

WSR 14-13-051
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Children's Administration)

[Filed June 12, 2014, 8:11 a.m., effective July 13, 2014]

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

Purpose: The WAC supports E2SSB 5405 - Extended foster care services. E2SSB 5405 authorized children's administration to additionally provide extended foster care services to youth eighteen up to twenty-one years old who are eligible to receive foster care services authorized under RCW 74.13.031 and participating in a program or activity designed to promote employment or remove barriers to employment secondary vocational program. Youth whose dependency has been dismissed may enter a voluntary placement agreement (VPA) one time. A youth must agree to the entry of a dependency order within one hundred eighty days of the date the youth was placed in foster care through the VPA to continue to receive services. CR-102 was filed on November 20, 2013, as WSR 13-23-102 and hearing was held on January 7, 2014.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-25-0518, 388-25-0520, 388-25-0522, 388-25-0524, 388-25-0526 and 388-25-0538; and amending WAC 388-25-0110; 388-25-0502, 388-25-0504, 388-25-0506, 388-25-0508, 388-25-0510, 388-25-0515, 388-25-0516, 388-25-0528, 388-25-0530, 388-25-0532, 388-25-0534, 388-25-0536, 388-25-0540, 388-25-0544, 388-25-0546, 388-25-0548, and 388-148-0010.

Statutory Authority for Adoption: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030.

Adopted under notice filed as WSR 13-23-102 on November 20, 2013.

Changes Other than Editing from Proposed to Adopted Version: Change was made to:

- WAC 388-25-0508(2), removed the time frame for youth who are expected to return to care in order to be considered in foster care.
- WAC 388-25-0510(4), removed the reference to youth who are absent from placement.
- WAC 388-25-0534(2), changed the WAC being referenced from WAC 388-148-2506 to 388-25-2506.
- WAC 388-148-0010, definition of VPA to reflect "eligible youth" instead of "nonminor dependents."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 17, Repealed 6; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 17, Repealed 6.

Date Adopted: June 11, 2014.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0110 What is the effective date for termination of foster care payments? (1) The department ends payment on the day before the child actually leaves the foster home or facility. The department does not pay for the last day that a child is in a foster care home or facility.

(2) The department terminates family foster care payments for children in family foster care effective the date:

- (a) The child no longer needs foster care; or
- (b) The child no longer resides in foster care (~~except as provided in WAC 388-25-0180~~); (~~or~~)

(c) The child reaches the age of eighteen(-); or
(d) The child is no longer eligible for the extended foster care program and the dependency action is dismissed or voluntary placement agreement (VPA) is revoked. To be eligible for the extended foster care program a child, age eighteen must be:

(i) ~~((If the child continues to attend, but has not finished, high school or an equivalent educational program at the age of eighteen and has a need for continued family foster care services, the department may continue payments until the date the child completes the high school program or equivalent educational or vocational program. The department must not extend payments for a youth in care beyond age twenty-))~~
Completing a high school diploma or high school equivalency certificate;

(ii) ~~((If the child has applied and demonstrates he or she intends to timely enroll, or is enrolled and participating in a post-secondary education program, or a post-secondary vocational program at the age of eighteen and has a need for continued family foster care services, the department may continue payments until the date the child reaches his or her twenty-first birthday or is no longer enrolled in and participating in a post-secondary program, whichever is earlier))~~
Completing a post-secondary academic or vocational program; or

(iii) Participating in a program or activity designed to promote employment or remove barriers to employment.

(3) The department must terminate foster care payments for children in the behavior rehabilitative services program effective the date:

- (a) The child no longer needs rehabilitative services; or
- (b) The child is no longer served through contracted rehabilitative services program except as provided in WAC 388-25-0030; or

(c) The child reaches the age of eighteen and continues to attend, but has not finished, high school or an equivalent educational program and has a need for continued rehabilitative treatment services, the department may continue payments until the date the youth completes the high school program or equivalent educational or vocational program. The

department must not extend payments for a youth in care beyond age twenty.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0502 What is the purpose of the extended foster care program? The extended foster care program provides an opportunity for young adults in foster care at age eighteen to voluntarily agree to continue receiving foster care services, including placement services, while the youth completes a secondary or post-secondary academic or vocational program, or participates in a program or activity designed to promote employment or remove barriers to employment.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0504 What is extended foster care? Extended foster care is a program offered to young adults, age eighteen up to twenty-one, who turn eighteen while in foster care, to enable them to ~~((complete))~~:

(1) ~~((A))~~ Complete a high school diploma or ~~((general))~~ high school equivalency ~~((diploma))~~ certificate;

(2) ~~((Post-secondary))~~ Complete a post-secondary academic or vocational ~~((education))~~ program;

(3) Participate in a program or activity designed to promote employment or remove barriers to employment.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0506 Who is eligible for extended foster care? To be eligible for the extended foster care program a youth, on his or her eighteenth birthday, must:

(1) Be dependent under chapter 13.34 RCW ~~((;~~
~~((Be))~~, be placed in foster care (as defined in WAC 388-25-0508) by children's administration, and:

(a) Be enrolled (as described in WAC 388-25-0512) in a high school or ~~((secondary education))~~ high school equivalency program; or

(b) Be enrolled (as described in WAC 388-25-0512) in a post-secondary academic or vocational education program; or

(c) Have applied for and can demonstrate intent to timely enroll in a post-secondary academic or vocational education program (as described in WAC 388-25-0514) ~~((;))~~ or

(d) Be participating in a program or activity designed to promote employment or remove barriers to employment.

(2) Have had their dependency dismissed on their eighteenth birthday as the youth did not meet any of the criteria found in subsections (1)(a) through (d) of this section, or did not agree to participate in the program and the youth is requesting to participate in the extended foster care program prior to reaching the age of nineteen. Youth must meet one of

the criteria in subsections (1)(a) through (d) when requesting to participate in the extended foster care program.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0508 When is a youth considered to be "in foster care"? For the purpose of determining initial eligibility for the extended foster care program, a youth is in foster care if the youth is under children's administration (CA) placement and care authority, is placed by CA in out of home care, in relative care, licensed foster home, licensed group care, or other suitable person placement. ~~((Provided))~~ A youth is considered to be in foster care:

(1) ~~((A))~~ If the youth ~~((who))~~ is temporarily away from a foster care placement in:

(a) A hospital;

(b) A drug/alcohol treatment facility;

(c) A mental health treatment facility; or

(d) ~~((For))~~ A county detention center for less than thirty days ~~((in a county detention center is considered to be in foster care)).~~

(2) ~~((A))~~ If the youth ~~((who))~~ is temporarily away from his or her foster care placement without permission of the case worker or ~~((care giver))~~ caregiver, ~~((but who is expected to return to foster care within twenty days;))~~ the youth is considered to be in foster care for purposes of determining initial eligibility.

(3) ~~((A))~~ If the youth ~~((who))~~ is committed to juvenile justice and rehabilitation administration custody and ~~((who))~~ resides in a foster home, group home, or community facility, as defined in RCW 74.15.020 (1)(a).

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0510 When is a youth not "in foster care"? For the purposes of determining initial eligibility for the extended foster care program, a youth is not in foster care if the youth is:

(1) Placed with a parent;

(2) In a dependency guardianship or in a chapter 13.36 RCW; or

(3) Committed to and residing in a juvenile justice and rehabilitation administration ~~((JRA))~~ institution (as defined in RCW 13.30.020(12)) or to the department of corrections ~~((;~~
~~or~~

~~((4) Absent from his/her foster care placement without permission of the case worker or care giver for more than twenty consecutive days)).~~

NEW SECTION

WAC 388-25-0515 How does a youth demonstrate participation in a program or activity designed to promote employment or remove barriers to employment? (1) Actively participate in a state, federal, tribal or community program that addresses any barriers to employment that the youth may have and/or prepares or trains individuals for employment; or

(2) Involved in a self-directed program that will remove any barriers to employment and will prepare a youth for employment: or

(3) Working less than eighty hours a month.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0516 What if an eligible youth does not want to participate in the extended foster care program ((at age eighteen))? ((Youth may elect to participate in the extended foster care program beginning on their eighteenth birthday. The law recognizes an eligible youth may need time beyond the eighteenth birthday to consider if they want continued foster care services. It provides a six-month grace period or a time for "trial independence", from date of youth's eighteenth birthday, to give the youth an opportunity to change their mind)) Participation in extended foster care is voluntary. A youth who does not agree to participate in extended foster may request the court to dismiss his or her dependency case.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0528 How does a youth agree to participate in the extended foster care program? (1) An eligible dependent youth can agree to participate by:

((1)) (a) Signing an extended foster care agreement; or

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

(2) An eligible nondependent youth can agree to participate by:

(a) Signing a voluntary placement agreement (VPA) before reaching age nineteen; or

(b) Establishing a nonminor dependency before reaching age nineteen.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0530 Where do youth obtain information about how to participate in the program? (1) The department must provide dependent youth between the age of seventeen and seventeen and a half.

(a) Written documentation explaining the availability of extended foster care services.

(b) Detailed instructions on how to access such services after he or she reached age eighteen.

(2) Youth can contact:

((1)) (a) Youth's attorney/CASA/GAL.

((2)) (b) Youth's ((social)) worker.

((3)) (c) Local children's administration office.

((4)) (d) www.independence.wa.gov.

((5)) (e) 1-866-END-HARM.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0532 Can ((a youth participating in the extended foster care program to complete a secondary education or equivalency program continue to receive extended foster care services to participate in a post-secondary education program)) an extended foster care participant continue in extended foster care under a different eligibility category? Yes((, if at the time the secondary program is completed, the youth is enrolled in, or has applied to, and can demonstrate they intend to timely enroll in, a post-secondary academic or vocational program)). A youth may transition among the eligibility categories while under the same voluntary placement agreement or dependency order, so long as the youth remains eligible during the transition.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0534 ((Is there a trial independence period for a youth who completes his or her secondary education program while participating in extended foster care and before the youth enters a post-secondary program)) If an extended foster care participant loses his or her eligibility before he or she turns nineteen, can he or she reapply for extended foster care? ((No, if a youth completes a secondary education program while in extended foster care, the dependency will be dismissed and foster care services will end, unless the youth has enrolled in, or applied to and can demonstrate an intent to timely enroll in, a post-secondary academic or vocational program)) Yes. If a youth was receiving extended foster care services and lost eligibility, he or she may reapply as long as:

(1) The youth has not turned nineteen; and

(2) The youth meets one of the conditions for eligibility in WAC 388-25-0506; and

(3) The youth has not entered into a prior voluntary placement agreement with the department for the purposes of participating in the extended foster care program.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0536 What are CA's responsibilities to a youth who is participating in extended foster care? Children's administration (CA) is required to have placement and care authority over the youth and to provide foster care services, including transition planning and independent living services, medical assistance through medicaid, and case management. Case management includes findings or approving a foster care placement for the youth, convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the youth, caseworker visits, and court-related duties, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the youth is progressing toward independence within state and federal mandates. CA has responsibility to inform the court of the status of the child (including health, safety, welfare, education status and continuing eligi-

bility for extended foster care program). The department's placement and care authority over a youth receiving extended foster care services is solely for the purpose of providing services and does not create a legal responsibility for the actions of the youth receiving extended foster care services.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0540 How does CA determine a youth's continuing eligibility for the extended foster care program? At least every six months, children's administration will determine if youth continues to:

- (1) Agree to participate in the extended foster care program.
- (2) Be enrolled in an education program, vocational program, or participating in a program or activity designed to promote employment or remove barriers to employment, or is transitioning from one status to another.
- (3) Continue to reside in an approved placement.
- (4) Comply with youth's responsibilities in WAC 388-25-0546.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0544 What are the youth's rights in the extended foster care program? Youth have a right to:

- (1) An approved foster care placement.
- (2) Foster care services including medical assistance through medicaid.
- (3) Participate in the court process as a party to the case.
- (4) Have an attorney appointed for them upon filing a notice of intent to file a petition for dependency and in dependency proceedings.
- (5) End their participation in the program at any time.
- (6) Referrals to community resources as appropriate.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0546 What must the youth do to remain in the extended foster care program? Unless otherwise authorized by court order the youth must:

- (1) Agree to participate in the program as expressed in the written extended foster care agreement;
- (2) Maintain the standard of eligibility as set by the youth's academic program or employment related program;
- (3) Participate in the case plan, including monthly health and safety visits;
- (4) Acknowledge that children's administration (CA) has responsibility for the youth's care and placement by authorizing CA to have access to records related to court-ordered medical, mental health, drug/alcohol treatment services, educational records needed to determine continuing eligibility for the program, and for additional necessary services; and
- (5) Remain in the approved foster care placement and follow placement rules. This means the youth will:
 - (a) Stay in the placement identified by CA or approved by the court;

(b) Obtain approval from case worker and notify caregiver for extended (~~(absence)~~) absences from the placement of more than three days; and

(c) Comply with court orders and any specific rules developed in collaboration by the youth, caregiver and social worker.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0548 When is a youth no longer eligible for the extended foster care program? A youth is no longer eligible for the extended foster care program and the department will ask the court to dismiss the dependency when the youth:

- (1) Graduates from high school or equivalency program, and has not enrolled in, or applied for and demonstrated an intent to timely enroll in a post-secondary academic or vocational program;
- (2) Graduates from a post-secondary education or vocational program;
- (3) Reaches their twenty-first birthday;
- (4) Is no longer participating or enrolled in high school(~~(s)~~) or equivalency program, post-secondary or vocational program, or in a program promoting employment or removing barriers to employment;
- (5) No longer agrees to participate in foster care services;
- (6) Fails or refuses to comply with youth responsibilities outlined in WAC 388-25-0546; or
- (7) Is incarcerated in an adult detention facility on a criminal conviction.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-148-0010 What definitions do I need to know to understand this chapter? The following definitions are for the purpose of this chapter and are important to understand these rules:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or mistreatment of a child where the child's health, welfare and safety are harmed.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and/or emotional condition.

"Capacity" means the maximum number of children that a home or facility is licensed to care for at a given time.

"Care provider" means any licensed or certified person or organization or staff member of a licensed organization that provides twenty-four-hour care for children.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child. Case managers are responsible for implementing the child's case plan, assisting in achieving those goals, and assisting with day-to-day problem solving.

"Certification" means:

- (1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that it meets the minimum licensing requirements; or

(2) Department licensing of a child-placing agency to certify that a foster home meets licensing requirements.

"Children" or **"youth,"** for this chapter, means individuals who are:

(1) Under eighteen years old, including expectant mothers under eighteen years old; or

(2) Up to twenty-one years of age and pursuing a high school ~~(, equivalent course of study (GED), or vocational program or post-secondary academic or)~~ diploma or high school equivalency certificate, post-secondary vocational program, or in a program promoting employment or removing barriers to employment;

(3) Up to twenty-one years of age with developmental disabilities; or

(4) Up to twenty-one years of age if under the custody of the Washington state juvenile rehabilitation administration.

"Child-placing agency" means an agency licensed to place children for temporary care, continued care or adoption.

"Crisis residential center (CRC)" means an agency under contract with DSHS that provides temporary, protective care to children in a foster home, regular (semi-secure) or secure group setting.

"Compliance agreement" means a written licensing improvement plan to address deficiencies in specific skills, abilities or other issues of a fully licensed home or facility in order to maintain and/or increase the safety and well-being of children in their care.

"DCFS" means the division of children and family services.

"DDD" means division of developmental disabilities.

"Department" means the department of social and health services (DSHS).

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources.

"Firearms" means guns or weapons, including but not limited to the following: BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, and shotguns.

"Foster-adopt" means placement of a child with a foster parent(s) who intends to adopt the child, if possible.

"Foster home or foster family home" means person(s) licensed to regularly provide care on a twenty-four-hour basis to one or more children in the person's home.

"Full licensure" means an entity meets the requirements established by the state for licensing or approved as meeting state minimum licensing requirements.

"Group care facility for children" means a location maintained and operated for a group of children on a twenty-four-hour basis.

"Group receiving center" or **"GRC"** means a facility providing the basic needs of food, shelter, and supervision for more than six children placed by the department, generally for thirty or fewer days. A group receiving center is considered a group care program and must comply with the group care facility licensing requirements.

"Hearing" means the administrative review process.

"I" refers to anyone who operates or owns a foster home, staffed residential home, and group facilities, includ-

ing group homes, child-placing agencies, maternity homes, day treatment centers, and crisis residential centers.

"Infant" means a child under one year of age.

"License" means a permit issued by the department affirming that a home or facility meets the minimum licensing requirements.

"Licensor" means:

(1) A division of licensed resources (DLR) employee at DSHS who:

(a) Approves licenses or certifications for foster homes, group facilities, and child-placing agencies; and

(b) Monitors homes and facilities to ensure that they continue to meet minimum health and safety requirements.

(2) An employee of a child-placing agency who:

(a) Attests that foster homes supervised by the child-placing agency meets licensing requirements; and

(b) Monitors those foster homes to ensure they continue to meet the minimum licensing standards.

"Maternity service" as defined in RCW 74.15.020.

"Medically fragile" means the condition of a child who has a chronic illness or severe medical disabilities requiring regular nursing visits, extraordinary medical monitoring, or on-going (other than routine) physician's care.

"Missing child" means:

(1) Any child up to eighteen years of age for whom Children's Administration (CA) has custody and control (not including children in dependency guardianship) and:

(a) The child's whereabouts are unknown; and/or

(b) The child has left care without the permission of the child's caregiver or CA.

(2) Children who are missing are categorized under one of the following definitions:

(a) **"Taken from placement"** means that a child's whereabouts are unknown, and it is believed that the child is being or has been concealed, detained or removed by another person from a court-ordered placement and the removal, concealment or detainment is in violation of the court order;

(b) **"Absence not authorized, whereabouts unknown"** means the child is not believed to have been taken from placement, did not have permission to leave the placement, and there has been no contact with the child and the whereabouts of the child is unknown; or

(c) **"Absence not authorized, whereabouts known"** means that a child has left his or her placement without permission and the social worker has some contact with the child or may periodically have information as to the whereabouts of the child.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at-risk youth or children in need of services, and their parents.

"Nonambulatory" means not able to walk or traverse a normal path to safety without the physical assistance of another individual.

"Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Probationary license" means a license issued as part of a disciplinary action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies to minimum licensing requirements.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include anti-psychotic, antidepressants and anti-anxiety medications.

"Relative" means a person who is related to the child as defined in RCW 74.15.020 (4)(a)(i), (ii), (iii), and (iv) only.

"Respite" means brief, temporary relief care provided to a child and his or her parents, legal guardians, or foster parents with the respite provider fulfilling some or all of the functions of the care-taking responsibilities of the parent, legal guardian, or foster parent.

"Secure facilities" means a crisis residential center that has locking doors and windows, or secured perimeters intended to prevent children from leaving without permission.

"Service plan" means a description of the services to be provided or performed and who has responsibility to provide or perform the activities for a child or child's family.

"Severe developmental disabilities" means significant disabling, physical and/or mental condition(s) that cause a child to need external support for self-direction, self-support and social participation.

"Social service staff" means a clinician, program manager, case manager, consultant, or other staff person who is an employee of the agency or hired to develop and implement the child's individual service and treatment plans.

"Staffed residential home" means a licensed home providing twenty-four-hour care for six or fewer children or expectant mothers. The home may employ staff to care for children or expectant mothers. It may or may not be a family residence.

"Standard precautions" is a term relating to procedures designed to prevent transmission of bloodborne pathogens in health care and other settings. Under standard precautions, blood or other potentially infectious materials of all people should always be considered potentially infectious for HIV and other pathogens. Individuals should take appropriate precautions using personal protective equipment like gloves to prevent contact with blood or other bodily fluids.

"Supervised independent living" includes, but is not limited to: apartment living, room and board arrangements, college or university dormitories, and shared roommate settings, which must be approved by the children's administration or the court.

"Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement with an eligible youth who agrees to submit to the care and authority of the department for the purpose of participating in the extended foster care program.

"Washington state patrol fire protection bureau" or **"WSP/FPB"** means the state fire marshal.

"We" or **"our"** refers to the department of social and health services, including DLR licensors and DCFS social workers.

"You" refers to anyone who operates a foster home, staffed residential home, and group facilities, including group homes, maternity programs, day treatment programs, crisis residential centers, group receiving centers, and child-placing agencies.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-25-0518 What is the trial independence or grace period?
- WAC 388-25-0520 Does an eligible youth who elects to participate in extended foster care on his or her eighteenth birthday receive a trial independence period?
- WAC 388-25-0522 When does the six-month trial independence period end?
- WAC 388-25-0524 If a youth does not remain enrolled in school during the trial independence period may the youth still elect to participate in the program?
- WAC 388-25-0526 Does a youth have to agree to participate in extended foster care program?
- WAC 388-25-0538 What is the CA's responsibility for the youth during the six-month trial independence period?

WSR 14-14-011 PERMANENT RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 14-144—Filed June 19, 2014, 4:01 p.m., effective July 20, 2014]

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

Purpose: Amend rules for commercial salmon fishing in Puget Sound, including WAC 220-47-307 Closed areas—Puget Sound salmon, 220-47-311 Purse seine—Open periods, 220-47-401 Reef net—Open periods, 220-47-411 Gillnet—Open periods, and 220-47-428 Beach seine—Open periods.

Citation of Existing Rules Affected by this Order: Amending WAC 220-47-307, 220-47-311, 220-47-401, 220-47-411, and 220-47-428.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 14-05-102 on February 19, 2014, and WSR 14-09-108 on April 23, 2014.

Changes Other than Editing from Proposed to Adopted Version: Minor changes were made to WAC 220-47-311 and 220-47-411 after the supplemental CR-102 was filed. Changes made to both WACs reflect edits to alternate "first

starts" for the gear groups in the Hood Canal and South Sound fall chum fisheries.

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

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Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 0.

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

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

Date Adopted: June 13, 2014.

Philip Anderson
Director

AMENDATORY SECTION (Amending WSR 13-15-148, filed 7/23/13, effective 8/23/13)

WAC 220-47-307 Closed areas—Puget Sound salmon. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 -

(1) The San Juan Island Preserve as defined in WAC 220-47-262.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwestern-most point of Fidalgo Head, and including those

waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-47-252.

Area 7B -

(1) That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

(2) That portion of Bellingham Bay and Portage Bay adjacent to Lummi Indian Reservation is closed north and west of a line from the intersection of Marine Drive and Hoff Road (48°46'59"N, 122°34'25"W) projected 180° true for 2.75 nautical miles (nm) to a point at 48°45'11"N, 122°34'25"W, then 250° true for 1.4 nm to a point at 48°44'50"N, 122°35'42"W, then 270° true for 1.4 nm to 48°44'50"N, 122°37'08"W, then 230° true for 1.3 nm to 48°44'24"N, 122°37'52"W, then 200° true for 1 nm to 48°43'45"N, 122°38'12"W, then 90° true for 1 nm to a point just northeast of Portage Island (48°43'45"N, 122°37'14"W), then 160° true for 1.4 nm to a point just east of Portage Island (48°42'52"N, 122°36'37"W).

(3) Additional coho seasonal closure: September 1 through September 21, closed to gillnets in the waters of Area 7B west of a line from Point Francis (48°41'46"N, 122°36'32"W) to the red and green buoy southeast of Point Francis (48°40'27"N, 122°35'24"W), then to the northernmost tip of Eliza Island (48°39'38"N, 122°35'14"W), then along the eastern shore of the island to its southernmost tip (48°38'40"N, 122°34'57"W) and then north of a line from the southernmost tip of Eliza Island to Carter Point (48°38'24"N, 122°36'31"W). Nontreaty purse seiners fishing September ~~(1-21)~~ 1 through September 21 in this area must release coho.

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 -

(1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlenn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A -

(1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D,

thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, except when open for pink fisheries.

(2) Additional coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

~~((3) Adjusted pink seasonal closure: Those waters easterly of a line projected from the southernmost point of Area 8D, the point of which begins from a line projected 225° from the pilings at Old Bower's Resort to a point 2,000 feet offshore, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, and waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.))~~

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 -

(1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional pink seasonal closure: The area east inside of the line originating from West Point and extending west to the closest midchannel buoy, thence true through Point Wells until reaching latitude 47°44'500"N, thence extending directly east to the shoreline.

(4) Additional purse seine pink seasonal closure: The area within 500 feet of the eastern shore in Area 10 is closed to purse seines north of latitude 47°44'500"N.

(5) Additional coho and chum seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Fourmile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 -

(1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Area 12 -

(1) Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek,

thence southerly to the tip of the outermost northern headland of Little Beef Creek.

(2) Additional purse seine chum seasonal closure:

(a) Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line are closed to purse seines except this area is open for purse seines on October 27 and November 3.

(b) Those waters of Area 12 within 2 miles of the Hood Canal Bridge are closed to purse seines on October 27 and November 3.

Area 12A -

(1) Those waters north of a line projected due east from Broad Spit.

(2) Those waters within 1,000 feet of the mouth of the Quilcene River.

Area 12B -

(1) Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

~~((Areas 12, 12A, and 12B -- (1) Those waters within 1,000 feet of the mouth of the Quilcene River.~~

~~(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.))~~ (2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Areas 12, 12B and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12C -

(1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodspout marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

~~**Area(s) 12 ((and 12D -- Additional coho and)) -**~~ **Chum seasonal closures:**

(1) Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line (, and those waters of Area 12D)) are closed to purse seines except this area is open for purse seines on October 27 and November 3.

(2) Those waters of Area 12 within 2 miles of the Hood Canal Bridge are closed to purse seines on October 27 and November 3.

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

AMENDATORY SECTION (Amending WSR 13-15-148, filed 7/23/13, effective 8/23/13)

WAC 220-47-311 Purse seine—Open periods. (1) It is unlawful to take, fish for, or possess salmon taken with purse

seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	10/11, 10/12, ((10/13, 10/15, 10/17,)) 10/14, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1(-11/2)
	7AM - 5PM	11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8(-11/9)

Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

7B, 7C:	6AM - 9PM	((8/44)) 8/13
7B, 7C:	6AM - 8PM	((8/21, 8/28, 9/4)) 8/20, 8/27, 9/3
7B:	7AM - 8PM	((9/9, 9/11, 9/13)) 9/8, 9/10, 9/12
	7AM - 7PM	((9/16, 9/18, 9/20)) 9/15, 9/17, 9/19
	7AM ((9/22)) 9/21	6PM ((10/26)) 10/25
	7AM ((10/28)) 10/27	4PM ((11/1)) 10/31
	7AM ((11/4)) 11/3	4PM ((11/8)) 11/7
	7AM ((11/11)) 11/10	4PM ((11/15)) 11/14
	7AM ((11/18)) 11/17	4PM ((11/22)) 11/21
	7AM ((11/25)) 11/24	4PM ((11/29)) 11/28

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

((8:	6AM - 7PM	-	8/21, 8/22, 8/26, 8/27, 9/4)
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AREA	TIME	DATE	
8A:	((7AM - 7PM	-	8/19, 8/20, 8/28, 8/29, 9/3)
	7AM - 7PM	-	Limited participation - Two boats ((9/23, 9/30)) 9/15, 9/22
8D:	7AM - 7PM	-	((9/23, 9/30)) 9/22, 9/29, 10/6
	7AM - 6PM	-	((10/14, 10/21)) 10/13, 10/20, 10/28, 10/30
	7AM - 5PM	-	((11/4, 11/11, 11/13, 11/18)) 11/3, 11/11, 11/13, 11/17, 11/25
10:	((7AM - 7PM	-	Limited participation - 5 boats 8/15, 8/21, 8/22, 8/27))
10, 11:	7AM - 6PM	-	((10/22, 10/28, 10/30)) 10/16, 10/20, 10/28
	7AM - 5PM	-	((11/5)) 11/3, 11/11, 11/13, ((11/19, 11/26)) 11/17, 11/25
12, 12B:	7AM - 6PM	-	((10/22, 10/28, 10/30)) 10/16, 10/20, 10/28
	7AM - 5PM	-	((11/5)) 11/3, 11/11, 11/13, ((11/19)) 11/17
12C:	7AM - 5PM	-	11/3, 11/11, 11/13, ((11/19, 11/26)) 11/17, 11/25

Note: In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f). ~~((During limited participation fisheries it is unlawful for vessels to take or fish for salmon without department observers on board.))~~

(2) It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

(a) Chinook salmon - At all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 20 in Area 7B.

(b) Coho salmon - At all times in Areas 7, 7A, 10, and 11, and prior to September 1 in Area 7B.

(c) Chum salmon - Prior to October 1 in Areas 7 and 7A, and at all times in 8A.

(d) All other saltwater and freshwater areas - Closed for all species at all times.

