of each month; and

(c) A summary of the operation of the activity. This includes, at least, coin-in meter readings and gross gambling receipts. Operators must provide these coin-in meter readings and gross gambling receipts to charitable or nonprofit organizations each time they service a game or disburse money.

(3) Licensees must report at least monthly the number and actual cost of merchandise prizes awarded for each location.

(4) For amusement games that issue tickets for the redemption of prizes, licensees must at least log the beginning and ending nonresettable ticket out meters or ticket numbers during each collection of funds from each game.

(5) Licensees must provide the full details for all amusement game operating expenses.

WSR 16-17-145
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed August 24, 2016, 9:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-13-130.

Title of Rule and Other Identifying Information: WAC 182-548-1400 Federally qualified health centers—Payment methodologies, 182-548-1450 Federally qualified health centers—General payment information, 182-549-1400 Rural health clinics—Payment methodologies, and 182-549-1450 Rural health clinics—General payment information.

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://www.hca.wa.gov/documents/directions

_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on September 27, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 28, 2016.

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, fax (360) 586-9727, by 5:00 p.m. on September 27, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by September 23, 2016, e-mail amber.lougheed@hca.wa.gov, or (360) 725-1349, TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules in response to ESSHB [E2SHB] 2572, which directs the agency to increase the use of value-based contracting, alternative quality contracting, and other payment incentives that promote quality, efficiency, cost savings, and health improvement for medicaid purchasing. To improve clarity, the agency moved existing rule language from WAC 182-548-1400 and 182-549-1400 to new section numbers with new titles: WAC 182-548-1450, FQHC—General payment information and 182-549-1450, RHC—General payment information.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: Gary Swan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1250.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

August 24, 2016
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-11-008, filed 5/7/15, effective 6/7/15)

WAC 182-548-1400 Federally qualified health centers—((~~Reimbursement and limitations~~)) Payment methodologies. (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the medicaid agency's payment methodology for federally qualified health centers (FQHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) For services provided beginning January 1, 2009, FQHCs have the choice to be reimbursed under the PPS or to be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM will be at least as much as payments that would have been made under the PPS.

(3) The agency calculates FQHC PPS encounter rates as follows:

(a) Until an FQHC's first audited medicaid cost report is available, the agency pays an average encounter rate of other similar FQHCs within the state, otherwise known as an interim rate;

(b) Upon availability of the FQHC's first audited medicaid cost report, the agency sets FQHC encounter rates at one hundred percent of its total reasonable costs as defined in the cost report. FQHCs receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then increased each January 1st by the percent change in the medicare economic index (MEI).

(4) For FQHCs in existence during calendar years 1999 and 2000, the agency sets encounter rates prospectively using a weighted average of one hundred percent of the FQHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-548-1500.

(b) PPS base encounter rates are determined using audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

$$\text{Specific FQHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each FQHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are increased by the MEI for primary care services, and adjusted for any increase or decrease in the FQHC's scope of services.

(5) The agency calculates the FQHC's APM encounter rate for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM utilizes the FQHC base encounter rates, as described in subsection (4)(b) of this section.

(b) Base rates are adjusted to reflect any approved changes in scope of service in calendar years 2002 through 2009.

(c) The adjusted base rates are then increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index.

The result is the year 2009 APM rate for each FQHC that chooses to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency pays FQHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay FQHCs at the encounter rates described in subsection (5) of this section.

(b) Each FQHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM uses each FQHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency will recoup from FQHCs any amount in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rates that the agency pays FQHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each FQHC has the choice of receiving either its PPS rate as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For FQHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For FQHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for FQHCs receiving their initial FQHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and by the cumulative percentage increase in the MEI from calendar years 2009 through 2011. The rates were increased by the MEI effective January 1, 2012, and will be increased by the MEI each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency will recoup from FQHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-022).

(d) For FQHCs that choose to be paid under the revised APM, the agency will periodically rebase the encounter rates using the FQHC cost reports and other relevant data. Rebasing will be done only for FQHCs that are reimbursed under the APM.