AMENDATORY SECTION (Amending WSR 13-15-148, filed 7/23/13, effective 8/23/13)

WAC 220-47-411 Gillnet—Open periods. It is unlawful to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM - 7PM	9/21, 9/22, 9/24, 9/25, 9/26, ((9/27)) 9/29, 9/30, 10/1, 10/2, 10/3, ((10/4)) 10/6, 10/7, 10/8, 10/9, 10/10, ((10/11)) 10/13, 10/14, 10/15, 10/16, 10/17, ((10/18)) 10/20, 10/21, 10/22, 10/23, 10/24(-10/25)	5"

AREA	TIME		DATE(S)	MINIMUM MESH
7, 7A:	7AM	-	Midnight; use of recovery box required <u>10/11, 10/12, ((10/13, 10/15, 10/17;))</u> <u>10/14, 10/18((, 10/19))</u>	6 1/4"
	7AM	-	Midnight <u>10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8((, 11/9))</u>	6 1/4"

Note: In Areas 7 and 7A after October 9 but prior to October ((20)) 19, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f) when coho and Chinook release is required.

7B, 7C:	7PM	-	8AM NIGHTLY ((8/11)) <u>8/10, 8/12, 8/13, ((8/14)) 8/17, 8/18, 8/19, 8/20, ((8/21)) 8/24, 8/25, 8/26, 8/27((, 8/28))</u>	7"
7B, 7C:	7AM ((9/4)) <u>8/31</u>	-	7AM ((9/6)) <u>9/5</u>	5"
7B:	7AM ((9/8)) <u>9/7</u>	-	7AM 9/12	<u>5"</u>
	7AM ((9/15)) <u>9/14</u>	-	7AM 9/19	5"
	7AM ((9/22)) <u>9/21</u>	-	Midnight ((10/26)) <u>10/25</u>	5"
	7AM ((10/28)) <u>10/27</u>	-	4PM ((11/1)) <u>10/31</u>	6 1/4"
	6AM ((11/4)) <u>11/3</u>	-	4PM ((11/8)) <u>11/7</u>	6 1/4"
	6AM ((11/11)) <u>11/10</u>	-	4PM ((11/15)) <u>11/14</u>	6 1/4"
	6 AM ((11/18)) <u>11/17</u>	-	4PM ((11/22)) <u>11/21</u>	6 1/4"
	7 AM ((11/25)) <u>11/24</u>	-	4PM ((11/29)) <u>11/28</u>	6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gillnets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

8:	((5AM	-	10PM	8/19, 8/20, 8/28, 8/29	5" minimum and 5 1/2" maximum
	6AM	-	10PM	9/3	5" minimum and 5 1/2" maximum))

Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gillnets greater than 60-mesh maximum depth. Fishers must also use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8A:	((5AM	-	10PM	8/21, 8/22, 8/26, 8/27	5" minimum and 5 1/2" maximum
	6AM	-	10PM	9/4	5" minimum and 5 1/2" maximum))
	6PM	-	8AM	Limited participation; 2 boats only ((9/24)) <u>9/17</u>	5"
	6PM	-	8AM	NIGHTLY ((10/1, 10/2)) <u>9/23, 9/24</u>	5"

Note: In Area 8A fishers must use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8D:	6PM	-	8AM	NIGHTLY ((9/22, 9/26, 9/29, 10/3, 10/6, 10/10)) <u>9/21, 9/25, 9/28, 10/2, 10/5, 10/9</u>	5"
	6PM ((9/23)) <u>9/22</u>	-	8AM ((9/26)) <u>9/25</u>	5"	

AREA	TIME		DATE(S)	MINIMUM MESH
	6PM (9/30) <u>9/29</u>	-	8AM (10/3) <u>10/2</u>	5"
	6PM (10/7) <u>10/6</u>	-	8AM (10/10) <u>10/9</u>	5"
	5PM	-	8AM (10/13, 10/17) <u>10/12, 10/16</u>	5"
	5PM (10/14) <u>10/13</u>	-	8AM (10/17) <u>10/16</u>	5"
	5PM	-	9AM (10/20, 10/24, 10/27, 10/31, 11/3, 11/7) <u>10/19, 10/23, 10/26, 10/30</u>	5"
	5PM (10/21) <u>10/20</u>	-	9AM (10/24) <u>10/23</u>	5"
	5PM (10/28) <u>10/27</u>	-	9AM (10/31) <u>10/30</u>	5"
	(5PM 11/4) <u>4PM</u>	-	(9AM 11/7) <u>8AM</u>	5"
	<u>4PM 11/3</u>	=	<u>8AM 11/6</u>	<u>5"</u>
	6AM	-	6PM <u>11/12, 11/13, (11/14) 11/19, 11/20, (11/21, 11/27, 11/28)</u>	6 1/4"
	6AM	-	4PM (11/15, 11/22, 11/29) <u>11/14, 11/21</u>	6 1/4"
	<u>7AM</u>	=	<u>6PM 11/26, 11/27</u>	<u>6 1/4"</u>
	<u>7AM</u>	=	<u>4PM 11/28</u>	<u>6 1/4"</u>
9A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM (8/25) <u>8/24</u>	-	7PM (11/2) <u>11/1</u>	5"
Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.				
10:	(7PM)	-	7AM <u>Limited participation—5 boats 8/14, 8/19, 8/20, 8/27</u>	4 1/2" minimum and 5 1/2" maximum)
Note: In Area 10 fishers must use minimum 4 1/2" and maximum 5 1/2" mesh during pink salmon management periods. Also, during August or September openings, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 90 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f). During all limited participation fisheries, it is unlawful for vessels to take or fish for salmon without department observers on board.				
10, 11:	5PM	-	9AM <u>NIGHTLY (10/20, 10/23, 11/3, 11/6) 10/14, 10/21, 10/23, 10/26, 10/30</u>	6 1/4"
	<u>5PM</u>	=	<u>7AM NIGHTLY 10/15</u>	<u>6 1/4"</u>
	(5PM) <u>4PM</u>	-	8AM (10/29) <u>11/4, 11/6, 11/9, 11/12, 11/18, 11/20, 11/23, 11/26</u>	6 1/4"
	(4PM)	-	9AM <u>NIGHTLY 11/12, 11/17, 11/24</u>	<u>6 1/4"</u>
	4PM	-	(Midnight) <u>7AM NIGHTLY (10/31, 11/14, 11/20, 11/27) 11/12</u>	6 1/4"
12A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gillnet gear.	5"
Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.				
12, 12B:	7AM	-	8PM <u>10/14, 10/15, 10/21, 10/23, (10/29, 10/31, 11/4, 11/6)</u>	6 1/4"
	<u>7AM</u>	=	<u>7PM 10/27, 10/30</u>	<u>6 1/4"</u>
	6AM	-	6PM <u>11/4, 11/6, 11/10, 11/12, (11/14) 11/18, 11/20</u>	6 1/4"
12C:	6AM	-	6PM <u>11/4, 11/6, 11/10, 11/12, (11/14) 11/18, 11/20, 11/24, (11/25) 11/26</u>	6 1/4"

All other saltwater and freshwater areas - Closed.

Nightly openings refer to the start date.

AREA	TIME	DATE(S)	MINIMUM MESH
Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.			

AMENDATORY SECTION (Amending WSR 12-15-034, filed 7/12/12, effective 8/12/12)

WAC 220-47-401 Reef net open periods. (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)	
7, 7A	5AM - 9PM Daily	((9/30-11/10)) 9/21 - 11/8	

(2) It is unlawful at all times to retain wild Chinook salmon taken with reef net gear, and it is unlawful prior to October 1 to retain chum or wild coho salmon taken with reef net gear.

(3) It is unlawful to retain marked Chinook after September 30.

(a) It is unlawful to retain marked Chinook with reef net gear if the fisher does not have in his or her immediate possession a department-issued Puget Sound Reef Net Logbook with all retained Chinook accounted for in the logbook. Marked Chinook are those with a clipped adipose fin and a healed scar at the site of the clipped fin.

(b) Completed logs must be submitted and received within six working days to: Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091.

(4) All other saltwater and freshwater areas - Closed.

AMENDATORY SECTION (Amending WSR 13-15-148, filed 7/23/13, effective 8/23/13)

WAC 220-47-428 Beach seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME	DATE(S)	
12A:	7AM - 7PM	8/21, 8/22, ((8/23)) 8/25, 8/26, 8/27, 8/28, 8/29, ((8/30)) 9/1, 9/2, 9/3, 9/4, 9/5, ((9/6)) 9/8, 9/9, 9/10, 9/11, 9/12, ((9/13)) 9/15, 9/16, 9/17, 9/18, 9/19, ((9/20)) 9/22, 9/23, 9/24, 9/25, 9/26 ((9/27))	
12H:	7AM - 7PM	November (dates determined per agreement with tribal co-managers in-season if harvestable surplus of salmon remain).	

It is unlawful to retain Chinook taken with beach seine gear in all areas, and it is unlawful to retain chum from Area 12A.

**WSR 14-14-019
PERMANENT RULES
BEEF COMMISSION**

[Filed June 23, 2014, 7:38 a.m., effective July 24, 2014]

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

Purpose: The rule identifies those authorized to make expenditures for the Washington beef commission on promotional hosting and the objectives for those expenditures.

Statutory Authority for Adoption: RCW 15.04.200; chapters 16.67, 34.05 RCW.

Adopted under notice filed as WSR 14-09-072 on April 18, 2014.

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

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

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

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

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

Date Adopted: June 23, 2014.

Patti Brumbach
Executive Director

NEW SECTION

WAC 60-12-030 Rules for implementation of promotional hosting by the Washington beef commission. RCW 15.04.200 provides that agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents, or commissioners. The rules governing promotional hosting expenditures for the Washington beef commission shall be as follows:

(1) "Promotional hosting" means the hosting of individuals or groups of individuals at meetings, meals, events, or other gatherings for the purpose of agricultural development, trade promotion, cultivating trade relations, and in the aid of the marketing, advertising, promotion, or sales of beef and beef products. Such hosting may include providing meals, refreshments, lodging, transportation, gifts of a nominal value, reasonable and customary entertainment, and normal incidental expenses.

(2) Expenditures for promotional hosting shall be pursuant to specific budget items in the commission's annual budget as approved by the commission and the director.

(3) The commission staff members are authorized to make expenditures for promotional hosting in accordance with the provisions of these rules.

(4) Commissioners shall obtain prior authorization of the commission before making any expenditure for promotional hosting.

(5) All payments and reimbursements for promotional hosting expenses shall be identified and supported by a hosting expense report with receipts attached when available. Hosting expense report forms will be supplied by the commission and shall require the following information:

(a) Name of each person hosted, and company or affiliation name if appropriate;

(b) General purpose of the hosting;

(c) Date and location of hosting;

(d) Name and signature of person seeking payment or reimbursement; and

(e) Amount of payment or reimbursement.

(6) The executive director of the commission or chairman of the board are authorized to approve direct payment or reimbursements submitted in accordance with these rules, provided that they are not authorized to approve their own reimbursements.

(7) The following persons may be hosted by Washington beef commission staff or board members when it is reasonably believed such hosting will promote agricultural development, promote trade, cultivate trade relations, or aid in the marketing, advertising, or sale of beef or beef products, provided that such hosting shall not violate federal or state conflict of interest laws:

(a) Individuals from private businesses, associations, commissions;

(b) Foreign government officials;

(c) Federal, state, and local officials: Lodging, meals, and transportation will be provided when such officials may not obtain reimbursement for these expenses from their government employer;

(d) Individuals who directly influence consumer perception and demand for beef and beef products, including media and health care professionals;

(e) Spouses of the persons listed in (d) of this subsection when it is customary and expected; and

(f) The general public, at meetings and gatherings open to the general public.

WSR 14-14-023

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed June 23, 2014, 10:53 a.m., effective July 24, 2014]

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

Purpose: The department of revenue is amending these rules to incorporate recent legislation: WAC 458-14-056 incorporates ESHB 1826 (2011), which requires a board of equalization to waive the filing deadline for valuation appeals when certain criteria are met.

WAC 458-19-045 incorporates 2SSB 5433 (2009), which allows property tax resulting from levy lid lifts to be used to supplant existing funds in certain counties in certain

years; ESB 6641 (2008), which clarifies that all single year and multiple year lid lifts are considered temporary unless the ballot proposition approved by voters make[s] the increase permanent; ESB 5498 (2007), which extended the ability to request multiple year lid lifts to all taxing districts; and 2ESSB 5659 (2003), which allowed counties, cities, and towns to approve lid lifts for a six-year period with one vote.

WAC 458-19-055 incorporates ESHB 1432 (2013), which provides that the veteran's assistance levy and developmental disability and mental health levy may be increased or reduced in the same proportion as the regular county property tax levy, as approved by the county legislative authority. This authorization includes situations where the county legislative authority has decided to not levy the full amount of property tax revenue otherwise allowed under the law and bank the unused levy capacity for future use.

WAC 458-19-060 incorporates SSB 5381 (2012), which adjusts the voter requirements for the "uninterrupted continuation" renewal of a six year or ten year EMS levy to only require a majority vote and does not contain any validation requirements; also incorporates SB 5628 (2011), relating to a limited property tax exemption for part of a city from a county's emergency medical services levy.

WAC 458-19-070 incorporates 2ESB 5638 (2011), which allows certain metropolitan park districts to protect a portion of its levy rate outside of the \$5.90 limitation with voter approval; also incorporates EHB 1969 (2011), which allows a flood control zone district in certain counties to protect a portion of its levy rate outside of the \$5.90 limitation.

WAC 458-19-075 incorporates 2ESB 5638 (2011), which allows certain metropolitan park districts to protect a portion of its levy rate outside of the \$5.90 limitation with voter approval; also incorporates EHB 1969 (2011), which allows a flood control zone district in certain counties to protect a portion of its levy rate outside of the \$5.90 limitation.

WAC 458-19-085 incorporates SHB [SSB] 5705 (2013), which provides that taxes may be levied within a taxing district in order to reimburse a taxing district for taxes that were abated or cancelled, offset by any supplemental tax, in the next levy cycle. Any tax received to reimburse the taxing district for taxes that were abated or cancelled does not reduce the levy authority of that taxing district.

Citation of Existing Rules Affected by this Order: Amending WAC 458-14-056 Petitions—Time limits—Waiver of filing deadline for good cause, 458-19-045 Levy limit—Removal of limit (lid lift), 458-19-055 Levy limit—Proration of earmarked funds, 458-19-060 Emergency medical service levy, 458-19-070 ~~Procedure to adjust consolidated levy rate for taxing districts when the statutory aggregate dollar rate limit is exceeded. Five dollars and ninety cents statutory aggregate limit calculation~~, 458-19-075 Constitutional one percent limit calculation, and 458-19-085 Refunds—Procedures—Applicable limits.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, 84.48.080, 84.48.200, 84.52.0502, 84.55.060.

Adopted under notice filed as WSR 14-08-086 on April 1, 2014.

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

Recently Enacted State Statutes: New 0, Amended 7, Repealed 0.

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

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

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

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

Date Adopted: June 23, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-07-133, filed 3/23/10, effective 4/23/10)

WAC 458-14-056 Petitions—Time limits—Waiver of filing deadline for good cause. (1) The sole method for appealing an assessor's determination to the board, as to valuation of property, or as to any other types of assessor determinations is by means of a properly completed and timely filed taxpayer petition.

(2) A taxpayer's petition for review of the assessed valuation placed upon property by the assessor or for review of any of the types of appeals listed in WAC 458-14-015 must be filed in duplicate with the board (~~on or before July 1st of the assessment year or within thirty days, or up to sixty days if a longer time period is adopted by the county legislative authority, after the date an assessment or value change notice or other determination notice is mailed to the taxpayer, whichever date is later~~). The deadline for filing such petition with the board shall be the later of:

(a) July 1st of the year of assessment or determination;

(b) Thirty days from the date that an assessment, value change notice, or other notice has been mailed; or

(c) Sixty days from the date that an assessment, value change notice, or other notice has been mailed, if a longer time period was established by the county legislative authority. (RCW 84.40.038).

(3) No late filing of a petition shall be allowed except as specifically provided in this subsection. The board may waive the filing deadline if the petition is filed within a reasonable time after the filing deadline and the petitioner shows good cause, as defined in this subsection, for the late filing. However, the board must waive the filing deadline for the circumstance described under (g) of this subsection if the petition is filed within a reasonable time after the deadline. A petition that is filed after the deadline without a showing of good cause, as described in this subsection, must be dismissed unless, after the taxpayer is notified by the board that the petition will be dismissed because of the late filing, the taxpayer promptly shows good cause for the late filing. The board must decide a taxpayer's claim of good cause without holding a public hearing on the claim and must promptly notify the taxpayer of the decision, in writing. The board's decision regarding a waiver of the filing deadline is final and

not appealable to the state board of tax appeals. Good cause may be shown by documentation of one or more of the following events or circumstances:

(a) The taxpayer was unable to file the petition by the filing deadline because of a death or serious illness of the taxpayer or of a member of the taxpayer's immediate family occurring at or shortly before the time for filing. For purposes of this subsection, the term "immediate family" includes, but is not limited to, a grandparent, parent, brother, sister, spouse, domestic partner, child, grandchild, or domestic partner's child or grandchild.

(b) The taxpayer was unable to file the petition by the filing deadline because of the occurrence of all of the following:

(i) The taxpayer was absent from his or her home or from the address where the assessment notice or value change notice is normally received by the taxpayer. If the notice is normally mailed by the assessor to a mortgagee or other agent of the taxpayer, the taxpayer must show that the mortgagee or other agent was required, pursuant to written instructions from the taxpayer, to promptly transmit the notice and failed to do so; and

(ii) The taxpayer was absent (as described in (b)(i) of this subsection) for more than fifteen of the days allowed in subsection (2) of this section prior to the filing deadline; and

(iii) The filing deadline is after July 1st of the assessment year.

(c) The taxpayer was unable to file the petition by the filing deadline because the taxpayer reasonably relied upon incorrect, ambiguous, or misleading written advice as to the proper filing requirements by either a board member or board staff, the assessor or assessor's staff, or the property tax advisor designated under RCW 84.48.140, or his or her staff.

(d) The taxpayer was unable to file the petition by the filing deadline because of a natural disaster such as a flood or earthquake occurring at or shortly before the time for filing.

(e) The taxpayer was unable to file the petition by the filing deadline because of a delay or loss related to the delivery of the petition by the postal service. The taxpayer must be able to provide documentation from the postal service of such a delay or loss.

(f) The taxpayer is a business and was unable to file the petition by the filing deadline because the person employed by the business, responsible for dealing with property taxes, was unavailable due to illness or unavoidable absence.

(g) The taxpayer was not sent a revaluation notice under RCW 84.40.045 for the current assessment year and the taxpayer can demonstrate both of the following:

(i) The taxpayer's property value did not change from the previous year; and

(ii) The taxpayer's property is located in an area revalued by the assessor for the current assessment year.

(4) If a petition is filed by mail it must be postmarked no later than the filing deadline. If the filing deadline falls upon a Saturday, Sunday or holiday, the petition must be filed on or postmarked no later than the next business day.

(5) A petition is properly completed when all relevant questions on the form provided or approved by the department have been answered and the answers contain sufficient information or statements to apprise the board and the assessor of the reasons for the appeal. A petition which merely

states that the assessor's valuation is too high or that property taxes are excessive, or similar such statements, is not properly completed and must not be considered by the board. If, at the time of filing the petition, the taxpayer does not have all the documentary evidence available which he or she intends to present at the hearing, the petition will be deemed to be properly completed for purposes of preserving the taxpayer's right of appeal, if it is otherwise fully and properly filled out. However, any comparable sales, valuation evidence, or other documentary evidence not submitted at the time the petition is filed must be provided by the taxpayer to the assessor and the board at least seven business days, excluding legal holidays, prior to the board hearing. A copy of the completed petition must be provided to the assessor by the clerk of the board. Any petition not fully and properly completed must not be considered by the board (RCW 84.40.038) and a notice of the board's rejection of the petition must be promptly mailed to the taxpayer. See: WAC 458-14-066 Requests for valuation information—Duty to exchange information—Time limits, for an explanation of the availability, use and exchange of valuation and other documentary information prior to the hearing before the board.

(6) Whenever the taxpayer has an appeal pending with the board, the state board of tax appeals or with a court of law, and the assessor notifies the taxpayer of a change in property valuation, the taxpayer is required to file a timely petition with the board in order to preserve the right to appeal the change in valuation. For example, if a taxpayer has appealed a decision of the board to the board of tax appeals regarding an assessed value for the year 2005, and that appeal is pending when the assessor issues a value change notice for the 2006 assessment year, the taxpayer must still file a timely petition appealing the valuation for the 2006 assessment year in order to preserve his or her right to appeal from that 2006 assessed value.

(7) Petition forms shall be available from the clerk of the board and from the assessor's office.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-045 Levy limit—Removal of limit (lid lift). (1) **Introduction.** The levy limit may be exceeded when authorized by a majority of the voters voting on a proposition to "lift the lid" of the levy limit in accordance with RCW 84.55.050. This "lid lift" is intended to allow the levy limit to be exceeded for the levy made immediately following the vote on the proposition. The purpose of the lid lift is to allow additional property taxes to be collected at a time when the levy limit in chapter 84.55 RCW is the effective legal constraint to the collection of additional property taxes. Lid lifts may result in increasing the limit factor for one year or up to six consecutive years. The result of the limit factor increase can temporarily or permanently impact subsequent levy limit calculations. The requirements for the text of a ballot title and measure differ depending on whether the levy limit will be exceeded for a single year or multiple years, up to six consecutive years. This rule explains the procedures for implementing a lid lift ballot measure when a taxing district wants to ask its voters for the authority to exceed the levy limit.

(2) **Election for approval of lid lift proposition—when held.** The election to approve a lid lift proposition must be held within the taxing district and may be held at the time of a general election, or at a special election called by the governing body of the taxing district for that purpose. The election must be held not more than twelve months prior to the date the proposed levy is to be made. For purposes of this rule, a levy is "made" when the taxing district's budget is certified. The ballot title and measure proposing the lid lift ~~(is)~~ are prepared by the county prosecutor or city attorney, as applicable, in accordance with RCW ~~((29.27.066))~~ 29A.36.071. RCW ~~((29.27.066))~~ 29A.36.071 requires a ballot title to include a concise description of the measure, not to exceed seventy-five words. A simple majority vote is required for approval of a lid lift.

(3) ~~((Ballot title and contents of ballot measure.))~~ Single year lid lift. A "single year lid lift" allows a taxing district to increase its levy by more than one percent over its highest lawful levy since 1986 for one year. The text of a ballot title and measure for a single year lid lift must contain((s)) the following:

(a) The dollar rate of the proposed levy so that it reflects the total dollar rate for the taxing district, which may be less than the maximum statutory dollar rate allowed for the particular class of taxing district; ~~((and))~~

(b) Any of the following limitations that are applicable:

(i) The number of years the increased levy is to be made by the taxing district; however, if one of the purposes of the increased levy is to make redemption payments on bonds of the taxing district, the duration of the increased levy cannot exceed nine years; and/or

(ii) The purpose or purposes of the increased levy; and

(iii) Whether the dollar amount of the increased levy will be used for the purpose of computing the limitations for subsequent levies and thereby permanently increase the taxing district's levy base.

(4) Multiple year lid lift. A "multiple year lid lift" allows a taxing district to increase its levy by more than one percent over its highest lawful levy since 1986 for up to six consecutive years.

(a) The text of a ballot title and measure for a multiple year lid lift must contain the following:

(i) The dollar rate of the first year's proposed levy so that it reflects the total dollar rate for the taxing district, which may be less than the maximum statutory dollar rate allowed for the particular class of taxing district;

(ii) The limit factor, or specific index used to determine the limit factor (such as the consumer price index), which need not be the same for all years, by which the regular tax levy for the district may be increased in each of the subsequent consecutive years;

(iii) Any of the following limitations that are applicable:

(A) The number of years the increased levy is to be made by the taxing district; however, if one of the purposes of the increased levy is to make redemption payments on bonds of the taxing district, the duration of the increased levy cannot exceed nine years;

(B) The purpose or purposes of the increased levy; and

(C) Whether the dollar amount of the increased levy will be used for the purpose of computing the limitations for sub-

sequent levies and thereby permanently increase the taxing district's levy base.

(b) Supplanting of existing funds.

(i) Except as otherwise provided in (b) of this subsection, funds raised by a levy under this section may not supplant existing funds used for the limited purpose specified in the ballot title. For purposes of (b) of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the taxing district receiving the services, and major nonrecurring capital expenditures.

(ii) In counties with a population of less than one million five hundred thousand, funds raised through a lid lift can be used to supplant existing funds beginning with levies submitted and approved by the voters after July 26, 2009.

(iii) In counties with a population of one million five hundred thousand or more, funds raised through a lid lift can be used to supplant existing funds for levies approved by the voters between July 26, 2009, and December 31, 2011.

~~((4))~~ (5) Permanent lid lift. A permanent lid lift occurs when the ballot title and ~~((the))~~ ballot measure ~~((contain none of the limitations stated in subsection (3)(b) of this rule))~~ expressly state that the levy will be used for the purpose of computing the limitations for subsequent levies as provided in subsection (3)(a)(iii) and (4)(a)(iii)(C) of this section. Approval of a permanent lid lift permanently increases the base used to calculate the levy limit.

(a) The first regular levy of a taxing district made after voter approval of a permanent lid lift proposition is calculated on the basis of the dollar rate stated in the ballot title, but that dollar rate is subject to the constitutional one percent limit and the statutory aggregate dollar rate limit and any applicable prorationing.

(b) The levy limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a permanent lid lift proposition is calculated by multiplying the highest amount that could have been lawfully levied since 1985, including the dollar amount of the regular levy calculated in accordance with (a) of this subsection by the limit factor.

~~((5))~~ (6) Temporary lid lift. ~~((A temporary lid lift occurs when the ballot title and the ballot measure contain a time limit for the increased levy or contains a limited purpose or purposes for the increased levy, or both.))~~ If the ballot title and ballot measure do not expressly indicate that the final levy will be used for the purpose of computing subsequent levies, the levy increase is presumed temporary.

(a) The first regular levy of a taxing district made after voter approval of a temporary lid lift proposition is calculated on the basis of the dollar rate stated in the ballot title, but that dollar rate is subject to the constitutional one percent limit and the statutory aggregate dollar rate limit and any applicable prorationing.

(b) The levy limit on regular levies of a taxing district made subsequent to the first regular levy made after voter approval of a temporary lid lift proposition is calculated by multiplying the highest amount that could have been lawfully

levied since 1985, including the dollar amount of the regular levy calculated in accordance with (a) of this subsection by the limit factor.

~~((e) After expiration of the time limit authorized or satisfaction of the limited purpose for which the lid lift was authorized, whichever comes first, the levy limit as defined in RCW 84.55.005 on the taxing district's subsequent regular levies is calculated as if the lid lift proposition had not been approved.))~~

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-060 Emergency medical service levy.

(1) **Introduction.** This rule explains the criteria contained in RCW 84.52.069 relative to a taxing district imposing a limited or permanent regular levy for emergency medical care or emergency medical services. It describes the permitted duration of this levy, the ballot title and measure that must be presented to and approved by the voters, the maximum rate for this levy, and the applicable limits.

(2) **Purpose - Voter approval required - Who may levy.** An emergency medical service (EMS) levy is a regular voter approved levy. Any taxes collected as a result of this levy can only be used to provide emergency medical care or emergency medical services, including related personnel costs, training for such personnel and related equipment, supplies, vehicles, and structures needed to provide this care or service. ~~((A))~~ A permanent EMS levy, or the initial imposition of a six-year or ten-year EMS levy must be approved by a super majority of registered voters at a general or special election. However, the uninterrupted continuation of a six-year or ten-year EMS levy only requires the authorization of a majority of the registered voters at a general or special election. For purposes of this section, an "uninterrupted continuation of a six-year or ten-year EMS levy" means the continuation of both the levy itself and its maximum levy rate. Only a county, emergency medical service district, city, town, public hospital district, urban emergency medical service district, regional fire protection service area, or fire protection district is authorized to impose an EMS levy.

(3) **Duration - Maximum rate.** An EMS levy is imposed each year for six consecutive years, each year for ten consecutive years, or permanently. ~~((If approved.))~~ Except as provided in subsection (10) of this section, a taxing district ~~((can))~~ may impose a regular property tax levy in an amount that cannot exceed fifty cents per thousand dollars of assessed value of the property of the taxing district.

(4) **Contents of ballot title and measure.** Any ballot title and measure seeking authorization of an EMS levy must conform to the requirements of RCW ~~((29.30.111))~~ 29A.36.210. A taxing district cannot submit to the voters at the same election multiple propositions to impose a levy under RCW 84.52.069. If the approved ballot title and measure did not authorize the maximum allowable levy rate (fifty cents) for the EMS levy, any future proposition to increase the rate up to the maximum allowable must be specifically authorized by voters at a general or special election. That is, a taxing district may impose a levy rate up to, but no greater than, the rate contained in the approved ballot measure without obtaining

additional voter approval. The ballot title and measure authorizing a taxing district to impose:

(a) An EMS levy for a limited duration must state the name of the taxing district, the maximum rate per thousand dollars of assessed value to be imposed, and the maximum number of years the levy is to be allowed; or

(b) A permanent EMS levy must state the name of the taxing district and the maximum rate per thousand dollars of assessed value to be permanently imposed. A ballot title for this type of levy must include wording to indicate that it is a permanent EMS levy. A taxing district that seeks to impose a permanent levy must also provide for a referendum procedure to apply to the ordinance or resolution imposing the tax. The detailed specifics of this procedure are set forth in RCW 84.52.069(4).

(5) **County-wide EMS levy.** A county-wide EMS levy cannot be placed on the ballot without first obtaining the approval of the legislative authority of any city within the county having a population exceeding fifty thousand. No other taxing district within the county may hold an election on a proposed EMS levy at the same time as the election on a proposed county-wide EMS levy. To the extent feasible, emergency medical care and services must be provided throughout the county whenever the county levies an EMS levy. In addition, if a county levies an EMS levy, the following conditions apply:

(a) Any other taxing district within the county, authorized to levy an EMS levy may do so, but only if the taxing district's EMS levy rate does not exceed the difference between the county's EMS levy rate and fifty cents per thousand dollars of assessed value of the property of the taxing district; and

(b) When a taxing district within the county levies an EMS levy and the voters of the county subsequently approve a county-wide EMS levy, the taxing district must then reduce its EMS levy rate so that the combined EMS levy rate of the county and the taxing district does not exceed fifty cents per thousand dollars of assessed value in the taxing district; and

(c) An EMS levy of limited duration of a taxing district within the county, authorized by the voters subsequent to a county-wide EMS levy of limited duration, will expire concurrently with the county EMS levy; and

(d) A fire protection district that has annexed an area described in subsection (10) of this section may levy the maximum amount of tax that would otherwise be allowed, notwithstanding any limitations in this subsection.

(6) **EMS levy of taxing district other than county.** Once a taxing district that has the authority to levy an EMS levy has done so within the county, only the county may concurrently levy an EMS levy within the boundaries of that taxing district; all other taxing districts are prohibited from levying an EMS levy within that taxing district's boundaries while it collects an EMS levy.

(a) If a regional fire protection service authority imposes a tax under this section, no other taxing district that is a participating fire protection jurisdiction in the regional fire protection service authority may levy a tax under this section.

(b) For purposes of this subsection, "participating fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district that is represented on the

governing board of a regional fire protection service authority.

(7) **Constitutional one percent limit is applicable.** An EMS levy is subject to the constitutional one percent limit for regular property taxes. If a reduction of the rate of an EMS levy is required because this limit is exceeded, it is to be reduced in the manner set forth in RCW 84.52.010(1) and WAC 458-19-075.

(8) **Statutory aggregate dollar rate limit is not applicable.** An EMS levy is not subject to the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value (see RCW 84.52.043).

(9) **Applicability of limit factor to EMS levy.** The first year an EMS levy is made following voter approval, the levy limit set forth in RCW 84.55.010 does not apply. However, after the first year any EMS levy made is subject to this limit. In other words, beginning the second year this levy is made it cannot exceed the limit factor multiplied by the highest amount of regular property taxes that could have lawfully been levied since the voters last approved such a levy plus an additional dollar amount calculated by multiplying the increase in assessed value in that district resulting from new construction, improvements to property, and any increase in the assessed value of state-assessed property by the regular property tax rate for the district in the preceding year. The EMS levy is calculated separately from any other levies made by the taxing district for purposes of calculating the levy limit.

(10) For purposes of imposing the tax authorized under this section, the boundary of a county with a population greater than one million five hundred thousand does not include the area of the county that is located within a city that has a boundary in two counties, if the locally assessed value of all the property in the area of the city within the county having a population greater than one million five hundred thousand is less than two hundred fifty million dollars.

AMENDATORY SECTION (Amending WSR 09-19-010, filed 9/3/09, effective 10/4/09)

WAC 458-19-070 (~~Procedure to adjust consolidated levy rate for taxing districts when the statutory aggregate dollar rate limit is exceeded.~~) Five dollars and ninety cents statutory aggregate limit calculation. (1) **Introduction.** The aggregate of all regular levy rates of junior taxing districts and senior taxing districts, other than the state and other specifically identified districts, cannot exceed five dollars and ninety cents per thousand dollars of assessed value in accordance with RCW 84.52.043. When the county assessor finds that this limit has been exceeded, the assessor recomputes the levy rates and establishes a new consolidated levy rate in the manner set forth in RCW 84.52.010. This section describes the prorationing process used to establish a consolidated levy rate when the assessor finds the statutory aggregate levy rate exceeds five dollars and ninety cents. If prorationing is required, the five dollar and ninety cents limit is reviewed before the constitutional one percent limit.

(2) **Levies not subject to statutory aggregate dollar rate limit.** The following levies are not subject to the statu-

tory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value:

- (a) Levies by the state;
- (b) Levies by or for port or public utility districts;
- (c) Excess property tax levies authorized in Article VII, section 2 of the state Constitution;
- (d) Levies by or for county ferry districts under RCW 36.54.130;
- (e) Levies for acquiring conservation futures under RCW 84.34.230;
- (f) Levies for emergency medical care or emergency medical services under RCW 84.52.069;
- (g) Levies for financing affordable housing for very low-income households under RCW 84.52.105;
- (h) The portion of metropolitan park district levies protected under RCW 84.52.120;
- (i) The portion of fire protection district levies protected under RCW 84.52.125;
- (j) Levies for criminal justice purposes under RCW 84.52.135; ~~((and))~~
- (k) ~~Levies for transit-related purposes by a county ((with a population of one million five hundred thousand or more under section 5, chapter 551, Laws of 2009)) under RCW 84.52.140; and~~

(l) The protected portion of the levies imposed under RCW 86.15.160 by flood control zone districts in a county with a population of seven hundred seventy-five thousand or more that are coextensive with a county.

(3) Prorating under consolidated levy rate limitation. RCW 84.52.010 sets forth the prorating order in which the regular levies of taxing districts will be reduced or eliminated by the assessor to comply with the statutory aggregate dollar rate limit of five dollars and ninety cents per thousand dollars of assessed value. The order contained in the statute lists which taxing districts are the first to either reduce or eliminate their levy rate. Taxing districts that are at the same level within the prorating order are grouped together in tiers. Reductions or eliminations in levy rates are made on a pro rata basis within each tier of taxing district levies until the consolidated levy rate no longer exceeds the statutory aggregate dollar rate limit of five dollars and ninety cents.

As opposed to the order contained in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this section is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the statutory aggregate dollar rate is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis. The proration factor, which is multiplied by each levy rate within the tier, is obtained by dividing the dollar rate remaining available to the taxing districts in that tier as a group by the sum of the levy rates originally certified by or for all of the taxing districts within the tier.

(a) Step one: Total the aggregate levy rates requested by all affected taxing districts in the tax code area. If this total is less than five dollars and ninety cents per thousand dollars of assessed value, no prorating is necessary. If this total levy rate is more than five dollars and ninety cents, the assessor must proceed through the following steps until the aggregate dollar rate is brought within that limit.

(b) Step two: Subtract from \$5.90 the levy rates of the county and the county road district if the tax code area includes an unincorporated portion of the county, or the levy rates of the county and the city or town if the tax code area includes an incorporated area, as applicable.

(c) Step three: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.-050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first fifty cents per thousand dollars of assessed value for public hospital districts under RCW 70.44.060(6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorating, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c). However, under RCW 84.52.125 fire protection districts may protect up to twenty-five cents per thousand dollars of assessed value of the total levies made under RCW 52.16.140 and 52.16.160 from prorating.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. It is at this point that the provisions of RCW 84.52.-125 come into play; that is, a fire protection district may protect up to twenty-five cents per thousand dollars of assessed value of the total levies made under RCW 52.16.140 and 52.16.160 from prorating under RCW 84.52.043(2), if the total levies would otherwise be prorated under RCW 84.52.010 (2)(e) with respect to the five-dollar and ninety cent per thousand dollars of assessed value limit. After prorating, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate, if any, for the first fifty cents per thousand dollars of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the twenty-five cent per thousand dollars of assessed value levy rate for metropolitan park districts if it is not protected under RCW 84.52.120, the twenty-five cent per thousand dollars of assessed value levy rate for public hospital districts under RCW 70.44.060(6), and the levy rates, if any, for cemetery districts under RCW 68.52.310 and all other junior taxing districts if those levies are not listed in steps three through five or seven or eight of this subsection.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate, if any, for flood control zone districts ~~((under RCW 86.15.160))~~ other than the portion of a levy protected under RCW 84.52.815.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates, if any, for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, and cultural arts, stadium, and convention districts under RCW 67.38.130 on a pro rata basis until the remaining levy capacity equals zero.

(4) Example.

DISTRICT	ORIGINAL LEVY RATE	PRORATION FACTOR	FINAL LEVY RATE	REMAINING LEVY CAPACITY
County Road	1.8000	NONE	1.8000	1.850
	2.2500	NONE	2.2500	
Library	.5000	NONE	.5000	.350
Fire	.5000	NONE	.5000	
Hospital	.5000	NONE	.5000	
Fire	.2000	NONE	.2000	.150
Cemetery	.1125	.4138	.0466	
Hospital	.2500	.4138	.1034	
Totals	6.1125		5.90	

1. Beginning with the limit of \$5.90, subtract the original certified levy rates for the county and county road taxing districts leaving \$1.85 available for the remaining districts.

2. Subtract the total of the levy rates for each district within the next tier: The library's \$.50, the fire district's \$.50 and the hospital's \$.50 = \$1.50, which leaves \$.35 available for the remaining districts.

3. Subtract the fire district's additional \$.20 levy rate, which leaves \$.15 available for the remaining districts.

4. The remaining \$.15 must be shared by the cemetery and the hospital districts within the next tier of levies. The cemetery district originally sought to levy \$.1125 and the hospital district sought to levy \$.25. The proration factor is arrived at by dividing the amount available (\$.15) by the original levy rates (\$.3625) requested within that tier resulting in a proration factor of .4138. And finally, the original levy rates in this tier of \$.1125 and \$.25 for the cemetery and hospital respectively are multiplied by the proration factor.

AMENDATORY SECTION (Amending WSR 09-19-010, filed 9/3/09, effective 10/4/09)

WAC 458-19-075 Constitutional one percent limit calculation. (1) **Introduction.** The total amount of all regular property tax levies that can be applied against taxable property is limited to one percent of the true and fair value of the property in money. The one percent limit is stated in Article VII, section 2 of the state Constitution and the enabling statute, RCW 84.52.050. The constitutional one percent limit is based upon the amount of taxes actually levied on the true and fair value of the property, not the dollar rate used in computing property taxes. This section explains how to determine if the constitutional one percent limit is being exceeded and the sequence in which levy rates will be reduced or eliminated in accordance with RCW 84.52.010 if the constitutional one percent limit is exceeded. The constitutional one percent calculation is made after the assessor ensures that the \$5.90 statutory aggregate dollar rate limit is not exceeded.

(2) **Preliminary calculations.** After prorationing under RCW 84.52.043 (the five dollar and ninety cent per thousand dollars of assessed value limit) has occurred, make the following calculations to determine if the constitutional one percent limit is being exceeded:

(a) First, add all the regular levy rates, except the rates for port and public utility districts, in the tax code area, to arrive at a combined levy rate for that tax code area. "Regular levy rates" in this context means the levy rates that remain after prorationing under RCW 84.52.043 has occurred. The levy rates for port and public utility districts are not included in this computation because they are not subject to the constitutional one percent limit. The rates for the following regular ((levy rates)) levies are used to calculate the combined levy rate of any particular tax code area:

- (i) The local rate for the state levy;
- (ii) Levies by or for county ferry districts under RCW 36.54.130;
- (iii) Levies for acquiring conservation futures under RCW 84.34.230;
- (iv) Levies for emergency medical care or emergency medical services under RCW 84.52.069;
- (v) Levies for financing affordable housing for very low-income households under RCW 84.52.105;
- (vi) The portion of metropolitan park district levies protected under RCW 84.52.120;
- (vii) The portion of fire protection district levies protected under RCW 84.52.125;
- (viii) Levies for criminal justice purposes under RCW 84.52.135; ~~((and))~~
- (ix) ~~((The levy rate))~~ Levies for transit-related purposes by a county with a population of one million five hundred thousand or more under ~~((section 5, chapter 551, Laws of 2009))~~ RCW 84.52.140; and

(x) The protected portion of the levies imposed under RCW 86.15.160 by flood control zone districts in a county with a population of seven hundred seventy-five thousand or more that are coextensive with a county.

(b) Second, divide ten dollars by the higher of the real or personal property ratio of the county for the assessment year in which the levy is made to determine the maximum effective levy rate. If the combined levy rate exceeds the maximum effective levy rate, then the individual levy rates must be reduced or eliminated until the combined levy rate is equal to the maximum effective levy rate.

(3) **Prorationing - Constitutional one percent limit.** RCW 84.52.010 sets forth the prorationing order in which levy rates are to be reduced or eliminated when the constitutional one percent limit is exceeded. ~~((The order contained in this statute begins with the taxing districts that are the first to have their levy rates either reduced or eliminated. Taxing districts that are at the same level within the prorationing order are grouped together in tiers. Levy rates are reduced or eliminated on a pro rata basis within each tier of taxing district levies until the combined levy rate no longer exceeds one percent of the true and fair value of property.))~~

As opposed to the order contained in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this section is written in reverse order; that is, it lists the taxing districts that must be

first either fully or partially funded. If the constitutional one percent limit is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis.

If the constitutional one percent limit is exceeded after performing the preliminary calculations described in subsection (2) of this section, the following levies ~~((are to))~~ must be reduced or eliminated ~~((in the following order))~~ until the combined levy rate no longer exceeds the maximum effective levy rate:

~~((a) The levy rate for transit-related purposes by a county with a population of one million five hundred thousand or more under section 5, chapter 551, Laws of 2009;~~

~~(b) The levy rate for fire protection districts protected under RCW 84.52.125;~~

~~(c) The levy rate for criminal justice purposes imposed under RCW 84.52.135;~~

~~(d) The levy rate for county ferry districts under RCW 36.54.130;~~

~~(e) The levy rate for metropolitan park districts protected under RCW 84.52.120;~~

~~(f) The levy rates for levies used for acquiring conservation futures under RCW 84.34.230, financing affordable housing for very low income households under RCW 84.52.105, and any portion of a levy rate for emergency medical care or emergency medical services under RCW 84.52.069 in excess of thirty cents per thousand dollars of assessed value are reduced on a pro rata basis or eliminated;~~

~~(g) The levy rate for the first thirty cents per thousand dollars for emergency medical care or emergency medical services under RCW 84.52.069;~~

~~(h) The levy rates for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, and cultural arts, stadium, and convention districts under RCW 67.38.130 are reduced on a pro rata basis or eliminated;~~

~~(i) The levy rate for flood control zone districts under RCW 86.15.160;~~

~~(j) The levy rates for all other junior taxing districts, except fire protection districts under RCW 52.16.140 and 52.16.160, regional fire protection service authorities under RCW 52.26.140, library districts under RCW 27.12.050 and 27.12.150, and the first fifty cents per thousand dollars of assessed value for metropolitan park districts under RCW 84.52.120 and for public hospital districts under RCW 70.44.060(6) are reduced on a pro rata basis or eliminated;~~

~~(k) The levy rate of the first fifty cents per thousand dollars of assessed value for metropolitan park districts created on or after January 1, 2002 under RCW 35.61.210;~~

~~(l) The levy rates for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c) are reduced on a pro rata basis or eliminated;~~

~~(m) The levy rates for fire protection service authorities under RCW 52.16.130, regional fire protection districts under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and for~~

public hospital districts under RCW 70.44.060(6) are reduced on a pro rata basis or eliminated;

(n) The levy rates for the county, county road district, and for city or town purposes are reduced on a pro rata basis or eliminated; and

(o) The levy rate for the state for the support of common schools.) (a) Step one: Subtract the levy rate for the state for the support of common schools from the effective rate limit;

(b) Step two: Subtract the levy rates for the county, county road district, and for city or town purposes;

(c) Step three: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.-050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first fifty cents per thousand dollars of assessed value for public hospital districts under RCW 70.44.060(6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.-140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate for the first fifty cents per thousand dollars of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance from step four. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the levy rates for all other junior taxing districts if those levies are not listed in steps three through five or steps seven through sixteen of this subsection.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate for flood control zone districts other than the portion of a levy protected under RCW 84.52.815.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step six. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.-145, and cultural arts, stadium, and convention districts under RCW 67.38.130.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step nine.

(i) Step nine: Subtract from the remaining levy capacity the levy rate for the first thirty cents per thousand dollars for emergency medical care or emergency medical services under RCW 84.52.069.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step eight. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step ten.

(j) Step ten: Subtract from the remaining levy capacity the levy rates for levies used for acquiring conservation futures under RCW 84.34.230, financing affordable housing for very low-income households under RCW 84.52.105, and any portion of a levy rate for emergency medical care or emergency medical services under RCW 84.52.069 in excess of thirty cents per thousand dollars of assessed value.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eleven.

(k) Step eleven: Subtract from the remaining levy capacity the portion of the levy by a metropolitan park district with a population of one hundred fifty thousand or more that is protected under RCW 84.52.120.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step ten. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step twelve.

(l) Step twelve: Subtract from the remaining levy capacity the levy rates for county ferry districts under RCW 36.54.-130.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step eleven. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step thirteen.

(m) Step thirteen: Subtract from the remaining levy capacity the levy rate for criminal justice purposes imposed under RCW 84.52.135.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step twelve. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at

a lower tier and the assessor should proceed on to step fourteen.

(n) Step fourteen: Subtract from the remaining levy capacity the levy rate for fire protection districts protected under RCW 84.52.125.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step thirteen. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step fifteen.

(o) Step fifteen: Subtract from the remaining levy capacity the levy rate for transit-related purposes by a county under RCW 84.52.140.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step fourteen. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step sixteen.

(p) Step sixteen: Subtract from the remaining levy capacity the protected portion of the levy imposed under RCW 86.15.160 by a flood control zone district in a county with a population of seven hundred seventy-five thousand or more that is coextensive with a county.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step fifteen. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seventeen.

(q) Step seventeen: Subtract from the remaining levy capacity the portion of the levy by a metropolitan park district that has a population of less than one hundred fifty thousand and is located in a county with a population of one million five hundred thousand or more that is protected under RCW 84.52.120 until the remaining levy capacity equals zero.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-055 Levy limit—Proration of earmarked funds. (1) **Introduction.** Certain taxing districts are authorized to make "earmarked" levies for specific purposes.

An "earmarked levy" is not a taxing district in and of itself; the levy is included within, or is in addition to, the general regular levy made by a taxing district. Because these levies are generally placed within a taxing district treasury as a separately identified fund, they are often referred to as "earmarked funds." A taxing district is either directed by statute to levy or is authorized by statute to levy, but is not required to levy, for these earmarked funds; that is, some of the underlying statutes are mandatory while others are permissive in nature. This rule only discusses those taxing districts with the statutory authority to reduce their earmarked levies from their budgeted levy amount when they are up against ~~((their general levy limit; that is,))~~ the levy limit contained in chapter 84.55 RCW. ~~((Only those taxing districts having specific authorization to reduce the earmarked levy as a result of the levy limit under this chapter are addressed in this rule.))~~

(2) **Reduction of earmarked funds** ~~((to be reduced only))~~ when regular levy affected. Cities having a regularly organized full-time, paid, fire department may levy an additional amount for a firemen's pension fund under RCW 41.16.060. Counties are required to annually levy amounts for the developmental disabilities or mental health services fund under RCW 71.20.110 and for ~~((veteran's))~~ veterans' assistance fund under RCW 73.08.080. Each of these earmarked levies may be reduced if the taxing district's general regular levy is restricted by the levy limit contained in chapter 84.55 RCW. If a reduction is necessary, the earmarked levy may be reduced from its budgeted levy amount in the same proportion as the district's general levy is reduced from its budgeted amount.

~~((In other words, if the taxing district is unable to levy its total budgeted amount because it is restricted by the levy limit under chapter 84.55 RCW, the amount levied for the earmarked fund may be reduced proportionately to the reduction in the taxing district's general regular levy. For example, if the overall budget of the county or city/town is limited by the levy limit, and that levy includes specific amounts earmarked for special purposes, the county or city/town may take the total amount it receives from property taxes and allocate "x" amount to the earmarked fund and the remainder to its general purposes.))~~

(3) **Modification of county earmarked funds when regular levy affected.** The budgeted amount for an earmarked levy may be modified by the county legislative authority as provided in this subsection. For the purposes of this subsection, refund levies are not included within the general county property tax levy.

(a) If the general county property tax levy is reduced from the preceding year's levy, funding for the earmarked levies may be reduced by no more than the same percentage as the general county property tax levy was reduced from the preceding year's levy;

(b)(i) If the general county property tax levy is increased from the preceding year's levy, funding for the developmental disabilities and mental health services fund must be increased by at least the same percentage as the general county property tax levy was increased from the preceding year's levy; however, funding does not need to be increased for the portion of a voter-approved levy increase that is dedicated to a specific purpose;

(ii) If the general county property tax levy is increased from the preceding year's levy, funding for the veterans' assistance fund cannot be less than the base allocation (the most recent allocation that was not reduced when collections exceed expectations per RCW 73.08.080(2)) increased by the same percentage as the general county property tax levy was increased from the preceding year's levy; however, funding does not need to be increased for the portion of a voter-approved levy increase that is dedicated to a specific purpose;
or

(c) If the general county property tax levy is unchanged from the preceding year's levy, funding for the programs must equal or exceed the previous year's funding.

(4) Nothing in this section precludes a county from increasing funding for the programs to an amount that is greater than the change in the regular county levy.

AMENDATORY SECTION (Amending WSR 02-24-015, filed 11/25/02, effective 12/26/02)

WAC 458-19-085 Refunds—Procedures—Applicable limits. (1) **Introduction.** Chapters 84.68 and 84.69 RCW both set out procedures and conditions under which property taxes are refunded. This rule explains the differences between the types of refunds authorized under each chapter, the procedures related to the refunds, and the effect the refunds have on levy limits and the levy setting process in general.

(2) **Court ordered refunds under chapter 84.68 RCW - County tax refund fund levy.** Any person who believes that the taxes levied against their property are unlawful or excessive may pay the taxes under protest, setting forth all the grounds upon which the tax is claimed to be unlawful or excessive, and bring an action in superior court or in any federal court of competent jurisdiction against the state, county, or municipality. RCW 84.68.020. If the court determines that the taxes were indeed unlawful or excessive, it will enter a judgment in favor of the taxpayer who paid the tax under protest and determine the amount to be refunded to the taxpayer. When such a judgment is entered, the law provides a specific procedure for refunding the money to the taxpayer in RCW 84.68.030 and for taxing districts to generate the moneys to be refunded in RCW 84.68.040. Any and all taxing districts that were levying taxes against the property at the time for which a refund is directed by court order under RCW 84.68.020 must levy, or have levied for them, an amount for the county tax refund fund. The county tax refund fund levy is a regular levy that is subject to all the applicable levy limitations provided in law for regular levies. However, the law specifically exempts a refund fund levy from the levy limit set forth in RCW 84.55.010.

(a) Method used to make refunds. When a court judgment is entered in favor of a taxpayer, RCW 84.68.030 states that the refund is to be paid via warrants drawn against the "county tax refund fund." If, at the time the judgment is entered, there are no moneys in that fund, then the warrants bear interest and are "callable under such conditions as are provided by law for county warrants."

(b) Process used to generate funds for the county tax refund fund. RCW 84.68.040 provides that as part of the annual levying of taxes for county purposes, the county is

required to make and enter a tax levy or levies for the county tax refund fund. The purpose of the refund fund levy is to produce moneys to be deposited into a fund from which a taxpayer, who paid taxes that were later adjudged to be unlawful or excessive, can be repaid, without unduly affecting the operating funds of the taxing districts. This levy has precedence over all other tax levies for county and/or taxing district purposes.

(c) Who makes and enters the tax levies for the refund fund levy? Officers of local taxing districts, the county legislative authority, the county assessor, and any other person or entity that would normally be involved in the levy making process are required to make and enter the refund fund levy. However, if a taxing district is required to levy for the county tax refund fund and fails to do so, or if a taxing district is required to levy for the county tax refund fund and does not have a regular nonvoted levy, then the county legislative authority levies the tax for or on behalf of the district, the assessor sets the rate, and the treasurer collects the tax.

(d) What limitations apply to the county tax refund fund levy? There are four basic levy limitations that need to be taken into consideration: The levy limit set forth in RCW 84.55.010; the constitutional (Article VII, section 2) and statutory (RCW 84.52.010) one percent limit; the statutory dollar rate limit for the various taxing districts; and the aggregate dollar rate limit contained in RCW 84.52.043.

(i) The levy limit set forth in RCW 84.55.010 does not apply to the county tax refund fund levy, regardless of which taxing district is involved (see RCW 84.55.070). Therefore, a taxing district(s) can levy the amount to be refunded even if that amount will cause the total levy of the taxing district to exceed the levy limit. For example, a court orders County A to refund \$10,000 to a Taxpayer. The proper county officials in County A must determine what portion of the \$10,000 is attributable to Taxing District No. 1. For purposes of this example, Taxing District No. 1 owes the Taxpayer \$1,000. Taxing District No. 1's levy last year was \$30,000. Without considering new construction, improvements to property, and increase in value of state assessed property the levy for this year under the levy limit would be \$30,300. However, Taxing District No. 1's levy for this year, including the refund fund levy, can be \$31,300.

(ii) The constitutional one percent limit, the statutory dollar rate limit, and the aggregate dollar rate limit apply to any refund fund levy. Consequently, any refund fund levy must be contained within the maximum dollar rate authorized by law for any taxing district. For example, if under the levy limit, the county current expense levy rate is \$1.80/\$1,000 and the refund fund levy rate is \$.10/\$1,000 A.V., then only \$1.70 may go to the current expense fund. Similarly, if the current expense levy rate, as limited by the levy limit, is \$1.50/\$1,000 A.V., then the \$.10/\$1,000 is added to the \$1.50 making a levy rate that is \$1.60/\$1,000 A.V. Any combination is possible as long as the total of the two does not exceed the statutory dollar rate maximum of \$1.80/\$1,000 A.V. for levies made for county purposes. All moneys levied for the county tax refund fund levy are allocated first, without consideration of any delinquency, and then whatever balance is remaining goes to the district's operating fund.

(e) Refund fund's relationship to excess levies. Because the refund fund levy is the direct result of a court ordered judgment in a specific amount, it does not matter whether the judgment amount is derived from taxes paid on regular, excess, or bond levies, or any combination of these levies. The refund fund levy is separate and independent of the levies from which it arose. The levy includes an additional amount deemed necessary to meet the obligations of the county tax refund fund, taking into consideration the probable portions of the taxes that will not be collected or collectible during the year in which they are due and payable, as well as any unobligated cash in hand in this fund.

(f) Applicability to school district levies and state school levy. All taxing districts for which, and within which, taxes were collected unlawfully are required to levy for the refund fund. A refund fund for the school district would not be limited by a dollar rate limit. However, the school district refund fund levy would be subject to the constitutional one percent limit because the refund fund is a regular levy subject to all applicable limits. The state school levy will include a refund fund levy, which will be calculated by the department at the time it levies the state school levy. The state, as a taxing district itself, follows the same procedures that apply to any other taxing district, to the extent that those procedures are applicable.

(g) Separate account in county treasury. The county treasurer must keep a separate account for each district for which a refund fund is created and can only disburse money from that account to the taxpayer(s) entitled to receive a court ordered refund.

(3) Administrative refunds under chapter 84.69 RCW. Property taxes may be refunded on the order of the county treasurer before or after delinquency if the property taxes were paid under one of the circumstances listed in RCW 84.69.020. These circumstances include errors, changes in valuation or status by a county board of equalization or the state board of tax appeals, and delays in applying for a senior citizen exemption or deferral.

(a) The levy limit set forth in RCW 84.55.010 does not apply. RCW 84.55.070 states that the limitations contained in chapter 84.55 RCW do not apply to property tax refunds paid or to be paid under the provisions of (~~chapter 84.69~~) RCW 84.69.180. Therefore, an amount necessary to fund any refund paid in accordance with RCW 84.69.020 may be added to the levy for a taxing district without regard to the levy limit. A refund fund levy is not subject to the levy limit. However, the statutory dollar rate limit still applies to each taxing district, as well as the five dollar and ninety cent limit set forth in RCW 84.52.043 and the constitutional one percent limit set forth in Article VII, section 2 of the state Constitution and RCW 84.52.050.