(e) The agency will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) ((~~The agency limits encounters to one per client, per day except in the following circumstances:~~

~~(a) The visits occur with different health care professionals with different specialties; or~~

~~(b) There are separate visits with unrelated diagnoses.~~

~~(9) FQHC services and supplies incidental to the provider's services are included in the encounter rate payment.~~

~~(10) Fluoride treatment and sealants must be provided on the same day as an encounter-eligible service. If provided on another day, the rules for non-FQHC services in subsection (11) of this section apply.~~

~~(11) Payments for non-FQHC services provided in an FQHC are made on a fee-for-service basis using the agency's published fee schedules. Non-FQHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.~~

~~(12) For clients enrolled with a managed care organization (MCO), covered FQHC services are paid for by that plan.~~

~~(13) For clients enrolled with an MCO, the agency pays each FQHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).~~

~~(a) The FQHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.~~

~~(b) To ensure that the appropriate amounts are paid to each FQHC, the agency performs an annual reconciliation of the enhancement payments. For each FQHC, the agency will compare the amount actually paid to the amount determined by the following formula: (Managed care encounters times encounter rate) less fee-for-service equivalent of MCO services. If the FQHC has been overpaid, the agency will recoup the appropriate amount. If the FQHC has been underpaid, the agency will pay the difference.~~

~~(14) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service regardless of the type of service performed.~~)) This subsection describes the payment methodology that the agency uses to pay participating FQHCs for services provided during the period beginning on January 1, 2017, and ending December 31, 2018.

(a) Each FQHC may receive payments under the APM described in subsection (7) of this section, or receive payments under the revised APM described in this subsection.

(b) The revised APM is as follows:

(i) The revised APM establishes a budget-neutral, baseline per member per month (PMPM) rate for each FQHC. For the purposes of this section, "budget-neutral" means the cost of the revised APM to the agency will not exceed what would have otherwise been spent not including the revised APM on a per member per year basis.

(ii) The agency pays the FQHC a PMPM payment each month for each managed care client assigned to them by an MCO.

(iii) The agency pays the FQHC a PMPM rate in addition to the amounts the MCO pays the FQHC. The agency may prospectively adjust the FQHC's PMPM rate for any of the following reasons:

(A) Quality and access metrics performance.

(B) FQHC encounter rate changes.

(iv) In accordance with 42 U.S.C. 1396a (bb)(5)(A), the agency performs an annual reconciliation.

(A) If the FQHC was underpaid, the agency pays the difference, and the PMPM rate may be subject to prospective adjustment under (b)(iii) of this subsection.

(B) If the FQHC was overpaid, the PMPM rate may be subject to prospective adjustment under (b)(iii) of this subsection.

NEW SECTION

WAC 182-548-1450 Federally qualified health centers—General payment information. (1) The agency limits encounters to one per client, per day except in the following circumstances:

(a) The visits occur with different health care professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(2) FQHC services and supplies incidental to the provider's services are included in the encounter rate payment.

(3) Fluoride treatment and sealants must be provided on the same day as an encounter-eligible service. If provided on another day, the rules for non-FQHC services in subsection (4) of this section apply.

(4) Payments for non-FQHC services provided in an FQHC are made on a fee-for-service basis using the agency's published fee schedules. Non-FQHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.

(5) For clients enrolled with a managed care organization (MCO), covered FQHC services are paid for by that plan.

(6) For clients enrolled with an MCO, the agency pays each FQHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).

(a) The FQHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each FQHC, the agency performs an annual reconciliation of the enhancement payments. For each FQHC, the agency will compare the amount actually paid to the amount determined by the following formula: (Managed care encounters times encounter rate) less fee-for-service equivalent of MCO services. If the FQHC has been overpaid, the agency will recoup the appropriate amount. If the FQHC has been underpaid, the agency will pay the difference.

(7) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service regardless of the type of service performed.