(b) Refunds include interest. Refunds authorized under RCW 84.69.020 must include interest that is payable from the time the taxes were paid. The rate of interest is calculated in accordance with RCW 84.69.100, established annually by the department, and published in WAC 458-18-220.

(c) Taxing districts other than the state may levy a tax upon all the taxable property within the district for the purpose of:

(i) Funding refunds paid or to be paid under this chapter, except for refunds due to taxes paid more than once, RCW 84.69.020(1), including interest, as ordered by the county treasurer or county legislative authority within the preceding twelve months; and

(ii) Taxes that have been abated or canceled, offset by any supplemental taxes collected under Title 84 RCW other than amounts collected due to highly valued disputed property, RCW 84.52.018, within the preceding twelve months can be levied by taxing districts other than the state.

(iii) This subsection (3)(c)(ii) only applies to abatements and cancellations that do not require a refund under chapter 84.69 RCW. Cancellations that require a refund are included within the scope of (c)(i) of this subsection.

(d) Example 1. This example demonstrates net refunds, cancellations, and supplements that occurred within the past twelve months and the refund levy that can be requested by the taxing district:

<u>Refunds</u>		<u>\$8,000</u>
<u>Cancellations</u>	<u>\$10,000</u>	
<u>Abatements</u>	<u>\$ 1,000</u>	
<u>Supplements</u>	<u>\$ 7,000</u>	
<u>Net cancellations and abatements offset by supplements</u>		<u>\$4,000</u>
<u>Net amount eligible for a refund levy</u>		<u>\$12,000</u>

(e) ~~Example((s-Both))~~ 2. This example((s)) assumes that the base for computing the allowable levy is \$10,000 and refers to the county current expense levy rate that may not exceed one dollar and eighty cents per thousand dollars of assessed value in accordance with RCW 84.52.043.

(i) Statutory rate requested does not exceed the dollar rate allowable:

The allowable levy for the county current expense fund	\$10,000
Refunds paid or to be paid	<u>2,000</u>
Total amount of levy	\$12,000
Assessed value	\$7,000,000
Levy rate	\$1.714/\$1,000
The levy rate is within the statutory rate limit of \$1.80/\$1,000	

(ii) Statutory rate requested exceeds the dollar rate allowable:

Allowable levy	\$10,000
Refunds paid or to be paid	<u>2,000</u>
Total amount of levy	\$12,000
Assessed value	\$6,500,000
Levy rate	\$1.846/\$1,000
The dollar rate cannot exceed \$1.80/\$1,000; therefore, the maximum that can be levied is \$6,500,000 x \$1.80/\$1,000	
	\$11,700

Amount to be refunded	\$2,000
Amount to be credited to current expense	\$9,700

~~((+))~~ (f) The base for computing the following year's levy limit does not include the refund levy amount. In the preceding example((s)), the base for the following year's levy limit calculation is \$10,000. However, when calculating the additional levy amount based on the value of new construction, improvements to property and any increase in the value of state assessed property, the actual regular levy rate (including the refund levy) is used.

WSR 14-14-025

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 24, 2014, 7:40 a.m., effective July 25, 2014]

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

Purpose: The department is amending chapter 388-71 WAC and creating chapter 388-113 WAC, to support the health and safety of clients, to consolidate the various DSHS secretary's lists of crimes and negative actions in the aging and long-term support administration thus providing a uniform background check standard for all caregivers, and to reduce the overall costs of processing background checks.

Citation of Existing Rules Affected by this Order: Amending WAC 388-71-0500, 388-71-0510, 388-71-0513, 388-71-0540, 388-71-0546, and 388-71-0551.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.056.

Adopted under notice filed as WSR 14-05-069 on February 18, 2014.

A final cost-benefit analysis is available by contacting Angel Sullivan, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2495, fax (360) 407-7582, e-mail angel.sullivan@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 5, Amended 6, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 6, Repealed 0.

Date Adopted: June 24, 2014.

Kevin Quigley
Secretary

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0500 What is the purpose of this chapter? The purpose of this chapter is to describe the:

- (1) Qualifications of an individual provider, as defined in WAC 388-106-0010;
- (2) Qualifications of a long-term care worker employed by a home care agency, as defined in WAC 388-106-0010 and chapter 246-335 WAC;
- (3) Conditions under which the department or the area agency on aging (AAA) will pay for the services of an individual provider or a home care agency long-term care worker;
- (4) Training requirements for an individual provider and home care agency long-term care worker;
- (5) Client's options for obtaining a long-term care worker. A client, as described in WAC 388-71-0836, eligible to receive long-term care services, or his/her legal representative acting on the client's behalf, may choose to receive personal care services in the client's home from an individual provider or a long-term care worker from a home care agency. If the client chooses to receive services from a home care agency, the agency will assign a long-term care worker employed by the agency to provide services to the client. Individual providers and home care agency long-term care workers are "long-term care workers" as defined in RCW 74.39A.009 and are subject to background checks under RCW ~~((74.39A.055))~~ 74.39A.056 and ~~((43.20.710))~~ 43.20A.710; and
- (6) Contracting requirements.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0510 How does a person become an individual provider? In order to become an individual provider, a person must:

- (1) Be eighteen years of age or older;
- (2) Provide the social worker/case manager/designee with:
 - (a) A valid Washington state driver's license or other valid picture identification; and either
 - (b) A Social Security card; or
 - (c) Proof of authorization to work in the United States.
- (3) Complete the required DSHS form authorizing a background check;
- (4) Disclose any ~~((disqualifying))~~ criminal convictions and pending charges, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC 388-71-0512;
- (5) Effective January 8, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.
- (6) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.
- (7) Results of background checks are provided to the department and the employer or potential employer unless

otherwise prohibited by law or regulation for the purpose of determining whether the person:

- (a) Is disqualified based on a disqualifying criminal conviction~~((;))~~ or a pending charge for a disqualifying crime as listed in WAC 388-113-0020, civil adjudication proceeding, or negative action as defined in WAC 388-71-0512 and 388-71-0540; or
- (b) Should or should not be employed as an individual provider based on his or her character, competence, and/or suitability.
- ~~((8))~~ ~~((Disqualifying crimes, civil adjudication proceedings, and negative actions are listed in WAC 388-71-0540 (4), (5) and (6).))~~
- ~~((9))~~ ~~((For those providers listed in RCW 43.43.837(1), a second Washington state and national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.))~~
- ~~((10))~~ ~~((9))~~ The department may require an individual provider to have a Washington state name and date of birth background check or a Washington state and national fingerprint-based background check, or both, at any time.
- ~~((11))~~ ~~((10))~~ Sign a home and community-based service provider contract/agreement to provide personal care services to a person under a medicaid state plan or federal waiver such as COPEs or other waiver programs.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0513 Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health? In order to be a long-term care worker employed by a home care agency, a person must:

- (1) Complete the required DSHS form authorizing a background check.
- (2) Disclose any disqualifying criminal convictions and pending charges as listed in WAC 388-113-0020, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC 388-71-0512.
- (3) Effective January 8, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.
- (4) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.
- (5) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:
 - (a) Is disqualified based on a disqualifying criminal conviction~~((;))~~ or a pending charge for a disqualifying crime as listed in WAC 388-113-0020, civil adjudication proceeding, or negative action as defined in WAC 388-71-0512 and listed in WAC 388-71-0540; or
 - (b) Should or should not be employed based on his or her character, competence, and/or suitability.

(6) ~~((Disqualifying crimes, civil adjudication proceeding, and negative actions are listed in WAC 388-71-0540 (4), (5) and (6).~~

~~(7))~~ For those providers listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.

~~((8))~~ (7) The department may require a long-term care worker to have a Washington state name and date of birth background check or a Washington state and national fingerprint-based background check, or both, at any time.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0540 When will the department, AAA, or department designee deny payment for services of an individual provider or home care agency long-term care worker? The department, AAA, or department designee will deny payment for the services of an individual provider or home care agency provider:

(1) When the services are provided by an employee of the home care agency who is related by blood, marriage, adoption, or registered domestic partnership to the client;

(2) When he or she is the client's spouse, except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0020;

(3) When he or she is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under medicaid personal care;

(4) When he or she is a foster parent providing personal care to a child residing in their licensed foster home;

(5) When he or she has had any of the following:

(a) A history of noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

~~(b) ((A conviction or pending charge for a crime in federal court or in any other state, when the department determines that the crime is equivalent to a crime under subsections (c), (d), (e), (f), or (g) below;~~

~~(c) A conviction or pending charge for a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;~~

~~(d) A conviction or pending charge for "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;~~

~~(e) A conviction or pending charge for a "crime relating to drugs" which is the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance under one of the following:~~

~~(i) Violation of the Imitation Controlled Substances Act (VICSA);~~

~~(ii) Violation of the Uniform Controlled Substances Act (VUCSA);~~

~~(iii) Violation of the Uniform Legend Drug Act (VULDA); or~~

~~(iv) Violation of the Uniform Precursor Drug Act (VUPDA).~~

~~(f) A conviction or pending charge for sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;~~

~~(g) A conviction or pending charge for criminal mistreatment;~~

~~(h))~~ When he or she has a conviction or pending charge for a disqualifying crime listed in WAC 388-113-0020 (1), (2) or equivalent conviction or pending charge as described in WAC 388-113-0020(3).

(c) Been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26 RCW ((and vulnerable adult protection proceedings under chapter 74.34 RCW)), or proceedings involving a court ordered permanent restraining order or order of protection, either active or expired, against the individual that was based upon abuse, neglect, financial exploitation or mistreatment of a minor or vulnerable adult;

~~((i))~~ (d) A finding of abuse or neglect of a child under RCW 24.44.020 and chapter 388-15 WAC that is:

(i) Listed on the department's background check central unit (BCCU) report; or

(ii) Disclosed by the individual, except for findings made before December, 1998. Findings made before December 1998 require a character, competence, and suitability determination.

~~((j))~~ (e) A finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(i) Listed on any registry, including the department's registry;

(ii) Listed on the department's background check central unit (BCCU) report; or

(iii) Disclosed by the individual, except for adult protective services findings made before October 2003. Findings made before October 2003 require a character, competence, and suitability determination.

(6) Who has registered sex offender status;

(7) Who has had a license, certification, medicaid or medicare provider agreement, or a contract for the care of children or vulnerable adults denied, suspended, revoked, not renewed, or terminated, for noncompliance with state and/or federal regulations;

~~((7))~~ (8) Who obtained or attempted to obtain a license, certification or contract by fraudulent means or misrepresentation;

~~((8))~~ (9) Who knowingly, or with reason to know, made a false statement of material fact on his or her application for a license, certification, contract or any data attached to the application, or in any matter involving the department;

~~((9))~~ (10) Who willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or

monitoring visit made by the department, including refusal to permit authorized department representatives to interview clients or have access to their records;

~~((10))~~ (11) When the client's assessment or reassessment does not identify an unmet need;

~~((11))~~ (12) Who is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider);

~~((12))~~ (13) Who does not successfully complete applicable training requirements, within the timeframes described in WAC 388-71-0875, 388-71-0880, 388-71-0890 and 388-71-0991. If an individual provider or long-term care worker employed by a home care agency does not complete required training within the required timeframe, and:

(a) If the worker is not required to be a certified home care aide, then the long-term care worker may not provide care until the training is completed; or

(b) If the worker is required to be a certified home care aide, then the long-term care worker may not provide care until the certification has been granted.

~~((13))~~ (14) Who does not successfully complete the certification or recertification requirements as described under WAC 388-71-0975; or

~~((14))~~ (15) Who has had a home care aide certification denied, suspended, or revoked. If the individual is otherwise qualified, payment for services may resume when his or her certification has been reissued.

In addition, the department, AAA, or department designee may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0543, 388-71-0546, and 388-71-0551.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0546 When may the department, AAA, or department designee reject your choice of an individual provider? The department, AAA, or department designee may reject your request to have a family member or other person serve as your individual provider if the case manager has a reasonable, good faith belief that the person is, or will be, unable to appropriately meet your needs. Examples of circumstances indicating an inability to meet your needs include, but are not limited to:

(1) Evidence of misuse of alcohol, controlled substances, or legend drugs;

(2) A reported history of domestic violence committed by the individual provider, no-contact orders entered against the individual provider, or criminal conduct committed by the individual provider (whether or not the conduct is automatically disqualifying under WAC 388-71-0540 or under chapter 388-113 WAC);

(3) A report from any knowledgeable person that the individual provider lacks the ability or willingness to provide adequate care;

(4) The individual provider has other employment or responsibilities that prevent or interfere with the provision of required services; or

(5) Excessive commuting distance that would make it impractical for the individual provider to provide services as they are needed and outlined in your service plan.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0551 When may the department, AAA, or department designee terminate an individual provider's contract? The department, AAA, or department designee may terminate an individual provider's contract to provide personal care services under this chapter or chapters 388-106 and 388-112 WAC if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. Examples include, but are not limited to:

(1) The provider's home care aide certification has been revoked;

(2) The provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being;

(3) The department has determined that the provider lacks the character, competence or suitability necessary to protect the client's health, safety or well-being; and

(4) The provider has a disqualifying criminal conviction or a pending charge for a disqualifying crime under chapter 388-113 WAC or equivalent conviction or pending charge;

(5) The provider has been the subject of a negative action as described in WAC 388-71-0540; and

(6) The department, AAA or department designee may also terminate the individual provider's contract in accordance with the terms of the contract.

Chapter 388-113 WAC

Disqualifying Crimes and Negative Actions

NEW SECTION

WAC 388-113-0005 What is the purpose of this chapter? The purpose of this chapter is to describe the:

(1) Criminal convictions, pending charges, and negative actions that automatically disqualify an individual from having unsupervised access to vulnerable adults or minors who are receiving services under:

(a) Chapter 388-71 WAC, Home and community services and programs, including individual providers and employees of home care agencies;

(b) Chapter 388-101 WAC, Certified community residential services and supports;

(c) Chapter 388-76 WAC, Licensed adult family homes;

(d) Chapter 388-78A WAC, Licensed assisted living facilities;

(e) Chapter 388-97 WAC, Licensed nursing homes;

(f) Chapter 388-825 WAC, Developmental disabilities administration programs; and

(g) Chapter 388-107 WAC, Licensed enhanced services facilities.

(2) Exceptions to automatic disqualifications that may apply to certain criminal convictions and pending charges.

NEW SECTION

WAC 388-113-0010 What definitions apply to this chapter? "Department" means the Washington state department of social and health services.

"Drug" means a:

- (a) Controlled substance as defined in RCW 69.50.101;
- (b) Legend drug, as defined in RCW 69.41.010;
- (c) Precursor drug under Chapter 69.43 RCW; or
- (d) Imitation controlled substance, as defined in RCW 69.52.020.

"Minor" means any person under the age of eighteen.

"Pending charge" means a criminal charge for a disqualifying crime has been filed in a court of law for which the department has not received documentation showing the disposition of the charge.

"Unsupervised" means not in the presence of:

- (a) Another employee or volunteer from the same business or organization as the applicant; or
- (b) Any relative or guardian of any of the minors or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

"Vulnerable adult" is defined in RCW 74.34.020(17).

NEW SECTION

WAC 388-113-0020 Which criminal convictions and pending charges automatically disqualify an individual from having unsupervised access to adults or minors who are receiving services in a program under chapters 388-71, 388-101, 388-76, 388-78A, 388-97, 388-825, and 388-107 WAC? (1) Individuals who must satisfy background checks requirements under chapters 388-71, 388-101, 388-76, 388-78A, 388-97, 388-825, and 388-107 WAC may not work in a position that may involve unsupervised access to minors or vulnerable adults if he or she has been convicted of or has a pending charge for one of the following crimes:

- (a) Abandonment of a child;
- (b) Abandonment of a dependent person;
- (c) Abuse or neglect of a child;
- (d) Arson 1;
- (e) Assault 1;
- (f) Assault 2;
- (g) Assault 3;
- (h) Assault 4/simple assault (less than three years);
- (i) Assault of a child;
- (j) Burglary 1;
- (k) Child buying or selling;
- (l) Child molestation;
- (m) Coercion (less than five years);
- (n) Commercial sexual abuse of a minor/patronizing a juvenile prostitute;
- (o) Communication with a minor for immoral purposes;

- (p) Controlled substance homicide;
- (q) Criminal mistreatment;
- (r) Custodial assault;
- (s) Custodial interference;
- (t) Custodial sexual misconduct;
- (u) Dealing in depictions of minor engaged in sexual explicit conduct;
- (v) Domestic violence (felonies only);
- (w) Drive-by shooting;
- (x) Drug crimes, if they involve one or more of the following:
 - (i) Manufacture of a drug;
 - (ii) Delivery of a drug; and
 - (iii) Possession of a drug with the intent to manufacture or deliver.
- (y) Endangerment with a controlled substance;
- (z) Extortion;
- (aa) Forgery (less than five years);
- (bb) Homicide by abuse, watercraft, vehicular homicide (negligent homicide);
- (cc) Identity theft (less than five years);
- (dd) Incendiary devices (possess, manufacture, dispose);
- (ee) Incest;
- (ff) Indecent exposure/public indecency (felony);
- (gg) Indecent liberties;
- (hh) Kidnapping;
- (ii) Luring;
- (jj) Malicious explosion 1;
- (kk) Malicious explosion 2;
- (ll) Malicious harassment;
- (mm) Malicious placement of an explosive 1;
- (nn) Malicious placement of an explosive 2 (less than five years);
- (oo) Malicious placement of imitation device 1 (less than five years);
- (pp) Manslaughter;
- (qq) Murder/aggravated murder;
- (rr) Possess depictions minor engaged in sexual conduct;
- (ss) Promoting pornography;
- (tt) Promoting prostitution 1;
- (uu) Promoting suicide attempt (less than five years);
- (vv) Prostitution (less than three years);
- (ww) Rape;
- (xx) Rape of child;
- (yy) Residential burglary;
- (zz) Robbery;
- (aaa) Selling or distributing erotic material to a minor;
- (bbb) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;
- (ccc) Sexual exploitation of minors;
- (ddd) Sexual misconduct with a minor;
- (eee) Sexually violating human remains;
- (fff) Stalking (less than five years);
- (ggg) Theft 1;
- (hhh) Theft 2 (less than five years);
- (iii) Theft 3 (less than three years);
- (jjj) Unlawful imprisonment
- (kkk) Unlawful use of building for drug purposes (less than 5 years);
- (lll) Use of machine gun in a felony;

(mmm) Vehicular assault;

(nnn) Violation of temporary restraining order or preliminary injunction involving sexual or physical abuse to a child;

(ooo) Violation of a temporary or permanent vulnerable adult protection order (VAPO) that was based upon abandonment, abuse, financial exploitation, or neglect; and

(ppp) Voyeurism.

(2) If "(less than five years)" or "(less than three years)" appears after a crime listed in subsection (1) above, the individual is not automatically disqualified if the required number of years has passed since the date of the conviction. For example, if three or more years have passed since an individual was convicted of Theft in the 3rd degree that conviction would not be automatically disqualifying. If the required number of years has passed, the employer must conduct an overall assessment of the person's character, competence, and suitability before allowing unsupervised access to vulnerable adults and minors.

(3) When the department determines that a conviction or pending charge in federal court or in any other court, including state court is equivalent to a Washington state crime that is disqualifying under this section, the equivalent conviction or pending charge is also disqualifying.

NEW SECTION

WAC 388-113-0030 Where do I find what negative actions are disqualifying? In addition to disqualifying convictions and pending charges for disqualifying crimes, individuals are disqualified from working in positions involving unsupervised access to minors or vulnerable adults under chapters 388-71, 388-101, 388-76, 388-78A, 388-97, 388-825 and 388-107 WAC if certain findings have been made or certain actions have been taken against them. These disqualifying findings and actions are referred to as "negative actions" and they are listed in the following program rules:

(a) Chapter 388-71 WAC, Home and community services and programs, including individual providers and employees of home care agencies;

(b) Chapter 388-101 WAC, Certified community residential services and supports;

(c) Chapter 388-76 WAC, Licensed adult family homes;

(d) Chapter 388-78A WAC, Licensed assisted living facilities;

(e) Chapter 388-97 WAC, Licensed nursing homes;

(f) Chapter 388-825 WAC, Developmental disabilities administration programs; and

(g) Chapter 388-107 WAC, Licensed enhanced services facilities.

NEW SECTION

WAC 388-113-0040 Are there any exceptions to the automatic disqualification under WAC 388-113-0020? (1) Under the conditions described in this section, an individual is not automatically disqualified from having unsupervised access to minors and vulnerable adults if he or she:

(a) Has worked continuously for the same employer for whom he or she was working on July 24, 2014; and

(b) Does not have a conviction or pending charge that was automatically disqualifying under rules that were in effect on July 24, 2014; and

(c) Works for a program or facility that operates under chapters 388-71 WAC, Individual providers and home care agencies; 388-76 WAC, Adult family home; 388-78A WAC Assisted living facility; or 388-97 WAC, Nursing homes and was convicted of, or has a pending charge for:

(i) Residential burglary;

(ii) Unlawful use of building for drug purposes (five or more years);

(iii) Vehicular assault; or

(d) Works for a program or facility that operates under chapter 388-825 WAC (developmental disabilities administration programs) or supported living and was convicted of, or has a pending charge for:

(i) Assault 3;

(ii) Manufacture of a controlled substance;

(iii) Delivery of a controlled substance; or

(iv) Possession of a controlled substance with the intent to manufacture or deliver.

(2) In addition to the requirements under subsection (1), in order for an individual to be eligible for an exception under this section, the following conditions must also be satisfied:

(a) The conviction date for the crimes listed in (1)(c) and (d) must be before July 25, 2014;

(b) The individual has to continue to work for the same employer; and

(c) The employer or hiring entity must:

(i) Review the individual's character, competence and suitability to have unsupervised access to minors or to vulnerable adults, and;

(ii) Have documentation on file demonstrating the results of the character, competence and suitability review; and

(iii) Have documentation on file demonstrating that the individual meets all of the conditions in subsection (2) of this section, including a copy of a background check result letter dated prior to July 25, 2014, indicating the individual was not disqualified from having unsupervised access to minors or vulnerable adults.

WSR 14-14-026

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Operations Support and Services Division)

(Background Check Central Unit)

[Filed June 24, 2014, 7:41 a.m., effective July 25, 2014]

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

Purpose: The purpose of this coordinated rule making is to remove developmental disabilities administration (DDA) background check requirements from WAC 388-06-0020 through 388-06-0540, and make a clarifying change to children's administration (CA) background check requirements in WAC 388-06-0240. Under a separate CR-103, DDA will adopt the DDA background check requirements in chapter

388-825 WAC, DDA service rules, as part of a larger aging and disability services coordinated background check rule-making effort. This rule making is intended to resolve confusion and rule misinterpretation that exists because CA and DDA programmatic background check requirements are contained in the same WAC sections.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-06-0115; and amending WAC 388-06-0010, 388-06-0020, 388-06-0100, 388-06-0110, 388-06-0130, 388-06-0150, 388-06-0160, 388-06-0190, 388-06-0210, 388-06-0240, 388-06-0250, 388-06-0525, and 388-06-0540.

Statutory Authority for Adoption: RCW 43.43.832.

Other Authority: RCW 74.15.030, 43.43.837.

Adopted under notice filed as WSR 14-05-066 on February 18, 2014.

Changes Other than Editing from Proposed to Adopted Version: Amendments to WAC 388-06-0170 and 388-06-0180 were removed from this filing and will be included in a separate emergency rule filing. WAC 388-06-0525 was revised to remove incorrect reference to subsection (2).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 13, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 13, Repealed 1.

Date Adopted: June 24, 2014.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0010 What is the purpose of this chapter? (1) ~~((The purpose of this chapter is to))~~ Sections 0100 through 0260 of this chapter establish rules for background checks conducted by children's administration (CA)~~((and the division of developmental disabilities (DDD)))~~ at the department of social and health services (DSHS). The department does background checks on individuals who are licensed, certified, contracted, or authorized to care for or have unsupervised access to children ~~((and to individuals with a developmental disability))~~. Background checks are conducted to find and evaluate any history of criminal convictions or civil adjudication proceedings, including those involving abuse, abandonment, financial exploitation, or neglect of a child or vulnerable adult.

(2) ~~((This chapter also))~~ WAC 388-06-0500 through 388-06-0540 of this chapter defines when the one hundred

twenty-day provisional hire is allowed by DSHS. ~~((WAC 388-06-0500 through 388-06-0540 apply to all DSHS administrations))~~.

(3) WAC 388-06-0600 through 388-06-0640 of this chapter includes the background check requirements for DSHS employees and applicants seeking, working or serving in a covered position.

(4) WAC 388-06-0700 through 388-06-0720 of this chapter describes the responsibilities of the background check central unit.

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 12-21-053, filed 10/15/12, effective 12/25/12)

WAC 388-06-0020 What definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter? The following definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter:

"Authorized" or **"authorization"** means not disqualified by the department to have unsupervised access to children and individuals with a developmental disability. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

"CA" means children's administration, department of social and health services. Children's administration is the cluster of programs within DSHS responsible for the provision of licensing of foster homes, group facilities/programs and child-placing agencies, child protective services, child welfare services, and other services to children and their families.

"Certification" means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that they met the minimum licensing requirements.

(2) Department licensing of a child-placing agency to certify and supervise foster home and group care programs.

"Children" and **"youth"** are used interchangeably in this chapter and refer to individuals who are under parental or department care including:

(1) Individuals under eighteen years old; or

(2) Foster children up to twenty-one years of age and enrolled in high school or a vocational school program; or

(3) Developmentally disabled individuals up to twenty-one years of age for whom there are no issues of child abuse and neglect (~~or~~

~~(4) JRA youth up to twenty-one years of age and who are under the jurisdiction of JRA or a youthful offender under the jurisdiction of the department of corrections who is placed in a JRA facility))~~.

"Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but

not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

~~("Community residential service businesses" include all division of developmental disabilities supported living providers with the exception of supported living providers who are also licensed as an assisted living facility or adult family home provider. Community residential service providers also include DDD companion homes, DDD alternative living and licensed residential homes for children.)~~

"DCFS" means division of children and family services and is a division within children's administration that provides child welfare, child protective services, and support services to children in need of protection and their families.

~~("DDD" means the division of developmental disabilities, department of social and health services (DSHS).)~~

"DLR" means the division of licensed resources that is a division within children's administration, the department of social and health services.

"Department" means the department of social and health services (DSHS).

"I" and "you" refers to anyone who has unsupervised access to children or to persons with developmental disabilities in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

~~("JRA" means the juvenile rehabilitation administration, department of social and health services.)~~

"Licensor" means an employee of DLR or of a child placing agency licensed or certified under chapter 74.15 RCW to approve and monitor licenses for homes or facilities that offer care to children. Licenses require that the homes and facilities meet the department's health and safety standards.

~~("Individual provider" as defined in RCW 74.39A.240 means a person, including a personal aide, who has contracted with the department to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and supports to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.)~~

"Individuals with a developmental disability" means individuals who meet eligibility requirements in Title 71A RCW. A developmental disability is any of the following: Intellectual disability, cerebral palsy, epilepsy, autism, or another neurological condition described in chapter 388-823 WAC; originates before the age of eighteen years; is expected to continue indefinitely; and constitutes a substantial limitation to the individual.

~~("Long term care worker" has the same meaning as defined in RCW 74.39A.009.)~~

"Spousal abuse" includes any crime of domestic violence as defined in RCW 10.99.020 when committed against

a spouse, former spouse, person with whom the perpetrator has a child regardless of whether the parents have been married or lived together at any time, or an adult with whom the perpetrator is presently residing or has resided in the past.

"Unsupervised" means not in the presence of:

(1) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of the child or developmentally disabled individual or vulnerable adult to whom the applicant has access during the course of his or her employment or involvement with the business or organization (RCW 43.43.080(9)).

"Unsupervised access" means that an individual will or may be left alone with a child or vulnerable adult (individual with developmental disability) at any time for any length of time.

"We" refers to the department, including licensors and social workers.

"WSP" refers to the Washington state patrol.

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

WAC 388-06-0100 Why are background checks done? The ~~((department))~~ Children's Administration does background checks to help safeguard the health, safety and well being of children ~~((and of individuals with a developmental disability))~~ in licensed homes and facilities and in day treatment programs. By doing background checks, the department reduces the risk of harm to children ~~((and individuals with a developmental disability))~~ from caregivers that have been convicted of certain crimes. The department's regulations require the evaluation of your background to determine your character, suitability and competence before you are issued a license, contract, certificate, or authorized to have unsupervised access to children ~~((or to individuals with a developmental disability))~~.