AMENDATORY SECTION (Amending WSR 15-11-008, filed 5/7/15, effective 6/7/15)

WAC 182-549-1400 Rural health clinics—Reimbursement and limitations. (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the medicaid agency's payment methodology for rural health clinics (RHC) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) For services provided beginning January 1, 2009, RHCs have the choice to be reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM will be at least as much as payments that would have been made under the PPS.

(3) The agency calculates RHC PPS encounter rates for RHC core services as follows:

(a) Until an RHC's first audited medicare cost report is available, the agency pays an average encounter rate of other similar RHCs (whether the RHC is classified as hospital-based or free-standing) within the state, otherwise known as an interim rate.

(b) Upon availability of the RHC's first audited medicare cost report, the agency sets RHC's encounter rates at one hundred percent of its costs as defined in the cost report divided by the total number of encounters the RHC has provided during the time period covered in the audited cost report. RHCs receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then increased each January 1st by the percent change in the medicare economic index (MEI).

(4) For RHCs in existence during calendar years 1999 and 2000, the agency sets the encounter rates prospectively using a weighted average of one hundred percent of the RHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The agency adjusts PPS base encounter rates to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 182-549-1500.

(b) PPS base encounter rates are determined using medicare's audited cost reports, and each year's rate is weighted by the total reported encounters. The agency does not apply a capped amount to these base encounter rates. The formula used to calculate base encounter rates is as follows:

$$\text{Specific RHC Base Encounter Rate} = \frac{\text{(Year 1999 Rate x Year 1999 Encounters) + (Year 2000 Rate x Year 2000 Encounters)}}{\text{(Year 1999 Encounters + Year 2000 Encounters) for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, encounter rates are increased by the MEI and adjusted for any increase or decrease in the RHC's scope of services.

(5) The agency calculates RHC's APM encounter rates for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) The APM utilizes the RHC base encounter rates as described in subsection (4)(b) of this section.

(b) Base rates are increased by each annual percentage, from calendar years 2002 through 2009, of the IHS Global Insight index, also called the APM index.

(c) The result is the year 2009 APM rates for each RHC that chooses to be reimbursed under the APM.

(6) This subsection describes the encounter rates that the agency pays RHCs for services provided during the period beginning April 7, 2011, and ending June 30, 2011. On January 12, 2012, the federal Centers for Medicare and Medicaid Services (CMS) approved a state plan amendment (SPA) containing the methodology outlined in this section.

(a) During the period that CMS approval of the SPA was pending, the agency continued to pay RHCs at the encounter rate described in subsection (5) of this section.

(b) Each RHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (c) of this subsection.

(c) The revised APM uses each RHC's PPS rate for the current calendar year, increased by five percent.

(d) For all payments made for services provided during the period beginning April 7, 2011, and ending June 30, 2011, the agency will recoup from RHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(7) This subsection describes the encounter rate that the agency pays RHCs for services provided on and after July 1, 2011. On January 12, 2012, CMS approved a SPA containing the methodology outlined in this section.

(a) Each RHC has the choice of receiving either its PPS rate, as determined under the method described in subsection (3) of this section, or a rate determined under a revised APM, as described in (b) of this subsection.

(b) The revised APM is as follows:

(i) For RHCs that rebased their rate effective January 1, 2010, the revised APM is their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and January 1, 2011.

(ii) For RHCs that did not rebase their rate effective January 1, 2010, the revised APM is based on their PPS base rate from 2001 (or subsequent year for RHCs receiving their initial RHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and the cumulative increase in the MEI from calendar years 2009 through 2011. The rates will be increased by the MEI effective January 1, 2012, and each January 1st thereafter.

(c) For all payments made for services provided during the period beginning July 1, 2011, and ending January 11, 2012, the agency will recoup from RHCs any amount paid in excess of the encounter rate established in this section. This process is specified in emergency rules that took effect on October 29, 2011, (WSR 11-22-047) and February 25, 2012 (WSR 12-06-002).

(d) For RHCs that choose to be paid under the revised APM, the agency will periodically rebase the encounter rates using the RHC cost reports and other relevant data. Rebasing will be done only for RHCs that are reimbursed under the APM.