AMENDATORY SECTION (Amending WSR 12-21-053, filed 10/15/12, effective 12/25/12)

WAC 388-06-0110 Who must have background checks? (1) Per RCW 74.15.030, the department requires background checks on all providers who may have unsupervised access to children or individuals with a developmental disability. This includes licensed, certified or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

~~(2)((b)) As described in WAC 388-06-0115, the division of developmental disabilities requires background checks on all contracted providers, individual providers, employees of contracted providers, and any other individual who is qualified by DDD to have unsupervised access to individuals with developmental disabilities.~~

(3) Long term care workers as defined in chapter 74.39A RCW hired after January 7, 2012 are subject to national fingerprint-based background checks. For individual providers and home care agency providers refer to WAC 388-71-0500 through 388-71-05909. For adult family homes refer to chapter 388-76 WAC, adult family home minimum licensing

requirements. For assisted living facilities refer to chapter 388-78A WAC, assisted living licensing rules.

(4)) Per RCW 74.15.030, the department also requires background checks on other individuals who may have unsupervised access to children or to individuals with a developmental disability in department licensed or contracted homes, or facilities which provide care. The department requires background checks on the following people:

(a) A volunteer or intern with regular or unsupervised access to children;

(b) Any person who regularly has unsupervised access to a child or an individual with a developmental disability;

(c) A relative other than a parent who may be caring for a child;

(d) A person who is at least sixteen years old, is residing in a foster home, relatives home, or child care home and is not a foster child.

AMENDATORY SECTION (Amending WSR 12-21-053, filed 10/15/12, effective 12/25/12)

WAC 388-06-0130 Does the background check process apply to new and renewal licenses, certification, contracts, and authorizations to have unsupervised access to children ((or individuals with a developmental disability))? ((+)) For children's administration these regulations apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to have unsupervised access to children or individuals with a developmental disability that are processed by the children's administration after the effective date of this chapter.

((2) For the division of developmental disabilities these regulations apply to initial contracts and renewals as required by the applicable DDD background check renewal schedule and program regulations:))

AMENDATORY SECTION (Amending WSR 12-21-053, filed 10/15/12, effective 12/25/12)

WAC 388-06-0150 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

(a) Washington state patrol.

(b) Washington courts.

(c) Department of corrections.

(d) Department of health.

(e) Civil adjudication proceedings.

(f) Applicant's self-disclosure.

(g) Out-of-state law enforcement and court records.

(2) Except as required in WAC 388-06-0150 (4)(b) ((and (5))), children's administration ((and division of developmental disabilities)) will conduct a fingerprint-based background check on any individual who has lived in Washington state for less than three consecutive years.

(3) Background checks conducted for children's administration also include:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS license that has been revoked, suspended, or denied.

(4) In addition to the requirements in subsections (1) through (3) of this section, background checks conducted by children's administration for placement of a child in out-of-home care, including foster homes, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home:

(a) Child abuse and neglect registries in each state a person has lived in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

((5) The division of developmental disabilities requires fingerprint-based background checks as described in WAC 388-06-0115. These background checks include a review of conviction records through the Washington state patrol, the Federal Bureau of Investigation, and the national sex offender registry:))

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0160 Who pays for the background check? (1) Children's administration (CA) pays the DSHS general administrative costs for background checks for foster home applicants, CA relative and other suitable caregivers, and CA adoptive home applicants.

(2) Children's administration pays the WSP and FBI-fingerprint processing fees for foster home applicants, CA relative and other suitable caregivers, CA adoptive home applicants, and other adults associated with the home who require background clearances under chapter 13.34 RCW.

(3) Children's administration does not pay WSP and FBI fingerprint processing fees or expenses for employees, contractors, or volunteers associated with facilities other than foster homes.

((4) The division of developmental disabilities pays for background checks, including fingerprint-based background checks, for individuals seeking authorization to provide services to clients of the division:))

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

WAC 388-06-0190 If I have a conviction, may I ever have unsupervised access to children ((or individuals with a developmental disability))? (1) In two situations, DSHS may find a person with convictions able to have unsupervised access to children or individuals with a developmental disability:

(a) If the conviction for any crime listed in WAC 388-06-0180 occurred more than five years ago; or

(b) If the conviction was for a crime other than those listed in WAC 388-06-0170 or 388-06-0180.

(2) In both of these situations, DSHS must review your background to determine your character, suitability, and competence to have unsupervised access to children or indi-

viduals with a developmental disability. In this review, DSHS must consider the following factors:

- (a) The amount of time that has passed since you were convicted;
- (b) The seriousness of the crime that led to the conviction;
- (c) The number and types of other convictions in your background;
- (d) ~~((The amount of time that has passed since you were convicted;~~
- ~~((e)))~~ Your age at the time of conviction;
- ~~((f)))~~ ~~(e)~~ Documentation indicating you have successfully completed all court-ordered programs and restitution;
- ~~((g)))~~ ~~(f)~~ Your behavior since the conviction; and
- ~~((h)))~~ ~~(g)~~ The vulnerability of those that would be under your care.

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

WAC 388-06-0210 Will you license, contract, or authorize me to have unsupervised access to children ~~((or individuals with a developmental disability))~~ if my conviction has been expunged, or vacated from my record or I have been pardoned for a crime? If you receive a pardon or a court of law acts to expunge or vacate a conviction on your record, the crime will not be considered a conviction for the purposes of licensing, contracting, certification, or authorization for unsupervised access to children ~~((or to individuals with a developmental disability))~~.

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

WAC 388-06-0240 What may I do if I disagree with the department's decision to deny me a license, certification, contract, or authorization based on the results of the background check? (1) If you are seeking a license, or employment with a ~~((licensed))~~ home or facility licensed by the children's administration, you may request an administrative hearing to disagree with the department's decision process to deny authorization for unsupervised access to children ~~((or to individuals with a developmental disability))~~ (chapter 34.05 RCW). You cannot contest the conviction in the administrative hearing.

(2) Prospective volunteers~~((;))~~ or interns, contractors or their employees, or those seeking certification do not have the right to appeal the department's decision to deny authorization for unsupervised access to children ~~((and to individuals with a developmental disability))~~.

(3) The employer or prospective employer cannot contest the department's decision on your behalf.

(4) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings (chapter 34.05 RCW).

AMENDATORY SECTION (Amending WSR 10-16-083, filed 7/30/10, effective 8/30/10)

WAC 388-06-0250 Is the background check information released to my employer or prospective employer?

(1) Children's administration will share with employers or approved care providers only that:

- (a) You are disqualified; or
- (b) You have not been disqualified by the background check.

~~((2))~~ ~~((Division of developmental disabilities will release the source of the disqualifying crime or negative action and WSP rap sheet to authorized requesters as allowed by state law.~~

~~((3)))~~ The department will follow laws related to the release of criminal history records (chapters 10.97 and 43.43 RCW) and public disclosure (chapter 42.17 RCW) when releasing any information.

AMENDATORY SECTION (Amending WSR 12-21-053, filed 10/15/12, effective 12/25/12)

WAC 388-06-0525 When are individuals eligible for the one hundred twenty-day provisional hire? ~~((f)))~~ Individuals are eligible for the one hundred twenty-day provisional hire immediately~~((, except as provided under subsection (2) of this section and WAC 388-06-0540))~~. The signed background check application and fingerprinting process must be completed as required by the applicable DSHS program.

~~((2))~~ ~~Long-term care workers as defined in chapter 74.39A RCW are eligible for the one hundred twenty-day provisional hire, pending the outcome of the fingerprint-based background check, as long as provisional hiring is allowed by the applicable DSHS program rules and the long-term care worker is not disqualified as a result of the initial name and date of birth background check.)~~

AMENDATORY SECTION (Amending WSR 12-21-053, filed 10/15/12, effective 12/25/12)

WAC 388-06-0540 Are there instances when the one hundred twenty-day provisional hire is not available? The one hundred twenty-day provisional hire is not available to an agency, entity, or hiring individual requesting:

- (1) An initial license;
- (2) An initial contract;
- (3) Approval as a family child day care home provider, foster parent or adoptive parent (see 42 U.S.C. Sec 671(a)(20))~~((; or~~
- ~~((4))~~ ~~Any other individual listed in the assisted living facility or adult family home license application, such as an adult family home entity representative or resident manager, or an assisted living facility administrator.)~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-06-0115 What are the division of developmental disabilities background check requirements?

WSR 14-14-027**PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed June 24, 2014, 7:47 a.m., effective July 25, 2014]

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

Purpose: The primary purposes for these changes were to consolidate the secretary's lists of crimes and negative actions that disqualify persons from being a provider for home and community services, residential care services, and developmental disabilities administration (DDA) while also clarifying background check requirements.

This consolidated locations and list provide better clarity and understanding for the public and contracted entities, reduce the amount of WAC language, and help preserve the health and safety of our clients.

DDA and the aging and long-term support administration have coordinated these changes with the DSHS background check central unit.

Other housekeeping changes such as WAC and RCW references, names of organizations, etc. were also updated.

Citation of Existing Rules Affected by this Order: Amending WAC 388-97-0001, 388-97-1800, 388-97-1820, and 388-97-4220.

Statutory Authority for Adoption: RCW 74.39A.056 and chapters 74.42, 18.51 RCW.

Adopted under notice filed as WSR 14-05-074 on February 18, 2014.

A final cost-benefit analysis is available by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 4, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 4, Repealed 0.

Date Adopted: June 24, 2014.

Kevin Quigley
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 14-15 issue of the Register.

WSR 14-14-028**PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed June 24, 2014, 7:50 a.m., effective July 25, 2014]

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

Purpose: The primary purposes for these changes were to consolidate the secretary's lists of crimes and negative actions that disqualify persons from being a provider for home and community services, residential services, and developmental disabilities administration (DDA) while also clarifying background check requirements.

This consolidated locations and list provide better clarity and understanding for the public and contracted entities, reduce the amount of WAC language, and help preserve the health and safety of our clients.

DDA and the aging and long-term support administration have coordinated these changes with the DSHS background check central unit.

Other housekeeping changes such as WAC and RCW references, names of organizations etc. were also updated.

Citation of Existing Rules Affected by this Order: Amending WAC 388-76-10000, 388-76-10120, 388-76-10125, 388-76-10130, 388-76-10135, 388-76-10145, 388-76-10150, 388-76-10163, 388-76-101631, 388-76-101632, 388-76-10164, 388-76-10166, 388-76-10174, 388-76-10175, 388-76-10180, 388-76-10181, and 388-76-10955.

Statutory Authority for Adoption: RCW 74.39A.056 and chapters 74.34, 18.20 RCW.

Adopted under notice filed as WSR 14-05-075 on February 18, 2014.

A final cost-benefit analysis is available by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 17, Repealed 0.

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

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

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Kevin Quigley
Secretary

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WSR 14-14-029
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Developmental Disabilities Administration)
 [Filed June 24, 2014, 7:52 a.m., effective July 25, 2014]

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

Purpose: The primary purposes for these changes were to consolidate the secretary's lists of crimes and negative actions that disqualify persons from being a provider in home and community services, residential services, and developmental disabilities administration (DDA) contracted or licensed setting while also clarifying background check requirements. The amendments in this rule making include: Aligning disqualifying criminal history standards with the aging and long-term support administration (AL TSA); moving all DDA background check related rules from the background check central unit (BCCU) into DDA program WAC; and creating grandfathering language for workers hired and qualified prior to implementation of new standards, for all but the most egregious crimes.

Locating the disqualifying rules in a consolidated chapter provide better clarity and understanding for the public and contracted entities, reduce duplicative rules and consequently the volume of rules, and help preserve the health and safety of our clients.

DDA and AL TSA have coordinated these changes with the DSHS BCCU.

Other housekeeping changes such as WAC and RCW references, names of organizations, etc. were also updated.

Citation of Existing Rules Affected by this Order: Amending 388-825-335, 388-825-375, 388-825-380, 388-825-385, 388-829A-290, 388-829A-300, 388-829C-460, and 388-829C-470.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710.

Adopted under notice filed as WSR 14-05-070 on February 18, 2014.

A final cost-benefit analysis is available by contacting Alan McMullen, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-3524, fax (360) 407-0955, e-mail memular@dshs.wa.gov.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 27, Repealed 0.

Date Adopted: June 24, 2014.

Kevin Quigley
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 14-15 issue of the Register.

WSR 14-14-030
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Long-Term Support Administration)
 [Filed June 24, 2014, 7:54 a.m., effective July 25, 2014]

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

Purpose: The primary purposes for these changes were to consolidate the secretary's lists of crimes and negative actions that disqualify persons from being a provider for home and community services, residential services, and developmental disabilities administration (DDA) while also clarifying background check requirements.

This consolidated locations and list provide better clarity and understanding for the public and contracted entities, reduce the amount of WAC language, and help preserve the health and safety of our clients.

DDA and the aging and long-term support administration have coordinated these changes with the DSHS background check central unit.

Other housekeeping changes such as WAC and RCW references, names of organizations, etc. were also updated.

Citation of Existing Rules Affected by this Order: Amending 388-101-3080, 388-101-3090, 388-101-3245, 388-101-3250, and 388-101-3255.

Statutory Authority for Adoption: Chapter 71A.12 RCW.

Adopted under notice filed as WSR 14-05-073 on February 18, 2014.

A final cost-benefit analysis is available by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2591, e-mail Jeanette.childress@dshs.wa.gov.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: June 24, 2014.

Kevin Quigley
Secretary

AMENDATORY SECTION (Amending WSR 10-03-065, filed 1/15/10, effective 2/15/10)

WAC 388-101-3080 The department may deny—
Application. Under WAC 388-101-3090, the department is required to deny an application for initial certification or change of ownership under certain circumstances. The department may also deny ~~((the))~~ an application ~~((for initial certification or change of ownership))~~ if any person named in the application has:

(1) Shown a lack of the understanding, character, ability, or emotional stability that is necessary to meet the identified needs of vulnerable adults;

(2) Had a contract terminated or a certification or license revoked or denied by the department, or has been subjected to department enforcement actions;

(3) Had ~~((a))~~ an out-of-state contract or license involving the provision of services to children or vulnerable adults terminated, ((or a certification or license)) revoked or denied ((in another state,)) or has been ~~((subjected to))~~ the subject of an enforcement action ((in another state)) related to the out-of-state contract or license;

(4) Obtained or attempted to obtain a license or certification by fraudulent means or misrepresentation;

(5) Relinquished or been denied a license or license renewal to operate a home or facility that was licensed for the care of children or vulnerable adults;

(6) Refused to permit authorized department representatives to interview clients or to have access to client records;

(7) Been convicted of a drug-related conviction within the past five years without evidence of rehabilitation, unless denial is required under WAC ~~((388-06-0180(4)))~~ 388-101-3090; or

(8) Been convicted of an alcohol-related conviction within the past five years without evidence of rehabilitation~~((:))~~; or

(9) Been convicted of any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of the service provider.

AMENDATORY SECTION (Amending WSR 10-03-065, filed 1/15/10, effective 2/15/10)

WAC 388-101-3090 The department must deny—
Application. (1) The department must deny an application for initial certification or change of ownership if any person named in the application has:

~~((a))~~ ((Been convicted of a crime listed under WAC 388-06-0170(1));

~~((b))~~ Been convicted of a disqualifying crime under WAC 388-06-0180;

~~((c))~~ Been found by a court in a criminal proceeding, a protection proceeding, or a civil damages lawsuit under chapter 74.34 RCW, to have abused, neglected, abandoned, or financially exploited a vulnerable adult;

~~((d))~~ Been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by a

court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

~~((e))~~ A substantiated finding of abuse or neglect of a child that is:

~~((i))~~ Listed on the department's background check central unit (BCCU) report; or

~~((ii))~~ Disclosed by the individual, except for findings made before December 1998; or

~~((f))~~ A substantiated finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

~~((i))~~ Listed on any registry, including the department's registry;

~~((ii))~~ Listed on the department's background check central unit (BCCU) report; or

~~((iii))~~ Disclosed by the individual, except for adult protective services findings made before October 2003.

~~((2))~~ The department must deny an application for initial certification or change of ownership if any person named in the application has a pending charge for a crime that is disqualifying under this section.)) A disqualifying criminal conviction or pending criminal charge under chapter 388-113 WAC.

~~((b))~~ Been convicted of a crime in any federal or state court, and the department determines that the conviction is equivalent to a disqualifying conviction under chapter 388-113 WAC.

~~((2))~~ The department must also deny an application for initial certification or change of ownership if any person named in the application has a disqualifying negative action. The following are considered to be disqualifying negative actions:

~~((a))~~ A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;

~~((b))~~ The person is a registered sex offender;

~~((c))~~ The person is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;

~~((d))~~ A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by child protective services prior to October 1, 1998;

~~((e))~~ The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;

~~((f))~~ The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;

~~((g))~~ The person has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or

~~((h))~~ The person has relinquished a license or terminated a contract because an agency was taking an action against the

individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

AMENDATORY SECTION (Amending WSR 12-02-048, filed 12/30/11, effective 1/30/12)

WAC 388-101-3245 Background check—General.

(1) The department is authorized to conduct background checks under the background check requirements of this chapter and of chapter 388-113 WAC. Background checks ((conducted by the department and required in this chapter)) include but are not limited to ((Washington state background checks including)) an inquiry into any of the following:

(a) Department and department of health findings; ~~((and))~~

(b) ~~((Criminal))~~ Administrative actions taken by the department or by other agencies;

(c) Washington state criminal background check information from the Washington state patrol;

(d) National fingerprint-based background check information from the Federal Bureau of Investigation, when required; and

(e) Information from Washington state courts.

(2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the service provider. In addition to chapter 71A.12 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.056.

AMENDATORY SECTION (Amending WSR 12-02-048, filed 12/30/11, effective 1/30/12)

WAC 388-101-3250 Background checks—~~((Washington state))~~ Requirements for service providers. (1) Service providers must follow the background check requirements described in chapter ~~((388-06))~~ 388-113 WAC and in this chapter. In the event of an inconsistency, this chapter applies.

(2) The service provider must obtain background checks from the department for all administrators, employees, volunteers, students, and subcontractors who may have unsupervised access to clients.

(3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives the department's background check results ~~((, verifying that the person does not have any convictions, pending criminal charges, or findings described in WAC 388-101-3090))~~:

- (a) Administrators;
- (b) Employees;
- (c) Volunteers or students; and
- (d) Subcontractors.

(4) If the department's background check results show that ~~((the individual has a conviction, pending criminal charge, or finding that is not disqualifying under WAC 388-101-3090))~~ an administrator, employee, volunteer, student, or subcontractor has any of the following, then the service provider must ~~((conduct a character, suitability, and competence review as described in WAC 388-06-0190.))~~ prevent that person from having unsupervised access to clients:

(a) A disqualifying conviction or pending criminal charge under chapter 388-113 WAC; or

(b) A disqualifying negative action under WAC 388-101-3090.

(5) ~~((The))~~ If the background check results show any of the following, then the service provider must conduct a character, suitability, and competence review before allowing the person unsupervised access to clients:

(a) The person has a conviction or pending criminal charge, but the conviction or criminal charge is not disqualifying under WAC 388-113-0020;

(b) The person has a conviction or pending criminal charge that meets one of the exceptions listed in WAC 388-113-0040; or

(c) Any of the circumstances described in WAC 388-101-3080 apply to the individual.

(6) When a service provider receives the results of a person's background check, the service provider must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy in writing of the results of the background check. If requested, a copy of the background check results must be provided within ten working days of the request; and

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

~~((6))~~ (7) The service provider must renew the Washington state background check for each administrator, employee, volunteer, student, or subcontractor of a service provider. The service provider must at least every thirty-six months ((and)) keep current background check results for each administrator, employee, volunteer, student, or subcontractor of a service provider.

~~((7))~~ (8) Licensed ((boarding homes)) assisted living facilities or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

~~((8))~~ Service providers must prevent unsupervised access to clients by any administrator, employee, subcontractor, student, or volunteer who has a disqualifying conviction, pending criminal charge, or finding described in WAC 388-101-3090.)

(9) All applicants for certification must have a background check.

AMENDATORY SECTION (Amending WSR 12-02-048, filed 12/30/11, effective 1/30/12)

WAC 388-101-3255 Background checks—Provisional hire—Pending results. Persons identified in WAC ~~((388-101-3250(2)))~~ 388-101-3250 and who have lived in Washington state less than three years, or who are otherwise required to complete a national fingerprint-based background check, may be hired for a one hundred twenty-day provisional period when:

(1) The person is not disqualified based on the initial results of the background check from the department; and

(2) A national fingerprint-based background check is pending.

WSR 14-14-031**PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed June 24, 2014, 7:58 a.m., effective July 25, 2014]

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

Purpose: The primary purposes for these changes were to consolidate the secretary's lists of crimes and negative actions that disqualify persons from being a provider for home and community services, residential services, and developmental disabilities administration (DDA) while also clarifying background check requirements.

This consolidated locations and list provide better clarity and understanding for the public and contracted entities, reduce the amount of WAC language, and help preserve the health and safety of our clients.

DDA and the aging and long-term support administration have coordinated these changes with the DSHS background check central unit.

Other housekeeping changes such as WAC and RCW references, names of organizations, etc. were also updated.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-24641, 388-78A-2464, 388-78A-24642, 388-78A-2465, 388-78A-2467, 388-78A-2468, 388-78A-2469, 388-78A-2470, 388-78A-24701, 388-78A-3170, and 388-78A-3190.

Statutory Authority for Adoption: RCW 74.39A.056, chapter 18.20 RCW.

Adopted under notice filed as WSR 14-05-072 on February 18, 2014.

A final cost-benefit analysis is available by contacting Jeanette Childress, P.O. Box 45600, Olympia, WA 98504, phone (360) 725-219577 [725-2591], e-mail Jeanette.childress@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 11, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 11, Repealed 0.

Date Adopted: June 24, 2014.

Kevin Quigley
Secretary

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-24641 Background checks—Washington state name and date of birth background check. ~~((#)) Unless the individual is eligible for an exception under WAC 388-113-0040, if the results of the Washington state name and date of birth background check indicate the person ((is disqualified by having)) has a disqualifying criminal conviction ((listed in WAC 388-78A-2470 subsections (1) through (6);)) or ((by having)) a ((finding listed in)) pending charge for a disqualifying crime under chapter 388-113 WAC, or a disqualifying negative action under WAC 388-78A-2470 ((subsections (7) through (9))), then the assisted living facility must:~~

(1) Not employ, directly or by contract, a caregiver, administrator, or staff person; and

(2) Not allow a volunteer or student to have unsupervised access to residents.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2464 Background checks—Process—Background authorization form. Before the assisted living facility employs, directly or by contract, an administrator, staff person or caregiver, or accepts any volunteer, or student, the home must:

(1) Require the person to complete a DSHS background authorization form; and

(2) ~~((Send the completed form))~~ Submit to the department's background check central unit, including any additional documentation and information requested by the department.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-24642 Background checks—National fingerprint background check. (1) Administrators and all caregivers who are hired after January 7, 2012 and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check the assisted living facility must not employ, directly or by contract, an administrator or caregiver who has ~~((been convicted of))~~ a ~~((crime or has a finding that is))~~ disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or that is disqualifying under WAC 388-78A-2470.

(3) The assisted living facility may accept a copy of the national fingerprint background check results letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2465 Background check—Results—Inform. (1) After receiving the results of the Washington state name and date of birth background check, the assisted living facility must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a disqualifying criminal conviction ((record)) or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-78A-2470.

(2) After receiving the result letter for the national fingerprint background check, the assisted living facility must inform the person:

(a) Of the national fingerprint background check result letter;

(b) That they may request a copy of the national fingerprint check result letter; and

(c) That any additional information requested can only be obtained from the department's background check central unit.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2467 Background check—Sharing by health care facilities. In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. Results of the national fingerprint checks may not be shared. For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, an assisted living facility ~~((license))~~ licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) The health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the individual was last employed at a licensed health care facility and the date of the individual's current employment application;

(c) The background check is no more than two years old; and

(d) The assisted living facility has no reason to believe the individual has ~~((or may have))~~ a disqualifying criminal conviction or ((finding as described in)) pending charge for a disqualifying crime under chapter 388-113 WAC, a negative action that is disqualifying under WAC 388-78A-2470.

(2) The assisted living facility may also establish, maintain and follow a written agreement with home health, hospice, or home care agencies licensed under chapter 70.127 RCW or nursing pools registered under chapter 18.52C RCW in order to ensure that the agency or pool staff meet the requirements of WAC 388-78A-2470.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2468 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check. The assisted living facility may conditionally hire an administrator, caregiver, or staff person directly or by contract, pending the result of the Washington state name and date of birth background check, provided that the assisted living facility:

(1) Submits the background authorization form for the person to the department no later than one business day after he or she starts working;

(2) Requires the person to sign a disclosure statement indicating if ~~((they have been convicted of))~~ he or she has a disqualifying criminal conviction or pending charge for a disqualifying crime ((or have a finding that is disqualifying)) under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-78A-2470;

(3) Has received three positive references for the person;

(4) Does not allow the person to have unsupervised access to any resident;

(5) Ensures direct supervision of the administrator, all caregivers, and staff persons; and

(6) Ensures that the person is competent, and receives the necessary training to perform assigned tasks and meets the training requirements under chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2469 Background check—Disclosure statement. (1) The assisted living facility must require each administrator, caregiver, staff person, volunteer and student, prior to starting his or her duties, to make disclosures of any crimes or findings consistent with RCW 43.43.834(2). The disclosures must be in writing and signed by the person under penalty of perjury.

(2) The department may require the assisted living facility or any administrator, caregiver, staff person, volunteer or student to complete additional disclosure statements or background authorization forms if the department has reason to believe that ~~((offenses specified in))~~ a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-78A-2470 have occurred since completion of the previous disclosure statement or background check.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2470 Background check—Employment-disqualifying information—Disqualifying negative

actions. (1) The assisted living facility must not employ (~~or allow~~) an administrator, caregiver, or staff person, to have unsupervised access to residents, as defined in RCW 43.43.830, if (~~the person has been:~~)

~~((1) Convicted of a "crime against children or other persons")~~ the individual has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, unless the individual is eligible for an exception under WAC 388-113-0040.

(2) The assisted living facility must not employ an administrator, caregiver, or staff person, or allow an administrator, caregiver, or staff person to have unsupervised access to residents, as defined in RCW 43.43.830, (unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years have passed since the last conviction;

~~(2) Convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in the third degree, and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;~~

~~(3) Convicted of the manufacture, delivery, or possession with intent to manufacture or deliver drugs under one of the following laws:~~

~~(a) Violation of the Imitation Controlled Substances Act (VICSA);~~

~~(b) Violation of the Uniform Controlled Substances Act (VUCSA);~~

~~(c) Violation of the Uniform Legend Drug Act (VULDA); or~~

~~(d) Violation of the Uniform Precursor Drug Act (VUPDA);~~

~~(4) Convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;~~

~~(5) Convicted of criminal mistreatment;~~

~~(6) Convicted of a crime in any federal or state court, and the department determines that the crime is equivalent to a crime described in this section;~~

~~(7) Found to have abused, neglected, financially exploited or abandoned a minor or vulnerable adult by a court of law or a disciplining authority, including the department of health;~~

~~(8) Found to have abused or neglected a child and that finding is:~~

~~(a) Listed on the department's background check central unit report; or~~

~~(b) Disclosed by the individual, except for finding made before December, 1998.~~

~~(9) Found to have abused, neglected, financially exploited or abandoned a vulnerable adult and that finding is:~~

~~(a) Listed on any registry, including the department's registry;~~

~~(b) Listed on the department's background check central unit report; or~~

~~(c) Disclosed by the individual, except for adult protective services findings made before October, 2003-))~~ if the individual has one or more of the following disqualifying negative actions:

(a) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;

(b) The individual is a registered sex offender;

(c) The individual is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by Adult Protective Services prior to October 2003;

(d) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by Child Protective Services prior to October 1, 1998;

(e) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;

(f) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;

(g) The person has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or

(h) The person has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-24701 Background checks—Employment—Nondisqualifying information. (1) If the background check results show that an employee or prospective employee has a criminal conviction or (~~finding~~) pending charge for a crime that is not a disqualifying crime under chapter 388-113 WAC (388-78A-2470), then the assisted living facility must determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the assisted living facility.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-3170 Circumstances (~~resulting~~) that may result in enforcement remedies. (1) The department is authorized to impose enforcement remedies described in WAC 388-78A-3160 if any person described in subsection (2) of this section is found by the department to have:

(a) A history of significant noncompliance with federal or state laws or regulations in providing care or services to frail elders, vulnerable adults or children, whether as a licensee, contractor, managerial employee or otherwise. Evidence of significant noncompliance may include, without limitation:

(i) Citations for violation of laws or regulations imposed by regulating entities;

(ii) Sanctions for violation of laws or regulations imposed by regulating entities;

(iii) Involuntary termination, cancellation, suspension, or nonrenewal of a medicaid contract or medicare provider agreement, or any other agreement with a public agency for the care or treatment of children, frail elders or vulnerable adults;

(iv) Been denied a license or contract relating to the care of frail elders, vulnerable adults or children; or

(v) Relinquished or failed to renew a license or contract relating to care of frail elders, vulnerable adults or children following written notification of the licensing agency's initiation of denial, suspension, cancellation or revocation of a license.

(b) Failed to provide appropriate care to frail elders, vulnerable adults or children under a contract, or having such contract terminated or not renewed by the contracting agency due to such failure;

(c) ~~((Been convicted of a felony, or a crime against a person, if the conviction reasonably relates to the competency of the person to operate an assisted living facility;))~~

~~((h))~~ Failed or refused to comply with the requirements of chapter 18.20 RCW, applicable provisions of chapter 70.129 RCW or this chapter;

~~((e))~~ (d) Retaliated against a staff person, resident or other individual for:

(i) Reporting suspected abuse, neglect, financial exploitation, or other alleged improprieties;

(ii) Providing information to the department during the course of ~~((the department conducting))~~ an inspection of the assisted living facility; or

(iii) Providing information to the department during the course of ~~((the department conducting))~~ a complaint investigation in the assisted living facility.

~~((f))~~ (e) Operated a facility for the care of children or vulnerable adults without a current, valid license or under a defunct or revoked license;

(f) Attempted to obtain a contract or license from the department by fraudulent means or by misrepresentation;

(g) ~~((Been convicted of a crime))~~ A conviction or pending charge for a crime that is not automatically disqualifying under chapter 388-113 WAC, but that:

(i) Was committed on an assisted living facility premises; or knowingly permitted, aided or abetted an illegal act on an assisted living facility premises; ~~((or engaged in))~~

(ii) Involved the illegal use of drugs or the excessive use of alcohol; or

(iii) Is reasonably related to the competency of the person to operate an assisted living facility.

(h) Abused, neglected or exploited a vulnerable adult ~~((or))~~;

(i) Had a sanction or corrective or remedial action taken by federal, state, county or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(j) ~~((knowingly failed))~~ Failed to report alleged abuse, neglect or exploitation of a vulnerable adult ~~((as required by))~~ in violation of chapter 74.34 RCW;

~~((h))~~ (k) Failed to exercise fiscal accountability and responsibility involving a resident, the department, public

agencies, or the business community; or to have insufficient financial resources or unencumbered income to sustain the operation of the assisted living facility;

~~((j))~~ (l) Knowingly or with reason to know, made false statements of material fact in the application for the license or the renewal of the license or any data attached thereto, or in any matter under investigation by the department;

~~((k))~~ (m) Willfully prevented or interfered with or attempted to impede in any way any inspection or investigation by the department, or the work of any authorized representative of the department or the lawful enforcement of any provision of this chapter;

~~((h))~~ (n) Refused to allow department representatives or agents to examine any part of the licensed premises including the books, records and files required under this chapter;

~~((m))~~ (o) Moved all residents out of the assisted living facility without the department's approval and appears to be no longer operating as an assisted living facility; or

~~((n))~~ (p) Demonstrated any other factors that give evidence the applicant lacks the appropriate character, suitability and competence to provide care or services to vulnerable adults.

(2) This section applies to any assisted living facility:

(a) Applicant;

(b) Partner, officer or director;

(c) Manager or managerial employee; or

(d) Majority owner of the applicant or licensee:

(i) Who is involved in the management or operation of the assisted living facility;

(ii) Who may have direct access to assisted living facility residents;

(iii) Who controls or supervises the provision of care or services to assisted living facility residents; or

(iv) Who exercises control over daily operations of the assisted living facility.

(3) For other circumstances resulting in discretionary enforcement remedies, see WAC 388-78A-3200.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required. (1) The department must deny, suspend, revoke, or refuse to renew an assisted living facility license if any person described in subsection (2) of this section ~~((who may have unsupervised access to residents has a conviction or finding described in WAC 388-78A-2470))~~ is found by the department to have:

(a) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;

(b) The individual is a registered sex offender;

(c) The individual is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;

(d) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by child protective services prior to October 1, 1998;

(e) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;

(f) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;

(g) The person has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or

(h) The person has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

(2) This section applies to any assisted living facility:

- (a) Applicant;
- (b) Partner, officer or director;
- (c) Manager or managerial employee; or
- (d) Owner of five percent or more of the applicant:
 - (i) Who is involved in the operation of the assisted living facility; or
 - (ii) Who controls or supervises the provision of care or services to the assisted living facility residents; or
 - (iii) Who exercises control over daily operations.

WSR 14-14-033

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed June 24, 2014, 9:15 a.m., effective July 25, 2014]

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

Purpose: This amendment adds language to WAC 458-20-268 relating to ESSB 5882, chapter 13, section 1503, Laws of 2013 2nd sp. sess., requiring an annual survey for the tax exemption for sales and use of machinery and equipment used directly in generating electricity from a qualifying renewable energy source.

Further, subsection (3) of the rule is amended to update the filing requirements. Amended subsection (3)(a) describes the required electronic filing; subsection (3)(b) describes the required paper form used if the department waives the electronic filing requirement upon a showing of good cause; and subsection (3)(c) explains that the department's taxpayer account administration division is now handling these annual survey filings with updated contact information.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-268 Annual surveys for certain tax adjustments.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 82.32.600 and 82.32.585.

Adopted under notice filed as WSR 14-09-083 on April 21, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: June 24, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-22-087, filed 11/1/10, effective 12/2/10)

WAC 458-20-268 Annual surveys for certain tax adjustments. (1) **Introduction.** ~~((In order))~~ To take certain tax credits, deferrals, and exemptions ~~((the~~ tax adjustments~~)),~~ taxpayers must file an annual survey with the department of revenue ~~((the~~ department~~))~~ containing information about their business activities and employment. This section explains the survey requirements for the various tax adjustments. This section also explains who is required to file an annual survey, how to file a survey, and what information must be included in the survey.

Refer to WAC 458-20-267 (Annual reports for certain tax adjustments) for more information on the annual report requirements for certain tax incentive programs.

This section provides examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(2) **Who is required to file the annual survey?** The following persons must file a complete annual survey:

(a) A person claiming the business and occupation ~~((B&O))~~ tax credit provided by RCW 82.04.4452 for engaging in qualified research and development. A separate annual survey must be filed for each tax reporting account. If the person has assigned its entire B&O tax credit provided by RCW 82.04.4452 to another person, the assignor is not required to file an annual survey. In such an instance, the assignee of the B&O tax credit is required to file an annual survey. If the person has assigned a portion of its B&O tax credit to another person, both the assignor and the assignee are required to file an annual survey. Refer to WAC 458-20-24003 (Tax incentives for high technology businesses) for more specific information about this tax adjustment.

(b) A recipient of a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in high unemployment counties, except as provided in (f) of this subsection. Refer to WAC 458-20-24001 (Sales and use tax deferral—Manufacturing and research/development activities in high unemployment counties—Applications filed after June 30, 2010) for more specific information about this tax adjustment.

(c) A recipient of a deferral of taxes under chapter 82.63 RCW for sales and use taxes on an eligible investment project in high technology, except as provided in (g) of this subsection. Refer to WAC 458-20-24003 (Tax incentives for high technology businesses) for more specific information about this tax adjustment.

(d) A recipient of a deferral of taxes under chapter 82.74 RCW for sales and use taxes on eligible investment project in certain agricultural or cold storage facilities, except as provided in (g) of this subsection.

(e) A recipient of a deferral of taxes under chapter 82.75 RCW for sales and use taxes on an eligible investment project in biotechnology products, except as provided in (g) of this subsection.

(f) A recipient of a deferral of taxes under chapter 82.82 RCW for sales and use taxes on a corporate headquarters, except as provided in (f) of this subsection (2).

(g) A lessee of an eligible investment project under chapters 82.60, 82.63, 82.74 or 82.82 RCW who receives the economic benefit of the deferral. A lessor, by written contract, must agree to pass the economic benefit of the deferral to its lessee. The economic benefit of the deferral to the lessee must be no less than the amount of tax deferred by the lessor as evidenced by written documentation of any type, whether by payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee. An applicant who is a lessor of an eligible investment project that received a deferral of taxes under chapters 82.60, 82.63, 82.74 or 82.82 RCW and who meets these requirements is not required to complete and file an annual survey.

(h) A person claiming the B&O tax exemption provided by RCW 82.04.4268 for dairy product manufacturers, RCW 82.04.4269 for seafood product manufacturers, and RCW 82.04.4266 for fruits and vegetable manufacturers.

(i) A person claiming the B&O tax credit provided by RCW 82.04.449 for customized employment training.

(j) A person claiming the B&O tax rate provided by RCW 82.04.260(11) for timber products, unless the person is a "small harvester" as defined in RCW 84.33.035.

(k) A person claiming the B&O tax credit provided by RCW 82.04.4483 for new employees created by businesses engaging in computer software manufacturing or programming in rural counties.

(l) A person claiming the B&O tax credit provided by RCW 82.04.4484 for persons providing information technology help desk services to third parties.

(m) Effective on July 1, 2013, a person claiming the retail sales or use tax exemption provided by RCW 82.08.962 or 82.12.962 for machinery and equipment used directly in generating electricity from a qualifying renewable energy source.

(3) How to file annual surveys.

(a) ~~((Required form. The department has developed a survey form that must be used to complete the annual survey unless a person obtains prior written approval from the department to file the annual survey in an alternative format.~~

~~(b))~~ **Electronic filing.** Surveys must be filed electronically unless the department waives this requirement upon a showing of good cause. A survey is filed electronically when the department receives the survey in an electronic format. A

person accesses electronic filing through that person's department "My Account." To file and submit electronically, go to <http://dor.wa.gov/TaxIncentiveReporting>.

(b) Required paper form. If the department waives the electronic filing requirement for a person upon a showing of good cause, then that person must use the annual survey developed by the department unless that person obtains prior written approval from the department to file an annual survey in an alternative format.

(c) **How to obtain the form.** Persons who have received a waiver of the electronic filing requirement from the department or who otherwise would like a paper copy of the survey may obtain the survey from the department's web site (www.dor.wa.gov). It may also be obtained from the department's district offices, by telephoning the telephone information center (800-647-7706), or by contacting the department's ~~((special programs))~~ taxpayer account administration division at:

Attn: Local Finance Team
 Department of Revenue
~~((Special Programs Division))~~
Taxpayer Account Administration
 Post Office Box ~~((47477))~~ 47476
 Olympia, WA 98504-~~((7477))~~ 7476
~~((Fax: 360-586-2163))~~

(d) Due date.

(i) **For surveys due in 2011 or later.** For persons claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this section, the survey must be filed or postmarked by April 30th following any calendar year in which the person becomes eligible to claim the tax credit, tax exemption, or tax rate.

For recipients of any sales tax deferrals listed under subsection (2) of this section or for lessees required to file the annual survey as provided in subsection (2)(g) of this section, the survey must be filed or postmarked by April 30th of the year following the calendar year in which an eligible investment project is certified by the department as being operationally complete and each of the seven succeeding calendar years.

(ii) **For surveys due ~~((in 2010 or earlier))~~ prior to 2011.** For persons claiming any B&O tax credit, tax exemption, or tax rate listed under subsection (2) of this section, the survey must be filed or postmarked by March 31st following any calendar year in which the tax credit, tax exemption, or tax rate is claimed.

For recipients of any sales tax deferrals listed under subsection (2) of this section or for lessees required to file the annual survey as provided in subsection (2)(g) of this section, the survey must be filed or postmarked by March 31st of the year following the calendar year in which an eligible investment project is certified by the department as being operationally complete and each of the seven succeeding calendar years.

(iii) **Due date extensions.** The department may extend the due date for timely filing annual surveys as provided in subsection (11) of this section.

(e) **Special requirement for person who did not file an annual survey during the previous calendar year.** If a per-

son is a first-time filer or otherwise did not file an annual survey with the department during the previous calendar year, the annual survey must include the information described in subsection (4) of this section for the two calendar years immediately preceding the due date of the survey.

(f) Examples.

(i) Advanced Computing, Inc. qualifies for the B&O tax credit provided by RCW 82.04.4452 and applied it against taxes due in calendar year 2010. Advanced Computing, Inc. filed an annual survey in March 2010 for credit claimed under RCW 82.04.4452 in 2009. Advanced Computing, Inc. must electronically file an annual survey with the department by April 30, 2011.

(ii) In ~~((2009))~~ 2011, Biotechnology, Inc. applied for and received a sales and use tax deferral under chapter 82.63 RCW for an eligible investment project in qualified research and development. The department certified the investment project ~~((was certified by the department))~~ as being operationally complete in ~~((2010))~~ 2012. Biotechnology, Inc. filed an annual survey ~~((in March 2010))~~ on April 30, 2013 for credit claimed under RCW 82.04.4452 in ~~((2009-))~~ 2012 for the sales and use tax deferral under chapter 82.63 RCW. ~~((Biotechnology, Inc. must file its annual survey with the department for the 2010 calendar year by April 30, 2011-))~~ A survey is due from Biotechnology, Inc. by April 30th each following year, with its last survey due April 30, ~~((2018))~~ 2020.

(iii) Advanced Materials, Inc. has been conducting manufacturing activities in a building leased from Property Management Services since ~~((2009))~~ 2014. Property Management Services is a recipient of a deferral under chapter 82.60 RCW, and the department certified the building ~~((was certified by the department))~~ as operationally complete in ~~((2009))~~ 2014. In order to pass on the entire economic benefit of the deferral, Property Management Services charges Advanced Materials, Inc. \$5,000 less in rent each year. Advanced Materials, Inc. is a first-time filer of annual surveys. Advanced Materials, Inc. must file its annual survey with the department covering the ~~((2008 and 2009))~~ 2014 calendar year(s) by ~~((March 31, 2010))~~ April 30, 2015, assuming all the requirements of subsection (2)(f) of this section are met. A survey is due from Advanced Materials, Inc. by April 30th each following year, with its last survey due by April 30, ~~((2017))~~ 2022.

(iv) Fruit Canning, Inc. claims the B&O tax exemption provided in RCW 82.04.4266 for the canning of fruit in 2010. Fruit Canning, Inc. is a first-time filer of annual surveys. Fruit Canning, Inc. must file an annual survey with the department by April 30, 2011, covering calendar years 2009 and 2010. If Fruit Canning, Inc. claims the B&O tax exemption during subsequent years, it must file an annual survey for each of those years by April 30th of each following year.

(4) What information does the annual survey require? The annual survey requests information about the following:

(a) Amount of tax deferred, the amount of B&O tax exempted, the amount of B&O tax credit taken, or the amount of B&O tax reduced under the preferential rate;

(b) For persons claiming the tax deferral under chapter 82.60 or 82.63 RCW:

(i) The number of new products or research projects by general classification; and

(ii) The number of trademarks, patents, and copyrights associated with activities at the investment project;

(c) For persons claiming the B&O tax credit under RCW 82.04.4452:

(i) The qualified research and development expenditures during the calendar year for which the credit was claimed;

(ii) The taxable amount during the calendar year for which the credit was claimed;

(iii) The number of new products or research projects by general classification;

(iv) The number of trademarks, patents, and copyrights associated with the research and development activities for which the credit was claimed; and

(v) Whether the credit has been assigned and who assigned the credit.

(d) The following information for employment positions in Washington:

(i) The total number of employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment. Refer to subsection (7) of this section for information about full-time, part-time, and temporary employment positions;

(iii) The number of employment positions according to the wage bands of less than \$30,000; \$30,000 or greater, but less than \$60,000; and \$60,000 or greater. A wage band containing fewer than three individuals may be combined with the next lowest wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands; and

(e) Additional information the department requests that is necessary to measure the results of, or determine eligibility for the tax adjustments.

(i) The department is required to report to the ~~((state))~~ legislature summary descriptive statistics by category and the effectiveness of certain tax adjustments, such as job creation, company growth, and such other factors as the department selects or as the statutes identify. The department has included questions related to measuring these effects.

(ii) In addition, the department has included questions related to:

(A) The person's use of the sales and use tax exemption for machinery and equipment used in manufacturing provided in RCW 82.08.02565 and 82.12.02565; and

(B) The Unified Business Identifier used with the Washington state employment security department and all employment security department reference numbers used on quarterly tax reports that cover the employment positions reported in the annual survey.

(5) What is total employment in the annual survey?

(a) The annual survey requires information on all full-time, part-time, and temporary employment positions located in Washington state on December 31st of the calendar year covered by the survey. Total employment includes persons who are on leaves of absence such as sick leave, vacation, disability leave, jury duty, military leave, and workers compensation leave, regardless of whether those persons are receiving wages. Total employment does not include separa-

tion from employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(b) **Examples.** Assume these facts for the following examples. National Construction Equipment (NCE) manufactures bulldozers, cranes, and other earth-moving equipment in Ridgefield, WA and Kennewick, WA. NCE received a deferral of taxes under chapter 82.60 RCW for sales and use taxes on its new manufacturing site in Kennewick, WA.

(i) NCE employs two hundred workers in Ridgefield manufacturing construction cranes. NCE employs two hundred fifty workers in Kennewick manufacturing bulldozers and other earth-moving equipment. Although NCE's facility in Ridgefield does not qualify for any tax adjustments, NCE's annual survey must report a total of four hundred fifty employment positions. The annual survey includes all Washington state employment positions, which includes employment positions engaged in activities that do not qualify for tax adjustments.

(ii) On November 20th, NCE lays off seventy-five workers. NCE notifies ten of the laid off workers on December 20th that they will be rehired and begin work on January 2nd. The seventy-five employment positions are excluded from NCE's annual survey, because a separation of employment has occurred. Although NCE intends to rehire ten employees, those employment positions are vacant on December 31st.

(iii) On December 31st, NCE has one hundred employees on vacation leave, five employees on sick leave, two employees on military leave, one employee who is scheduled to retire as of January 1st, and three vacant employment positions. The employment positions of employees on vacation, sick leave, and military leave must be included in NCE's annual survey. The one employee scheduled to retire must be included in the annual survey because the employment position is filled on December 31st. The three vacant positions are not included in the annual survey.

(iv) In June, NCE hires two employees from a local college to intern in its engineering department. When the academic year begins in September, one employee ends the internship. The other employee's internship continues until the following June. NCE must report one employment position on the annual survey, representing the one intern employed on December 31st.

(6) **When is an employment position located in Washington state?** The annual survey seeks information about Washington employment positions only. An employment position is located in Washington state if:

(a) The service of the employee is performed entirely within the state;

(b) The service of the employee is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state;

(c) The service of the employee is performed both within and without the state, and the employee's base of operations is within the state;

(d) The service of the employee is performed both within and without the state, but the service is directed or controlled in this state; or

(e) The service of the employee is performed both within and without the state and the service is not directed or con-

trolled in this state, but the employee's individual residence is in this state.

(f) **Examples.** Assume these facts for the following examples. Acme Computer, Inc. develops computer software and claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Acme Computer, headquartered in California, has employees working at four locations in Washington state. Acme Computer also has offices in Oregon and Texas.

(i) Ed is a software engineer in Acme Computer's Vancouver office. Ed occasionally works at Acme Computer's Portland, Oregon office when other software engineers are on leave. Ed's position must be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. Ed performs services both within and without the state, but the services performed without the state are incidental to the employee services within Washington state.

(ii) John is an Acme Computer salesperson. John travels throughout Washington, Oregon, and Idaho promoting sales of new Acme Computer products. John's activities are directed by his manager in Acme Computer's Spokane office. John's position must be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. John performs services both within and without the state, but the services are directed or controlled in Washington state.

(iii) Jane, vice-president for product development, works in Acme Computer's Portland, Oregon office. Jane regularly travels to Seattle to review the progress of research and development projects conducted in Washington state. Jane's position (~~must~~) should not be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. Although Jane regularly performs services within Washington state, her activities are directed or controlled in Oregon.

(iv) Roberta, a service technician, travels throughout the United States servicing Acme Computer products. Her activities are directed from Acme Computer's corporate offices in California, but she works from her home office in Tacoma. Roberta's position must be included in the number of total employment in Washington state that Acme Computer reports on the annual survey. Roberta performs services both within and without the state and the service is not directed or controlled in this state, but her residence is in Washington state.

(7) **What are full-time, part-time and temporary employment positions?** The survey must separately identify the number of full-time, part-time, and temporary employment positions as a percent of total employment.

(a) **Full-time and part-time employment positions.** A position is considered full-time or part-time if the employer intends for the position to be filled for at least fifty-two consecutive weeks or twelve consecutive months, excluding any leaves of absence.

(i) A full-time position is a position that requires the employee to work, excluding overtime hours, thirty-five hours per week for fifty-two consecutive weeks, four hundred fifty-five hours a quarter for four consecutive quarters, or one

thousand eight hundred twenty hours during a period of twelve consecutive months.

(ii) A part-time position is a position in which the employee may work less than the hours required for a full-time position.

(iii) In some instances, an employee may not be required to work the hours required for full-time employment because of paid rest and meal breaks, health and safety laws, disability laws, shift differentials, or collective bargaining agreements. If, in the absence of these factors, the employee would be required to work the number of hours for a full-time position to receive their current wage, the position must be reported as a full-time employment position.

(b) **Temporary positions.** There are two types of temporary positions.

(i) **Employees of the person required to complete the survey.** In the case of a temporary employee directly employed by the person required to complete the survey, a temporary position is a position intended to be filled for a period of less than fifty-two consecutive weeks or twelve consecutive months. For example, seasonal employment positions are temporary positions. These temporary positions must be included in the information required in subsections (5), (8), and (9) of this section.

(ii) **Workers furnished by staffing companies.** A temporary position also includes a position filled by a worker furnished by a staffing company, regardless of the duration of the placement. These temporary positions must be included in the information required in subsections (5), (8), and (9) of this section. In addition, the person filling out the annual survey must provide the following additional information:

(A) Total number of staffing company employees furnished by staffing companies;

(B) Top three occupational codes of all staffing company employees; and

(C) Average duration of all staffing company employees.

(c) **Examples.** Assume these facts for the following examples. Worldwide Materials, Inc. is a developer of materials used in manufacturing electronic devices at a facility located in Everett, WA. Worldwide Materials claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. Worldwide Materials has one hundred employees.

(i) On December 31st, Worldwide Materials has five employees on workers' compensation leave. At the time of the work-related injuries, the employees worked forty hours a week and were expected to work for fifty-two consecutive weeks. Worldwide Materials must report these employees as being employed in a full-time position. Although the five employees are not currently working, they are on workers' compensation leave and Worldwide Materials had intended for the full-time positions to be filled for at least fifty-two consecutive weeks.

(ii) In September, Worldwide Materials hires two employees on a full-time basis for a two-year project to design composite materials to be used in a new airplane model. Because the position is intended to be filled for a period exceeding twelve consecutive months, Worldwide Materials must report these positions as two full-time positions.

(iii) Worldwide Materials has two employees who clean laboratories during the evenings. The employees regularly work 5:00 p.m. to 11:00 p.m., Monday through Friday, fifty-two weeks a year. Because the employees work less than thirty-five hours a week, the employment positions are reported as part-time positions.

(iv) On November 1st, a Worldwide Materials engineer begins twelve weeks of family and medical leave. The engineer was expected to work forty hours a week for fifty-two consecutive weeks. While the engineer is on leave, Worldwide Materials hires a staffing company to furnish a worker to complete the engineer's projects. Worldwide Materials must report the engineer as a full-time position on the annual survey. Worldwide Materials must also report the worker furnished by the staffing company as a temporary employment position and include the information as required in (b) of this subsection.

(v) Worldwide Materials allows three of its research employees to work on specific projects with a flexible schedule. These employees are not required to work a set amount of hours each week, but are expected to work twelve consecutive months. The three research employees are paid a comparable wage as other research employees who are required to work a set schedule of forty hours a week. Although the three research employees may work fewer hours, they are receiving comparable wages as other research employees working forty hours a week. Worldwide Materials must report these positions as full-time employment positions, because each position is equivalent to a full-time employment position.

(vi) Worldwide Materials has a large order to fulfill and hires ten employees for the months of June and July. Five of the employees leave at the end of July. Worldwide Materials decides to have the remaining five employees work on an on-call basis for the remainder of the year. As of December 31st, three of the employees are working for Worldwide Materials on an on-call basis. Worldwide Materials must report three temporary employment positions on the annual survey and include these positions in the information required in subsections (5), (8), and (9) of this section.

(8) **What are wages?** For the purposes of the annual survey, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, or otherwise as reported on the W-2 forms of employees. Stock options granted as compensation to employees are wages to the extent they are reported on the W-2 forms of the employees and are taken as a deduction for federal income tax purposes by the employer. The compensation of a proprietor or a partner is determined in one of two ways:

(a) If there is net income for federal income tax purposes, the amount reported subject to self-employment tax is the compensation.

(b) If there is no net income for federal income tax purposes, reasonable cash withdrawals or cash advances is the compensation.

(9) **What are employer-provided benefits?** The annual survey requires persons to report the number of employees that have employer-provided medical, dental, and retirement benefits, by each of the wage bands. An employee has

employer-provided medical, dental, and retirement benefits if the employee is currently eligible to participate or receive the benefit. A benefit is "employer-provided" if the medical, dental, and retirement benefit is dependent on the employer's establishment or administration of the benefit. A benefit that is equally available to employees and the general public is not an "employer-provided" benefit.

(a) **What are medical benefits?** "Medical benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A "health plan" means any plan, fund, or program established, maintained, or funded by an employer for the purpose of providing for its employees or their beneficiaries, through the purchase of insurance or otherwise, medical and/or dental care services.

(i) Health plans include any:

(A) "Employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA);

(B) "Health plan" or "health benefit plan" as defined in RCW 48.43.005;

(C) Self-funded multiple employer welfare arrangement as defined in RCW 48.125.010;

(D) "Qualified health insurance" as defined in Section 35 of the Internal Revenue Code;

(E) "Archer MSA" as defined in Section 220 of the Internal Revenue Code;

(F) "Health savings plan" as defined in Section 223 of the Internal Revenue Code;

(G) "Health plan" qualifying under Section 213 of the Internal Revenue Code;

(H) Governmental plans; and

(I) Church plans.

(ii) "Health care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(b) **What are dental benefits?** "Dental benefits" means a dental health plan offered by an employer as a benefit to its employees. "Dental health plan" has the same meaning as "health plan" in (a) of this subsection, but is for the purpose of providing for employees or their beneficiaries, through the purchase of insurance or otherwise, dental care services. "Dental care services" means services offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease of human teeth, alveolar process, gums, or jaw.

(c) **What are retirement benefits?** "Retirement benefits" means compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. An employer contribution to the retirement plan is not required for a retirement plan to be employer-provided. A "retirement plan" means any plan, account, deposit, annuity, or benefit, other than a life insurance policy, that provides for retirement income or deferred income to employees for periods after employment is terminated. The term includes pensions, annuities, stock bonus plans, employee stock ownership plans, profit sharing plans, self-employed retirement plans, individual retirement accounts, individual retirement annuities, and retirement bonds, as well as any other plan or program, without regard to its source of funding, and without regard to

whether the retirement plan is a qualified plan meeting the guidelines established in the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code.

(d) **Examples.** Assume these facts for the following examples. Medical Resource, Inc. is a pharmaceutical manufacturer located in Spokane, WA. Medical Resource, Inc. claims the B&O tax credit provided by RCW 82.04.4452 for its research and development spending. It employs two hundred full-time employees and fifty part-time employees. Medical Resource, Inc. also hires a staffing company to furnish seventy-five workers.

(i) Medical Resource, Inc. offers its employees two different health plans as a medical benefit. Plan A is available at no cost to full-time employees. Employees are not eligible to participate in Plan A until completing thirty days of employment. Plan B costs employees \$200 each month. Full-time and part-time employees are eligible for Plan B after six months of employment. One hundred full-time employees are enrolled in Plan A. One hundred full-time and part-time employees are enrolled in Plan B. Forty full-time and part-time employees chose not to enroll in either plan. Ten part-time employees are not yet eligible for either Plan A or Plan B. Medical Resource, Inc. must report two hundred employees as having employer-provided medical benefits, because this is the number of employees enrolled in the health plans it offers.

(ii) Medical Resource, Inc. does not offer medical benefits to the employees of the staffing company. However, twenty-five of these workers have enrolled in a health plan through the staffing company. Medical Resource, Inc. must report these twenty-five employment positions as having employer-provided medical benefits.

(iii) Medical Resource, Inc. does not offer its employees dental insurance, but has arranged with a group of dental providers to provide all employees with a 30% discount on any dental care service. No action, other than Medical Resource, Inc. employment, is required by employees to receive this benefit. Unlike the medical benefit, employees are eligible for the dental benefit as of the first day of employment. This benefit is not provided to the workers furnished by the staffing company. Medical Resource, Inc. must report two hundred and fifty employment positions as having dental benefits, because this is the number of employees enrolled in this dental plan.