(e) The agency will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) ((~~The agency pays for one encounter, per client, per day except in the following circumstances:~~

~~(a) The visits occur with different health care professionals with different specialties; or~~

~~(b) There are separate visits with unrelated diagnoses.~~

~~(9) RHC services and supplies incidental to the provider's services are included in the encounter rate payment.~~

~~(10) Payments for non-RHC services provided in an RHC are made on a fee-for-service basis using the agency's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.~~

~~(11) For clients enrolled with a managed care organization (MCO), covered RHC services are paid for by that plan.~~

~~(12) For clients enrolled with an MCO, the agency pays each RHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).~~

~~(a) The RHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.~~

~~(b) To ensure that the appropriate amounts are paid to each RHC, the agency performs an annual reconciliation of the enhancement payments. For each RHC, the agency will compare the amount actually paid to the amount determined by the following formula: (Managed care encounters times encounter rate) less fee-for-service equivalent of MCO services. If the RHC has been overpaid, the agency will recoup the appropriate amount. If the RHC has been underpaid, the agency will pay the difference.~~

~~(13) Only clients enrolled in the Title XIX (medicaid) program or the Title XXI (CHIP) program are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service, regardless of the type of service performed.~~)) This subsection describes the payment methodology that the agency uses to pay participating RHCs for services provided during the

period beginning January 1, 2017, and ending December 31, 2018.

(a) Each RHC may receive payments under the APM described in subsection (7) of this section, or receive payments under the revised APM described in this subsection.

(b) The revised APM is as follows:

(i) The revised APM establishes a budget-neutral, baseline per member per month (PMPM) rate for each RHC. For the purposes of this section, "budget-neutral" means the cost of the revised APM to the agency will not exceed what would have otherwise been spent not including the revised APM on a per member per year basis.

(ii) The agency pays the RHC a PMPM payment each month for each managed care client assigned to them by an MCO.

(iii) The agency pays the RHC a PMPM payment each month in addition to the amounts the MCO pays the RHC. The agency may prospectively adjust the RHC's PMPM rate for any of the following reasons:

(A) Quality and access metrics performance.

(B) RHC encounter rate changes.

(iv) In accordance with 42 U.S.C. 1396a (bb)(5)(A), the agency performs an annual reconciliation.

(A) If the RHC was underpaid, the agency pays the difference, and the PMPM rate may be subject to prospective adjustment under (b)(iii) of this subsection.

(B) If the RHC was overpaid, the PMPM rate may be subject to prospective adjustment under (b)(iii) of this subsection.

NEW SECTION

WAC 182-549-1450 Rural health clinics—General payment information. (1) The agency pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different health care professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(2) RHC services and supplies incidental to the provider's services are included in the encounter rate payment.

(3) Payments for non-RHC services provided in an RHC are made on a fee-for-service basis using the agency's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters 182-500 through 182-557 WAC.

(4) For clients enrolled with a managed care organization (MCO), covered RHC services are paid for by that plan.

(5) For clients enrolled with an MCO, the agency pays each RHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).

(a) The RHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each RHC, the agency performs an annual reconciliation of the enhancement payments. For each RHC, the agency will compare the amount actually paid to the amount determined by the following formula: (Managed care encounters times encounter rate) less fee-for-service equivalent of MCO services. If the RHC has been overpaid, the agency will recoup the appropriate amount. If the RHC has been underpaid, the agency will pay the difference.

(6) Only clients enrolled in the Title XIX (medicaid) program or the Title XXI (CHIP) program are eligible for encounter or enhancement payments. The agency does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service, regardless of the type of service performed.

WSR 16-17-152
WITHDRAWL OF PROPOSED RULES
GAMBLING COMMISSION
[Filed August 24, 2016, 11:23 a.m.]

Please withdraw WSR 16-14-111 filed on July 6, 2016. The petitioner, Theresa Malphrus, has changed her mind and asked that her petition be revised. We will file an original notice of proposed rule making (CR-102) to reflect her revised request.

Michelle Rancour
Acting Rules Coordinator