(iv) Medical Resource, Inc. offers a 401(k) Plan to its full-time and part-time employees after six months of employment. Medical Resource, Inc. makes matching contributions to an employee's 401(k) Plan after two years of employment. On December 31st, two hundred and twenty-five workers are eligible to participate in the 401(k) Plan. Two hundred workers are enrolled in the 401(k) Plan. One hundred of these workers receive matching contributions. Medical Resource, Inc. must report two hundred employment positions as having employer-provided retirement benefits, because this is the number of employees enrolled in the 401(k) Plan.

(v) Medical Resource, Inc. coordinates with a bank to insert information in employee paycheck envelopes on the bank's Individual Retirement Account (IRA) options offered

to bank customers. Employees who open an IRA with the bank can arrange to have their contributions directly deposited from their paychecks into their accounts. Fifty employees open IRAs with the bank. Medical Resource, Inc. cannot report that these fifty employees have employer-provided retirement benefits. IRAs are not an employer-provided benefit because the ability to establish the IRA is not dependent on Medical Resource, Inc.'s participation or sponsorship of the benefit.

(10) **Is the annual survey confidential?** The annual survey is subject to the confidentiality provisions of RCW 82.32.330. However, information on the amount of tax adjustment taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in (b) and (c) of this subsection. More confidentiality provisions in regards to the annual surveys are as follows:

(a) **Failure to timely file a complete annual survey subject to disclosure.** If a taxpayer fails to file a complete annual survey as required by law, then the fact that the taxpayer ~~((fails))~~ failed to timely file a complete annual survey and the amount required to be repaid as a result of the taxpayer's failure to file a complete annual survey is not confidential and may be disclosed to the public upon request.

(b) **Amount reported in annual survey is different from the amount claimed or allowed.** If a taxpayer reports a tax adjustment amount on the annual survey that is different than the amount actually claimed on the taxpayer's tax returns or otherwise allowed by the department, then the amount actually claimed or allowed may be disclosed.

(c) **Tax adjustment is less than ten thousand dollars.** If the tax adjustment is less than ten thousand dollars during the period covered by the annual survey, then the taxpayer may request the department to treat the amount of the tax adjustment as confidential under RCW 82.32.330. The request must be made for each survey in writing, dated and signed by the owner, corporate officer, partner, guardian, executor, receiver, administrator, or trustee of the business, and filed with the department's ~~((special programs))~~ taxpayer account administration division at the address provided above in subsection (3) of this section.

(11) **What are the consequences for failing to timely file a complete annual survey?**

(a) **What is a "complete annual survey"?** An annual survey is complete if:

(i) The annual survey is filed on the form required by this section or in an electronic format as required by law; and

(ii) The person makes a good faith effort to substantially respond to all survey questions required by this section.

Responses such as "varied," "various," or "please contact for information" are not good faith responses to a question.

(b) If a person claims a tax adjustment that requires an annual survey under this section but fails to submit a complete annual survey by the due date of the survey or any extension under RCW 82.32.590, the amount of the tax adjustment claimed for the previous calendar year becomes immediately due. If the tax adjustment is a deferral of tax, twelve and one-half percent of the deferred tax is immediately due. If the economic benefits of the deferral are passed to a lessee, the lessee is responsible for payment to the extent

the lessee has received the economic benefit. Interest, but not penalties, will be assessed on these amounts. The interest will be assessed at the rate provided for delinquent taxes provided for in RCW 82.32.050, retroactively to the date the tax adjustment was claimed, and accrues until the taxes for which the tax adjustment was claimed are repaid.

(c) **Extension for circumstances beyond the control of the taxpayer.** If the department finds that the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for filing the survey. The extension will be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

In ~~((making a determination))~~ determining whether the failure of a taxpayer to file an annual survey by the due date was the result of circumstances beyond the control of the taxpayer, the department will apply the provisions ~~((adopted by the department))~~ in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment of untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(d) **One-time only extension.** A taxpayer who fails to file an annual survey required under this section by the due date of the survey is entitled to an extension of the due date. A request for an extension under this subsection must be made in writing to the department.

(i) To qualify for an extension, a taxpayer must have filed all annual reports and surveys, if any, due in prior years by their respective due dates, beginning with annual reports and surveys due in the calendar year 2010.

(ii) ~~((An))~~ The extension is for ninety days from the original due date of the annual survey.

(iii) No taxpayer may be granted more than one ninety-day extension.

WSR 14-14-034

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed June 24, 2014, 10:31 a.m., effective July 25, 2014]

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

Purpose: The department amended this rule to implement SSB 5444, chapter 235, Laws of 2013, which eliminated the leasehold excise credit for certain leasehold interests for the amount, if any, that the tax exceeds the property tax applicable if the property were privately owned.

Citation of Existing Rules Affected by this Order: Amending WAC 458-29A-600 Leasehold excise tax—Collection and administration.

Statutory Authority for Adoption: RCW 82.01.060 and 82.29A.140.

Adopted under notice filed as WSR 14-09-054 on April 15, 2014.

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

Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: June 24, 2014.

Dylan Waits
Assistant Director

AMENDATORY SECTION (Amending WSR 99-20-053, filed 10/1/99, effective 11/1/99)

WAC 458-29A-600 Leasehold excise tax—Collection and administration. (1) **Introduction.** Leasehold excise tax is levied by the state under RCW 82.29A.030 and by counties and/or cities under RCW 82.29A.040. The administrative procedures contained in chapters 82.02 and 82.32 RCW apply to the administration and collection of the leasehold excise tax.

(2) **Tax imposed.** The rates at which leasehold excise tax is levied are contained in RCW 82.29A.030 and 82.29A.040. The department publishes documents containing the applicable rates, credits, and formulas. These documents are updated as necessary and are available upon request.

(3) **Separate listing requirement.** The amount of leasehold excise tax due must be listed separately from the amount of contract rent on any statement or other document provided to the lessee by the lessor. If the leasehold excise tax is not stated separately from the contract rent, it is assumed that the leasehold excise tax is not included in the amount stated as due.

(4) **Credits allowed against leasehold excise tax.** Because the leasehold excise tax is intended only to equalize treatment between private property owners and lessees of public entities, the amount of leasehold excise tax should not exceed the amount of property tax that would be due if the leased property was privately owned. Therefore, in calculating the taxes imposed under RCW 82.29A.030 and 82.29A.040, RCW 82.29A.120 authorizes the following credits:

(a) **Leasehold interests created after April 1, 1986, or situations where the department has established taxable rent.** Where a leasehold interest other than a product lease was created after April 1, 1986, or where the department has established taxable rent in accordance with RCW 82.29A.020 (2)(b), and the amount of leasehold excise tax due is greater than the amount of property tax that would be due if the property was privately owned by the lessee, without regard to any property tax exemption under RCW 84.36.381, a credit equal to the difference between the leasehold excise tax and the comparable property tax will be allowed. This credit expires at midnight, July 27, 2013.

If the property is subleased, (~~the~~) any allowable credit must be passed on to the sublessee. Lessees and sublessees of residential property who would qualify for either a partial or total exemption from property tax under RCW 84.36.381 if they owned the property in fee are eligible for a corresponding reduction in the amount of leasehold excise tax due. The leasehold excise tax for the qualifying lessees or sublessees is reduced by the same percentage as the percentage reduction in property that would result from the property tax exemption under RCW 84.36.381.

(b) **Product leases.** A credit of thirty-three percent of the total leasehold excise tax due is allowed for product leases.

(5) **When payment is due.** The leasehold excise taxes are due on the same date that the contract rent is due to the lessor. If the contract rent is paid to someone other than the lessor, the leasehold tax is due at the time the payment is made to that other person or entity. Any prepaid contract rent will be deemed to have been paid in the year due and not in the year in which it was actually paid if the prepayment is for more than one year's rent. If contract rent is prepaid, the leasehold tax payment may be prorated over the number of years for which the contract rent is prepaid. The prorated portion of the tax will be due in two installments per year, with no less than one-half due on or before May 31 and the second half due no later than November 30 of each year.

(6) **Collection and distribution of tax by the department.** The department collects and distributes the leasehold excise taxes authorized by RCW 82.29A.030 and 82.29A.-040.

(a) **Taxes levied by the state.** All money received by the department from leasehold taxes levied under RCW 82.29A.-030 is transmitted to the state treasurer for deposit in the general fund.

(b) **Taxes levied by counties and cities.** Prior to the effective date of the ordinance imposing a leasehold excise tax, the county or city imposing the tax must contract with the department for administration and collection services. The department may deduct a percentage, not to exceed two percent, of the taxes collected as reimbursement for administration and collection expenses. The department deposits the balance of the taxes collected in the local leasehold excise tax account with the state treasury, and the state treasurer bimonthly distributes those moneys to the counties and cities.

County treasurers must proportionately distribute the moneys they receive in the same manner they distribute moneys collected from property tax levies in accordance with RCW 84.56.230, provided that no moneys are to be distributed to the state or any city, and the pro rata calculation for proportionate distribution cannot include any levy rates by the state or any city.

(7) **Leasehold interests in federally owned land or federal trust land.** Lessees with a leasehold interest in federally owned lands or federal trust lands must report and remit the leasehold tax due directly to the department on an annual reporting basis.

WSR 14-14-047
PERMANENT RULES
LAKE WASHINGTON
INSTITUTE OF TECHNOLOGY

[Filed June 25, 2014, 12:38 p.m., effective July 26, 2014]

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

Purpose: Changes to the student code of conduct were necessitated by new federal laws including the Violence Against Women Act (VAWA), new guidance related to the United States Department of Education Title IX, Washington State Administrative Procedure Act, other policy updates and plain language edits.

The proposed changes to the student code of conduct necessitated corresponding changes to the facilities use policy to address trespass and prohibited conduct at college facilities.

Citation of Existing Rules Affected by this Order: Repealing 495D-121-010, 495D-121-020, 495D-121-030, 495D-121-040, 495D-121-050, 495D-121-060, 495D-121-070, 495D-121-080, 495D-121-090, 495D-121-100, 495D-121-110, 495D-121-120, 495D-121-130, 495D-121-140, 495D-121-150, 495D-121-160, 495D-121-170, 495D-121-180, 495D-121-190, 495D-121-200, 495D-121-210, 495D-121-220, 495D-121-230, 495D-121-240, 495D-121-250, 495D-121-260, 495D-280-010, 495D-280-015, 495D-280-020, 495D-280-030, 495D-280-040, 495D-280-050, 495D-280-060, 495D-280-080, 495D-280-090, 495D-280-100, 495D-280-110 and 495D-280-120; and amending WAC 495D-140-060, 495D-140-070, 495D-131-010, and 495D-132-010.

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

Adopted under notice filed as WSR 14-10-061 on May 5, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 36, Amended 4, Repealed 38.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 36, Amended 4, Repealed 38.

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

Date Adopted: June 20, 2014.

Terry Byington
 Executive Director
 Government and External Relations

NEW SECTION

WAC 495D-121-310 Student conduct code—Statement of purpose. (1) The state of Washington operates Lake Washington Institute of Technology to provide programs of

instruction in higher education and related community services. Like any other institution that has its own special purposes, the college must maintain conditions conducive to the effective performance of its functions. Consequently, the college has special expectations regarding the conduct of the participants in the college community.

(2) Admission to the college carries the expectation that students will conduct themselves as responsible college community members. This includes an expectation that students will:

- (a) Obey appropriate laws;
- (b) Follow college and department rules;
- (c) Maintain a high standard of integrity and honesty.

(3) The college will deal with violations of college rules or conduct that interferes with the operation of college affairs. The college may impose sanctions independently of any action taken by civil or criminal authorities. Provisions of this code are subject to change. The college may report misconduct of students enrolled through the high school programs office to the student's parents. The college may report misconduct to any parent who claims the student as a dependent or as otherwise provided by the Family Educational Rights and Privacy Act of 1972, as amended.

NEW SECTION

WAC 495D-121-320 Student conduct code—Jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

- (a) On college premises;
- (b) At or in connection with college sponsored activities;
- (c) Off-campus when, in the judgment of the college, it adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students engage in official college activities including, but not limited to:

- (a) Foreign or domestic travel;
- (b) Activities funded by the associated students;
- (c) Athletic events;
- (d) Training internships;
- (e) Cooperative and distance education;
- (f) Online education;
- (g) Practicums;
- (h) Supervised work experiences;
- (i) Any other college-sanctioned social or club activities.

Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, and during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

NEW SECTION

WAC 495D-121-330 Student conduct code—Definitions. The following definitions apply for the purposes of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and official college holidays.

(2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property the college owns, uses, or controls.

(3) "Conduct review officer" means the vice-president of student services or other college administrator the president designates to have responsibility to receive and review or refer appeals of student disciplinary actions consistent with the procedures of this code. The president can reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as reasonably necessary.

(4) "Disciplinary action" means the process by which the student conduct officer imposes discipline against a student for violating the student conduct code.

(5) "Disciplinary appeal" means the process by which an aggrieved student can appeal the discipline the student conduct officer imposes. The student conduct committee hears disciplinary appeals for a suspension in excess of ten instructional days or a dismissal. The college will review appeals of all other appealable disciplinary action through brief adjudicative proceedings.

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

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

(b) Sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required for filing are considered filed when the specified college official actually receives the papers during office hours.

(7) "President" means the president of the college. The president can delegate any and all of his or her responsibilities as set forth in this chapter as reasonably necessary.

(8) "Respondent" means the student against whom the college initiates disciplinary action.

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

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

(b) Sending the document by e-mail and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

(10) "Student" includes all persons who take classes at or through the college, whether on a full-time or part-time basis, and whether such classes are credit courses, noncredit courses, online courses, or otherwise. People who withdraw after allegedly violating the code, are not officially enrolled for a particular term but who have a continuing relationship

with the college, or who were notified of their acceptance for admission are considered students.

(11) "Student conduct committee" means a college committee as described in WAC 495D-121-400.

(12) "Student conduct officer" means a college administrator to whom the president or vice-president of student services designates responsibility to implement and enforce the student conduct code. The president or vice-president can reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as reasonably necessary.

(13) "Title IX coordinator" means a college administrator to whom the president designates responsibility to implement and enforce the guidelines of federal Title IX legislation.

NEW SECTION

WAC 495D-121-340 Student conduct code—Initiation of discipline. (1) The student conduct officer initiates all disciplinary actions. If that officer is the subject of a complaint the respondent initiates, the president will, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities that relate to the complainant.

(2) The student conduct officer initiates disciplinary action by personally informing the student of the allegations or serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice will briefly describe the:

(a) Factual allegations;

(b) Provision(s) of the conduct code the respondent allegedly violated;

(c) Range of possible sanctions for the alleged violation(s);

(d) Time and location of the meeting.

At the meeting, the student conduct officer will present the allegations to the respondent and the respondent will be afforded an opportunity to explain what took place. If the respondent student fails or refuses to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(3) Within ten calendar days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer will give the respondent a written decision that states:

(a) The facts and conclusions that support the decision;

(b) The specific student conduct code provisions that were violated;

(c) The discipline imposed, if any;

(d) A notice of any appeal rights with an explanation of the consequences of not filing a timely appeal.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s) as described in WAC 495D-121-290;

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. The student conduct officer will make this referral in writing, to the attention of the student conduct committee's chair with a copy served on the respondent.

(5) Any college administrator or managing authority of a distance learning course, except the president and the vice-president who would hear any appeal, may initiate proceedings and recommend taking any of the disciplinary actions defined in WAC 495D-121-600, except that only the president, a vice-president, or designee may dismiss or suspend a student from the college. Before taking the action, the disciplining official will notify his or her supervisor and meet or attempt to meet with the student to explain the seriousness of the matter and hear any explanation by the student.

NEW SECTION

WAC 495D-121-350 Student conduct code—Appeal from disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

- (a) The imposition of disciplinary suspensions in excess of ten instructional days;
- (b) Dismissals; and
- (c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

- (a) Suspensions of ten instructional days or less;
 - (b) Disciplinary probation;
 - (c) Written reprimands; and
 - (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.
- (9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

NEW SECTION

WAC 495D-121-360 Student conduct code—Brief adjudicative proceedings (BAPs) authorized. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president or a designee, in regard to:

- (1) Parking violations;
- (2) Outstanding debts owed by students or employees;
- (3) Use of college facilities;
- (4) Residency determinations;
- (5) Use of library - Fines;
- (6) Challenges to contents of education records;
- (7) Loss of eligibility for participation in institution sponsored athletic events;
- (8) Denials of requests for public records;
- (9) Student conduct appeals involving the following disciplinary actions:
 - (a) Suspensions of ten instructional days or less;
 - (b) Disciplinary probation;
 - (c) Written reprimands;
 - (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and
 - (e) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:
 - (i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or
 - (ii) Issues a verbal warning to respondent.
- (10) Appeals of decisions regarding mandatory tuition and fee waivers.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt, fair resolution of the matter.

NEW SECTION

WAC 495D-121-370 Student conduct code—Brief adjudicative proceedings—Agency record. The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

NEW SECTION

WAC 495D-121-380 Student conduct code—Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which he or she has direct or personal interest, prejudice, or bias, or in which he or she has acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 495D-121-390 Student conduct code—Brief adjudicative proceedings—Review of an initial decision.

(1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which he or she has direct or personal interest, prejudice, or bias, or in which he or she has acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 495D-121-400 Student conduct code—Student conduct committee. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One administrative staff member, other than an administrator serving as a student conduct or conduct review

officer, appointed by the president at the beginning of the academic year.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee, so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

WAC 495D-121-410 Student conduct code—Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of the student conduct officer's notification of imposition of discipline (or referral to the committee) and the notice of appeal, or any response to referral, by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of

these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 495D-121-420 Student conduct code—Student conduct appeals committee hearings—Presentation of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision;

or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

NEW SECTION

WAC 495D-121-430 Student conduct code—Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing, or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

NEW SECTION

WAC 495D-121-440 Student conduct code—Appeal from student conduct committee initial decision. (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) The president may, at his or her discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 495D-121-450 Student conduct code—Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary

suspension remain in place pending the conclusion of the disciplinary proceedings.

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

NEW SECTION

WAC 495D-121-460 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—Supplemental sexual misconduct procedures. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 495D-121-310 through 495D-121-450. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

NEW SECTION

WAC 495D-121-470 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—Supplemental definitions. The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

(2) "Sexual misconduct" has the same meaning as the prohibited conduct set forth under this heading in WAC 495D-121-590(18).

NEW SECTION

WAC 495D-121-480 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—Supplemental complaint process. The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student:

(1) The college's Title IX compliance officer shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the

parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

NEW SECTION

WAC 495D-121-490 Student conduct code—Discipline procedures for cases involving allegations of sexual misconduct—Supplemental appeal rights. (1) The following actions by the student conduct officer may be appealed by the complainant:

- (a) The dismissal of a sexual misconduct complaint; or
- (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 495-121-340(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to the respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

- (a) Exoneration and dismissal of the proceedings;
- (b) A disciplinary warning;
- (c) A written reprimand;
- (d) Disciplinary probation;
- (e) Suspensions of ten instructional days or less; and/or
- (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent, and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complaint of his or her appeal rights.

(11) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

NEW SECTION

WAC 495D-121-500 Student conduct code—Free movement on campus. The president or designee is authorized in the instance of any event that he or she deems impedes the movement of persons or vehicles or which he or she deems to disrupt the ingress or egress of persons from the college facilities, to prohibit the entry of, or withdraw the license of, or privileges of a person or persons or any group of persons to enter onto or remain upon any portion of the college facility. The president may act through the vice-president of administrative services or any other person he or she may designate.

NEW SECTION

WAC 495D-121-510 Student conduct code—Right to demand identification. To determine if probable cause exists to apply any section of this code to any behavior by any person on a college facility, any college employee or other authorized personnel may demand that anyone on college facilities produce identification and/or evidence of student enrollment at the college by any of the following:

- (1) Student identification card;
- (2) Registration schedule;
- (3) Receipt for payment of fees for a current course.

NEW SECTION

WAC 495D-121-520 Student conduct code—Civil disturbances. In accordance with provisions contained in RCW 28B.10.571 and 28B.10.572:

(1) It shall be unlawful for any person, singly or in concert with others, to interfere by force or violence with any administrator, faculty, staff member, or student of the college who is in the peaceful discharge or conduct of his/her duties or studies.

(2) It shall be unlawful for any person, singly or in concert with others, to intimidate by threat of force or violence any administrator, faculty, staff member, or student of the college who is in the peaceful discharge of his/her duties or studies.

(3) The crimes described in RCW 28B.10.571 and 28B.10.572 shall not apply to any administrator, faculty, or staff member who is engaged in the reasonable exercise of their disciplinary authority.

(4) Any person or persons who violate the provisions of subsections (1) and (2) of this section will be subject to disciplinary action and referred to the authorities for prosecution.

NEW SECTION

WAC 495D-121-530 Student conduct code—Authority to prohibit trespass. (1) Individuals who are not students or members of the faculty or staff and who violate Lake Washington Institute of Technology's rules, or whose conduct threatens the safety or security of its students, staff, or faculty will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the campus president, or his or her designee, to leave the college property. Such a request will be deemed to prohibit the

entry of, withdraw the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW.

(2) Members of the college community, students, faculty, and staff who do not comply with these regulations will be reported to the appropriate college office or agency for action in accord with established college policies.

(3) When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the vice-president of administrative services or designee within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The decision of the vice-president of administrative services or designee will be the final decision of the college and should be issued within five business days.

NEW SECTION

WAC 495D-121-540 Student conduct code—Academic dishonesty and classroom, lab, clinic conduct. (1) Honest assessment of student performance is of crucial importance to all members of the academic community. The college views acts of dishonesty as serious breaches of honor and will deal with them using the following:

(a) College administration and faculty will provide reasonable and prudent security measures designed to minimize opportunities for acts of academic dishonesty.

(b) Any student who, for the purpose of fulfilling any assignment or task required by a faculty member as part of the student's program of instruction, shall knowingly tender any work product that the student fraudulently represents to the faculty member as the student's work product, shall be deemed to have committed an act of academic dishonesty. Acts of academic dishonesty are cause for disciplinary action.

(c) Any student who aids or abets an act of academic dishonesty, as described in (b) of this subsection, is subject to disciplinary action.

(d) Faculty may adjust the student's grade on a particular project, paper, test, or class for academic dishonesty. This section shall not be construed as preventing a faculty from taking immediate disciplinary action when he or she must act upon such breach of academic dishonesty to preserve order and prevent disruptive conduct in the classroom.

(2) Instructors have the authority to take whatever summary actions necessary to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the course objectives.

(a) Any student who, by any act of misconduct, substantially disrupts a class by engaging in conduct that renders it difficult or impossible to maintain the decorum of the faculty's class is subject to disciplinary action.

(b) The faculty of each course, or the managing authority of distance learning courses, can take steps as necessary to preserve order and to maintain the effective cooperation of the class in fulfilling the course objectives, given that a stu-

dent shall have the right to appeal the disciplinary action to the faculty's supervisor.

NEW SECTION

WAC 495D-121-550 Student conduct code—Hazing prohibited. (1) The college strictly bans hazing.

(2) **Hazing.** Any method of initiation into a student organization or living group or any pastime or amusement engaged in with respect to such an organization or living group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person who attends any institution of higher education or post-secondary institution.

(3) Penalties.

(a) Any student organization, association, or club that knowingly permits hazing is:

(i) Liable for harm caused to people or property that result from hazing.

(ii) Denied recognition by the college as an official organization, association, or club on campus. If the organization, association, or club is a corporation, for profit or nonprofit, the college may hold individual directors of the corporation individually liable for damages.

(b) A person who takes part in hazing another gives up any entitlement to state-funded grants, scholarships, or awards for a period of one year.

(c) Forfeiture of state-funded grants, scholarships, or awards may include permanent forfeiture, based upon the seriousness of the violations.

(d) The student conduct code may apply to hazing violations.

(e) Hazing violations are also misdemeanors punishable under state criminal law according to RCW 9A.20.021.

(4) Sanctions for impermissible conduct not amounting to hazing.

(a) Impermissible conduct associated with initiation into a student organization or club or any pastime or amusement engaged in, with respect to the organization or club, will not be tolerated.

(b) Impermissible conduct, which does not amount to hazing, may include conduct that causes embarrassment, sleep deprivation or personal humiliation, or may include ridicule or unprotected speech amounting to verbal abuse.

(c) Impermissible conduct not amounting to hazing is subject to any sanctions available under the student conduct code, depending upon the seriousness of the violation.

NEW SECTION

WAC 495D-121-570 Student conduct code—Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president of student affairs or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 495D-121-580 Student conduct code—Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

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

(1) Academic freedom.

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

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

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

(2) Due process.

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

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

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

NEW SECTION

WAC 495D-121-590 Student conduct code—Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct, which include, but are not limited to the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of

another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Disruptive activity.** Participation in any activity that obstructs or disrupts:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity;

(b) The free flow of pedestrian or vehicular movement on college property or at a college activity;

(c) Any student's ability to profit from the instructional program; or

(d) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(5) **Imminent danger.** Where the student presents an imminent danger to college property, or to himself or herself, or other students or persons in college facilities on or off campus, or to the education processes of the college.

(6) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual

recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(7) **Property violation.** Attempted or actual damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other person or organization; or

(d) Possession of such property or money after it has been stolen.

(8) **Noncompliance.** Failure to comply with:

(a) The direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so;

(b) A college attendance policy as published in the student handbook or course syllabus; or

(c) A college rule or policy as set forth in the *Lake Washington Institute of Technology Policies and Procedures Manual* which may be found in the library or online.

(9) **Weapons.** Possession, holding, wearing, transporting, storage, or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, martial arts weapons, explosive device, dangerous chemicals, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or

(b) A student with a valid concealed weapons permit may store a firearm in his or her vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in advance to bringing weapons to the college, in writing, and shall be subject to such terms or conditions incorporated therein.

(10) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(11) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(12) **Alcohol.** Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling, or delivering any alcoholic beverage, except as permitted by law and authorized by the college president.

(13) **Marijuana.** The use, possession, delivery, sale, or being visibly under the influence of marijuana or the psycho-

active compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(14) **Drugs.** Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional. Being observably under the influence of any lawfully prescribed drug when enrolled in classes that require operation of heavy equipment or other dangerous equipment.

(15) **Obstruction.** Obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity.

(16) **Disorderly conduct.** Conduct which is disorderly, lewd, obscene, or a breach of peace on college premises or at college sponsored activities.

(17) **Discrimination.** Discriminatory action which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental, or physical disability; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(18) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, or gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(19) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that

does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(20) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(21) **Misuse of information resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization;

(i) Failure to comply with the college's acceptable use policy.

(22) **Breach of campus safety.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community. Breaching campus safety or security includes, but is not limited to:

(a) Unauthorized access to college facilities; intentionally damaging door locks; unauthorized possession of college keys or access cards; duplicating college keys or access cards; or propping open of exterior doors;

(b) Tampering with fire safety equipment, such as fire extinguishers, smoke detectors, alarm pull stations or emergency exits;

(c) Placement of equipment or vehicles, including bicycles, so as to obstruct the means of access to/from college buildings;

(d) Entering or remaining in any closed college facility or entering after the closing time of the college facility without permission of a college official;

(e) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(23) **Abuse of procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c) Disruption or interference with the orderly conduct of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member;

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(24) **Violation of laws.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(25) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

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

NEW SECTION

WAC 495D-121-600 Student conduct code—Disciplinary sanctions. Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students according to the procedure outlined in WAC 495D-121-340.

(1) **Primary sanctions.**

(a) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from

the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(d) **Disciplinary suspension.** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken. The student is not guaranteed readmission at the end of such period of time, but is guaranteed a review of the case and a decision regarding eligibility for readmission.

(e) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(2) Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation including, but not limited to, drug and alcohol education, anger management coursework, or ongoing treatment. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **No contact orders and other summary relief.** The college may require a student to refrain from any form of contact with another student or college employee. Other forms or relief include, but are not limited to: Switching to alternate sections of individual classes or programs, delaying admission to an instructional program, assigned seating during a class, or behavioral contracts.

(3) **Secondary sanctions.** No order of severity is established for secondary sanctions:

(a) **Community/college service.** A student may be offered an opportunity to complete a specified number of hours of community/college service in lieu of other sanctions. The type of community/college service must be approved by the hearing officer.

(b) **Educational requirements.** A provision to complete a specific educational requirement directly related to the violation committed. The provision will be clearly defined. Such educational requirements may include, but are not limited to, completion of an alcohol education workshop, a diversity awareness workshop, an anger management class, essays, or reports.

(c) **Restrictions.** The withdrawal of specified privileges for a definite period of time, but without the additional stipulations contained in the imposition of conduct probation. The restrictions involved will be clearly defined.

(d) **Loss of parking privileges on campus.** Revocation of parking privileges.

NEW SECTION

WAC 495D-121-610 Student conduct code—Loss of eligibility, student activity participation. Any student found to have violated chapter 69.50 RCW, the Uniform Controlled Substances Act or chapter 69.41 RCW, legend drugs, by virtue of a criminal conviction or by final decision of the college president or designee shall, in lieu of or in addition to any other disciplinary action which may be imposed, be disqualified from participation in any school-sponsored student events or activities.

NEW SECTION

WAC 495D-121-620 Student conduct code—Refunds and access. (1) The college's refund policy covers refund of fees for the quarter in which disciplinary action occurs.

(2) The college may deny a student access to all or any part of the campus or other facility if he or she was suspended on the basis of conduct, which disrupted the orderly operation of the campus or any facility of the district, may be denied.

NEW SECTION

WAC 495D-121-630 Student conduct code—Readmission after suspension. The college will normally readmit any student suspended from the college for academic or disciplinary reasons on a space available basis in the students' program of study, when the suspension ends.

(1) The college may readmit a student after receiving approval of a written petition submitted to the vice-president, or other designated administrator, who imposed such suspension if:

(a) A student who was suspended believes that circumstances merit reconsideration of the suspension before it ends.

(b) The student was suspended with conditions imposed for readmission.

(2) This petition must state reasons that support a reconsideration of the matter. The vice-president's or designee's decision, after reviewing the petition, is final.

NEW SECTION

WAC 495D-121-640 Student conduct code—Reestablishment of academic standing. Students who were dismissed or suspended consistent with disciplinary procedures set forth in WAC 495D-121-340 and 495D-121-600 and whose dismissal or suspension upon appeal is found unwarranted, will have the opportunity to reestablish their academic and student standing to the extent possible within the college's abilities, including an opportunity to retake exams or otherwise complete course offerings missed because of such action.

NEW SECTION

WAC 495D-121-650 Student conduct code—Campus speakers. (1) Student organizations officially recognized by the college may invite speakers to the campus to address their own membership and other interested students and faculty if:

(a) Suitable space is available.

(b) It does not interfere with the college's regularly scheduled programs.

Although allowed by the college, having such speakers on the campus does not imply the college's approval or disapproval of them or their viewpoints. For speakers who are candidates for political office, the college will make equal opportunities available to opposing candidates if they desire.

(2) To ensure an atmosphere of open exchange and to not obscure the college's educational objectives, the president or designee, in a case with strong emotional feeling, may set conditions for conducting the meeting, such as requiring:

(a) A designated member of the college community as chair; or

(b) Permission for comments and questions from the floor.

The president or designee may encourage the appearance of one or more additional speakers at any meeting or at following meetings so people can express other points of view. The president may designate representatives to recommend conditions such as time, manner, and place for conducting particular meetings.

NEW SECTION

WAC 495D-121-660 Student conduct code—Distribution of information. (1) Students and members of recognized student organizations or college employees, may sell or distribute handbills, leaflets, newspapers, and similar materials free of charge on or in college facilities at locations specifically designated by the appropriate administrator, as long as the distribution or sale:

(a) Does not interfere with people's ingress or egress;

(b) Does not impede the free flow of vehicular or pedestrian traffic;

(c) Is not obscene; or

(d) Does not incite imminent violence.

(2) All nonstudents must contact the director of student programs or designee and get directions on where, when, and the manner of distribution before distributing any handbill, leaflet, newspaper, or related matter. This ensures that such

distribution or sale does not interfere with the free flow of vehicular or pedestrian traffic.

(3) Anyone who violates provisions of subsections (1) and (2) of this section is subject to disciplinary action. Anyone who violates provisions of subsection (2) of this section is subject to removal from the college campus.

NEW SECTION

WAC 495D-121-670 Student conduct code—Commercial activities. (1) No one can use college facilities for commercial solicitation, advertising, or promotional activities except when these activities:

(a) Clearly serve educational objectives including, but not limited to, display of books of interest to the academic community or the display or demonstration of technical or research equipment.

(b) Are conducted under the sponsorship or at the request of the college or official college organizations if the solicitation does not interfere with or operate to the detriment of the conduct of college affairs or the free flow of vehicular or pedestrian traffic.

(2) Students cannot use college facilities, equipment, and supplies for personal commercial gain.

(3) For the purpose of this regulation, the term "commercial activities" does not include handbills, leaflets, newspapers, and similarly related materials as regulated in WAC 495D-121-660.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 495D-121-010 Student conduct code—Statement of purpose.
- WAC 495D-121-020 Student conduct code—Definitions.
- WAC 495D-121-030 Student conduct code—Jurisdiction.
- WAC 495D-121-040 Student conduct code—Initiation of discipline.
- WAC 495D-121-050 Student conduct code—Free movement on campus.
- WAC 495D-121-060 Student conduct code—Right to demand identification.
- WAC 495D-121-070 Student conduct code—Civil disturbances.
- WAC 495D-121-080 Student conduct code—Authority to prohibit trespass.
- WAC 495D-121-090 Student conduct code—Notice of summary suspension.
- WAC 495D-121-100 Student conduct code—Initiation of summary suspension proceedings.
- WAC 495D-121-110 Student conduct code—Summary suspension hearing procedures.

- WAC 495D-121-120 Student conduct code—Summary suspension proceedings not duplicative.
- WAC 495D-121-130 Student conduct code—Decision by vice-president of student services.
- WAC 495D-121-140 Student conduct code—Academic dishonesty/and classroom/lab/clinic conduct.
- WAC 495D-121-150 Student conduct code—Hazing prohibited.
- WAC 495D-121-160 Student conduct code—Student misconduct.
- WAC 495D-121-170 Student conduct code—Student conduct sanctions.
- WAC 495D-121-180 Student conduct code—Loss of eligibility—Student activity participation.
- WAC 495D-121-190 Student conduct code—Appeal of academic action or disciplinary action and student grievances.
- WAC 495D-121-200 Student conduct code—Refunds and access.
- WAC 495D-121-210 Student conduct code—Readmission after dismissal or suspension.
- WAC 495D-121-220 Student conduct code—Reestablishment of academic standing.
- WAC 495D-121-230 Student conduct code—Reporting, recording and maintaining records.
- WAC 495D-121-240 Student conduct code—Campus speakers.
- WAC 495D-121-250 Student conduct code—Distribution of information.
- WAC 495D-121-260 Student conduct code—Commercial activities.

AMENDATORY SECTION (Amending WSR 11-19-083, filed 9/20/11, effective 10/21/11)

WAC 495D-131-010 Scholarships. The financial aid office keeps detailed information ((~~concerning~~)) about the criteria, eligibility, procedures for application, and other information ((~~regarding~~)) on scholarships ((~~at~~)) offered by Lake Washington Institute of Technology ((~~is located in the financial aid office on the Lake Washington Institute of Technology campus~~)) or administered by the financial aid office. Detailed information concerning the Lake Washington Foundation Scholarships is located in the foundation office at the college.

AMENDATORY SECTION (Amending WSR 00-20-007, filed 9/22/00, effective 10/23/00)

WAC 495D-132-010 Financial aid. ((The college shall)) Lake Washington Institute of Technology will offer a

comprehensive financial program for students (~~(using)~~) who use college, state, and federal financial aid resources (~~(as well as from)~~) and/or appropriate foundation resources. The financial aid office will:

- (1) Provide financial aid information in college publications (~~(-assist)~~).
- (2) Help students (~~(in obtaining)~~) to get financial aid information (~~(-)~~).
- (3) Determine student eligibility for financial aid (~~(- and)~~).
- (4) Manage the college's financial aid programs.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-140-060 Trespass. (1) Individuals who are not students or members of the faculty or staff and who violate (~~(these rules will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by any appropriate administrator, to leave the college property. Such a request prohibits the entry of and withdraws the license or privilege to enter onto or remain upon any portion of the college facilities by the person or group of persons requested to leave. Such persons shall be subject to arrest under the provisions))~~) Lake Washington Institute of Technology's rules, or whose conduct threatens the safety or security of its students, staff, or faculty will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the campus president, or his or her designee, to leave the college property. Such a request will be deemed to prohibit the entry of, withdraw the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave, and subject such individuals to arrest under the provision of chapter 9A.52 RCW.

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in (~~(accordance))~~ accord with ((these rules)) established college policies.

(3) When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the vice-president of administrative services or designee within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The decision of the vice-president of administrative services will be the final decision of the college and should be issued within five business days.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-140-070 Prohibited conduct at college facilities. (~~(1) The use or possession of unlawful drugs or narcotics, not medically prescribed, or of intoxicants, except as specifically permitted by board of trustees policy as determined by the president or executive vice president on college property or at college functions, is prohibited. Students under~~

~~the influence of intoxicants, unlawful drugs, or narcotics while on college property are subject to disciplinary action.~~

~~(2) The use of tobacco, whether smoked, chewed, or otherwise used, is prohibited in accordance with state laws and health regulations. Smoking is permitted only where specifically designated by official signs posted on campus.~~

~~(3) Destruction of public property is also prohibited.)~~

(1) **Drugs.** Being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, or selling any such drug or substance, except in accordance with a lawful prescription for that person by a licensed health care professional. Being observably under the influence of any lawfully prescribed drug when enrolled in classes that require operation of heavy equipment or other dangerous equipment.

(2) **Marijuana.** The use, possession, delivery, sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(3) **Alcohol.** Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling, or delivering any alcoholic beverage, except as permitted by law and authorized by the college president.

(4) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. "Related products" include, but are not limited to cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(5) **Weapons.** Possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or

(b) A person with a valid concealed weapons permit may store a firearm in his or her vehicle parked on campus in accordance with RCW 9A.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in advance to bringing weapons to the college, in writing, and shall be subject to such terms or conditions incorporated therein.

(6) **Property violation.** Attempted or actual damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other person or organization; or
(d) Possession of such property or money after it has
been stolen.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 495D-280-010 Family Educational Rights and Privacy Act—General policy.
- WAC 495D-280-015 Family Educational Rights and Privacy Act—Definitions.
- WAC 495D-280-020 Family Educational Rights and Privacy Act—Annual notification of rights.
- WAC 495D-280-030 Family Educational Rights and Privacy Act—Procedure to inspect education records.
- WAC 495D-280-040 Family Educational Rights and Privacy Act—Disclosure of education records.
- WAC 495D-280-050 Family Educational Rights and Privacy Act—Limits on rights to review and inspect and obtain copies of education records.
- WAC 495D-280-060 Family Educational Rights and Privacy Act—Record of request and disclosures.
- WAC 495D-280-080 Family Educational Rights and Privacy Act—Requests for corrections, hearings, adding statements to education records.
- WAC 495D-280-090 Family Educational Rights and Privacy Act—Fees for copies.
- WAC 495D-280-100 Family Educational Rights and Privacy Act—Waiver.
- WAC 495D-280-110 Family Educational Rights and Privacy Act—Type and location of education records.
- WAC 495D-280-120 Family Educational Rights and Privacy Act—Remedy for students protected by this act.

WSR 14-14-049**PERMANENT RULES****HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed June 25, 2014, 1:32 p.m., effective July 26, 2014]

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

Purpose: The health care authority (HCA) is rebasing the outpatient prospective payment system. HCA will move from

the ambulatory patient classification to the enhanced ambulatory payment group system, and update the pricing methods and rates associated with outpatient services. HCA has also defined rules for measuring and ensuring budget neutrality after rebased payment system implementation.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-550-7100; and amending WAC 182-550-7000, 182-550-7200, 182-550-7300, 182-550-7400, 182-550-7450, 182-550-7500, and 182-550-7600.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Chapter 74.60 RCW.

Adopted under notice filed as WSR 14-11-096 on May 21, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 7, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 7, Repealed 1.

Date Adopted: June 25, 2014.

Kevin M. Sullivan
 Rules Coordinator

NEW SECTION

WAC 182-550-3850 Budget neutrality adjustment and measurement. (1) The medicaid agency measures the effectiveness of budget neutral rebasing by applying a budget neutrality adjustment factor to the base payment rates for both inpatient and outpatient hospitals as needed to maintain aggregate payments under rebased payment systems.

(a) The agency performs budget-neutrality adjustments and measurement by prospectively adjusting conversion factors and rates to offset unintentional aggregate payment system decreases or increases. The agency publishes conversion factors and rates which reflect any required budget neutrality adjustment.

(b) The following rates and factors are not adjusted by the BNAF:

- (i) Inpatient per diem;
- (ii) Ratio of costs-to-charges (RCC);
- (iii) Critical access hospital (CAH) weighted costs-to-charges (WCC);
- (iv) Inpatient pain management and rehabilitation (PM&R);
- (v) Per-case rates;
- (vi) Administrative day rates;
- (vii) Long-term acute care (LTAC);
- (viii) Chemical-using pregnant women (CUP);
- (ix) Outlier parameters;

(x) Outpatient services paid at the resource-based relative value scale (RBRVS) fee;

(xi) Outpatient corneal transplants; and

(xii) Diabetic education.

(2) The agency measures budget neutrality on an ongoing basis after rebased system implementation as follows:

(a) The agency gathers inpatient and outpatient claims and encounter data from the rebased system implementation date to the end of the measurement period.

(i) The first measurement period is the initial six months following rebased payment system implementation.

(ii) Additional measurement periods occur no more frequently than quarterly thereafter.

(iii) The agency performs a final measurement period for data received through June 30, 2016.

(b) The agency sums the aggregate payment amounts separately for inpatient and outpatient services. The agency will make the following adjustments to the base data:

(i) The agency removes any reductions due to third-party liability (TPL), client responsibility, and client spenddown from the payment summary;

(ii) The agency removes any increase awarded by RCW 74.09.611(2) from inpatient services;

(iii) The agency includes any outpatient service lines which are bundled under the enhanced ambulatory patient group (EAPG) system, but would be otherwise payable under the ambulatory payment classification (APC) system; and

(iv) Other adjustments as necessary.

(c) The agency processes all claims and encounters using the rates, factors, and policies which were in effect on June 30, 2014, with the following exceptions:

(i) The agency uses the RCC effective on the date of service;

(ii) The agency uses the most recent RBRVS values for any outpatient service paid using the RBRVS; and

(iii) The agency updates APC relative weights to reflect the most recent relative weights supplied by CMS;

(iv) The agency adjusts the outpatient budget target adjuster (BTA) to offset the inflation factor applied to OPPS in the CMS OPPS final rule; and

(v) The agency may include other adjustments as necessary to ensure accurate payment determination.

(d) The agency aggregates payment amounts calculated under (c) of this subsection separately for inpatient and outpatient services.

(3) The agency will modify the conversion factors and rates to reflect aggregate changes in the overall payment system as follows:

(a) If the amount calculated in subsection (2)(b) of this section is between ninety-nine percent and one hundred one percent of the amount calculated in subsection (2)(d) of this section, no adjustment will be made to the conversion factors and rates currently in effect;

(b) If the amount calculated in subsection (2)(b) of this section is greater than one hundred one percent of the amount calculated in subsection (2)(d) of this section, the conversion factors and rates will be adjusted to reach a target expenditure of one hundred one percent from the rebased payment system implementation date to the end of the subsequent six-month period;

(c) If the amount calculated in subsection (2)(b) of this section is less than ninety-nine percent of the amount calculated in subsection (2)(d) of this section, the conversion factors and rates will be adjusted to reach a target expenditure decrease of ninety-nine percent from the rebased payment system implementation date to the end of the subsequent six-month period.

(4) The agency applies adjustments to the BNAF to rates prospectively at the beginning of the calendar quarter following the measurement.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-7000 Outpatient prospective payment system (OPPS)—General. (1) The ~~((department's))~~ medicaid agency pays for outpatient services using an outpatient prospective payment system (OPPS) ~~((uses an ambulatory payment classification (APC)-based reimbursement methodology as its primary reimbursement method. The department is basing its OPPS on the centers for medicare and medicaid services (CMS) prospective payment system for hospital outpatient department services.~~

~~((2) For a complete description of the CMS outpatient hospital prospective payment system, including the assignment of status indicators (SIs), see 42 C.F.R., Chapter IV, Part 419. The Code of Federal Regulations (C.F.R.) is available from the C.F.R. web site and the Government Printing Office, Seattle office. The document is also available for public inspection at the Washington state library (a copy of the document may be obtained upon request, subject to any pertinent charge))~~ for all hospitals that do not qualify as in-state critical access hospitals per WAC 182-550-2598.

(2) The agency uses the enhanced ambulatory payment group (EAPG) software provided by 3M™ Health Information Systems to group OPPS claims based on services performed and resource intensity.

(3) The agency uses the group established in subsection (2) of this section to determine payment for OPPS claims.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-7200 OPPS—Billing requirements and payment method. ~~((+))~~ This section describes hospital provider billing requirements and the payment methods the ~~((department))~~ medicaid agency uses to pay for covered outpatient hospital services provided by hospitals ~~((not exempted from))~~ included in the outpatient prospective payment system (OPPS).

~~((2))~~ (1) Providers must bill according to national correct coding initiative (NCCI) standards ~~((NCCI standards are based on:~~

~~((a) Coding conventions defined in the American Medical Association's Current Procedural Terminology (CPT®) manual;~~

~~((b) Current standards of medical and surgical coding practice;~~

~~((c) Input from specialty societies; and~~

~~((d) Analysis of current coding practices.~~

The centers for medicare and medicaid services (CMS) maintains NCCI policy.) maintained by the Centers for Medicare and Medicaid Services (CMS).

ENHANCED AMBULATORY ((PAYMENT CLASSIFICATION (APC))) PATIENT GROUP (EAPG) METHOD

~~((3))~~ (2) The ((department)) agency uses the ((APC)) enhanced ambulatory patient group (EAPG) method ((when (CMS) has established a national payment rate to pay for covered services. The APC method is) as the primary payment ((methodology)) method for OPSS. Examples of services paid by the ((APC methodology)) EAPG method include(;

- (a) ~~((Ancillary services;))~~ Surgeries;
- (b) ~~((Medical visits;))~~ Significant procedures;
- (c) ~~((Nonpass-through drugs or devices;))~~ Observation services;
- ~~((d))~~ Observation services;
- ~~((e))~~ Packaged services subject to separate payment when criteria are met;
- ~~((f))~~ Pass-through drugs;
- ~~((g))~~ Significant procedures that are not subject to multiple procedure discounting (except for dental-related services);
- ~~((h))~~ Significant procedures that are subject to multiple procedure discounting) (d) Medical visits;
- (e) Dental procedures; and
- ~~((i))~~ Other services as identified by the department.) (f) Ancillary services.

OPSS MAXIMUM ALLOWABLE FEE SCHEDULE

~~((4))~~ (3) The ((department uses)) agency pays using the outpatient fee schedule ((published in the department's billing instructions to pay for covered)) for:

- (a) Covered services ((that are)) exempted from the ((APC)) EAPG payment ((methodology or services for which there are no established weight(s)) method due to agency policy;
- (b) ~~((Procedures that are on the CMS inpatient only list;))~~ Covered services for which there are no established relative weights, such as:
 - (i) Durable medical equipment procedures grouped to EAPG type 7; and
 - (ii) Physical therapy procedures grouped to EAPG type 21;
- (c) ~~((Items, codes, and services that are not covered by medicare;))~~ Corneal tissue acquisition(;
- ~~((d))~~ Devices that are pass-throughs (see WAC 388-550-7050 for definition of pass-throughs); and
- ~~((e))~~ Dental clinic services;); and
- (d) Other services as identified by the agency and posted on the agency's web site.

HOSPITAL OUTPATIENT ((RATE)) RATIO OF COSTS-TO-CHARGES (RCC)

~~((5))~~ (4) The ((department)) agency uses the hospital outpatient ((rate described)) ratio of costs-to-charges (RCC) in WAC ((388-550-3900 and 388-550-4500)) 182-550-3900 and 182-550-4500 to pay for the services listed in subsection ~~((4))~~ (3) of this section for which the ((department)) agency has not established a maximum allowable fee.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-7300 OPSS—Payment limitations. (1)

The ((department)) medicaid agency limits payment for covered outpatient hospital services to the current published maximum allowable units of services listed in the outpatient fee schedule ((and)) published ((in)) on the ((department's hospital billing instructions)) agency's web site, subject to the following limitations:

(a) To receive payment for services, providers must bill claims according to national correct coding initiative (NCCI) standards. ((See WAC 388-550-7200(2) for more information on NCCI standards.)) When a unit limit for services is not stated in the outpatient fee schedule, ((department)) the agency pays for services according to the program's unit limits stated in applicable WAC and published ((issuances)) provider guides.

(b) ((Because multiple units for services may be factored into the ambulatory payment classification (APC) weight, department pays for services according to the unit limit stated in the outpatient fee schedule when the limit is not the same as the program's unit limit stated in applicable WAC and published issuances.

(2) The department does not pay separately for covered services that are packaged into the APC rates. These services are paid through the APC rates.

(3) The department:

(a) Limits surgical dental services payment to the ambulatory surgical services fee schedule and pays:

- (i) The first surgical procedure at the applicable ambulatory surgery center group rate; and
- (ii) The second surgical procedure at fifty percent of the ambulatory surgery center group rate.

(b) Considers all surgical procedures not identified in subsection (a) to be bundled.) The average resource, including units of service, are factored into the enhanced ambulatory patient group (EAPG) weight determination, and the allowable units of service for EAPGs is equal to one.

(2) The following service categories are included in the EAPG payment for significant procedure(s) on the claim and do not receive separate payments under EAPG:

- (a) Services classified as the same or clinically related to the main significant procedure;
- (b) Routine ancillary services;
- (c) Chemotherapy services grouped as class I, class II, or minor; and
- (d) Pharmacotherapy services grouped as class I, class II, or minor.

(3) The agency reduces the EAPG payment by fifty percent based on the default EAPG grouper settings for services subject to one or more of the following discounts:

- (a) Multiple procedures;
- (b) Repeat ancillary services; or
- (c) A terminated procedure.

(4) The ((department)) agency limits outpatient services billing to one claim per episode of care. If ((there are late charges, or if)) any line of the claim is denied, or a service that was provided was not stated on the initial submitted claim, the ((department)) agency requires the entire claim to be adjusted.

(5) The agency limits payments to the total billed charges.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-7400 OPSS ((APC)) EAPG relative weights. (1) The ((department)) medicaid agency uses ((the ambulatory payment classification (APC))) national relative weights established by ((the centers for medicare and medicaid services (CMS) at the time the budget target adjuster is established. See WAC 388-550-7050 for the definition of budget target adjuster)) 3M™ as part of its enhanced ambulatory patient group (EAPG) payment system.

(2) The agency may update the relative weights used for calculating OPSS payments on July 1st of each year, beginning on July 1, 2015.

(3) The agency may update relative weights more frequently for newly added EAPGs in order to maintain current EAPG grouper system functionality.

(4) The agency will post all relative weights used on the agency's web site.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-7450 OPSS budget target adjuster. ((1) The outpatient prospective payment system (OPSS) budget target adjuster is a component of the ambulatory payment classification (APC) payment calculation. The budget target adjuster allows the department to reach but not exceed the established budget target. The same OPSS budget target adjuster value is applied to payments for all hospitals.

(2) The department calculates the OPSS budget target adjuster using:

(a) A payment system model developed by the department;

(b) The department's budget target;

(c) The department's outpatient fee schedule;

(d) Addendum B to 42 C.F.R. Part 410 (medicare's hospital outpatient regulations and notices); and

(e) The wage index established and published by the centers for medicare and medicaid services (CMS) at the time the OPSS budget target adjuster is set for the upcoming year.

(3) In response to direction from the legislature, the department may change the method for calculating the OPSS)) The medicaid agency may apply an outpatient prospective payment system (OPSS) budget target adjuster to ((achieve the legislature's targeted expenditure levels for outpatient hospital services-)) the enhanced ambulatory patient group (EAPG) payment. The agency calculates the OPSS budget target adjuster based on legislative direction to achieve the legislature's targeted expenditure levels for outpatient hospital services. The legislative direction may take the form of express language in the Biennial Appropriations Act or may be reflected in the level of funding appropriated to the ((department)) agency in the Biennial Appropriations Act.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-7500 OPSS rate. (1) The ((department)) medicaid agency calculates hospital-specific outpatient prospective payment system (OPSS) rates using:

(a) A ((payment method model)) base conversion factor established by the ((department)) agency; ((and))

(b) The latest wage index information established and published by the centers for medicare and medicaid services (CMS) at the time the OPSS rates are set for the upcoming year. Wage index information reflects labor costs in the cost-based statistical area (CBSA) where a hospital is located; and

(c) An adjustment for graduate medical education (GME).

(2) ((The department may adjust OPSS rates to pay for graduate medical education (GME) costs-)) Base conversion factors. The agency calculates the average, or base, enhanced ambulatory patient group (EAPG) conversion factor during a hospital payment system rebasing. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter, to maintain aggregate payments across the system. The agency will publish base conversion factors on its web site.

(3) Wage index adjustments reflect labor costs in the CBSA where a hospital is located.

(a) The agency determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(b) The amount in (a) of this subsection is multiplied by the most recent wage index information published by CMS at the time the rates are set; then

(c) The agency adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(4) GME. The ((department)) agency obtains the GME information from ((a)) the hospital's ((("as filed" annual)) most recently filed medicare cost report ((Form 2552-96) and applicable patient revenue reconciliation data provided by the hospital)) as available in the CMS HCRIS dataset.

(a) The hospital's ((("as filed")) medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS form 2552-10 to calculate GME.

(c) In the case where a ((delay in submission of the)) hospital has not submitted a CMS medicare cost report ((to the medicare fiscal intermediary is granted by medicare)) in greater than eighteen months from the end of the hospital's cost reporting period, the ((department)) agency may ((adjust the hospital's OPSS rate.

(b) The department may not pay GME expenses for hospitals in specified categories, and hospitals that meet, or fail to meet, conditions specified in statute or WAC.

(3) In response to direction from the legislature, the department may change the method for calculating OPSS rates to achieve the legislature's targeted expenditure levels for outpatient hospital services. The legislative direction may take the form of express language in the Biennial Appropriations Act or may be reflected in the level of funding appropri-

ated to the department in the Biennial Appropriations Act.)
remove the hospital's GME adjustment.

(d) The agency calculates the hospital-specific GME by dividing the durable medical equipment cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(5) The formula for calculating the hospital's final specific conversion factor is:

$$\text{EAPG base rate} \times (.6(\text{wage index}) + .4)/(1-\text{GME})$$

NEW SECTION

WAC 182-550-7550 OPPS payment enhancements.

(1) Pediatric adjustment.

(a) The medicaid agency establishes a policy adjustor to be applied to all enhanced ambulatory patient group (EAPG) services for clients under age eighteen years.

(b) Effective July 1, 2014, this adjustor equals one point thirty-five (1.35).

(2) Chemotherapy and combined chemotherapy/pharmacotherapy adjustment.

(a) The agency establishes a policy adjustor to be applied to services grouped as chemotherapy drugs or combined chemotherapy and pharmacotherapy drugs.

(b) Effective July 1, 2014, this adjustor equals one point one (1.1).

(3) Sole community hospitals (SCH).

(a) To qualify as an SCH, a hospital must meet all of the following criteria. The hospital must:

(i) Be certified as an SCH by the Centers for Medicare and Medicaid Services (CMS) as of January 1, 2013;

(ii) Have a level III adult trauma service designation by the department of health as of January 1, 2014;

(iii) Have less than one hundred fifty acute-care-licensed beds in state fiscal year 2011; and

(iv) Be owned and operated by the state or one of its political subdivisions.

(b) Effective January 1, 2015, the agency will apply an adjustor of one point twenty-five (1.25) to the EAPG conversion factor for any hospital that meets the conditions in (a) of this subsection.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-7600 OPPS payment calculation. (1)

~~The ((department follows the discounting and modifier policies of the centers for medicare and medicaid services (CMS). The department calculates the ambulatory payment classification (APC) payment as follows:~~

~~APC payment =~~

~~National payment rate x Hospital OPPS rate x Discount factor (if applicable) x~~

~~Units of service (if applicable) x Budget target adjustor))~~

medicaid agency calculates the enhanced ambulatory patient group (EAPG) payment as follows:

EAPG payment =

EAPG relative weight x

Hospital-specific conversion factor x

Discount factor (if applicable) x

Policy adjustor (if applicable)

(2) The total OPPS claim payment is the sum of the ((APC)) EAPG payments plus the sum of the ((~~lesser of the billed charge or~~)) allowed ((~~charge~~)) amounts for each non-((APC)) EAPG service.

(3) ~~((The department pays hospitals for claims that involve clients who have third-party liability (TPL) insurance, the lesser of either the:~~

~~(a) Billed amount minus the third-party payment amount; or~~

~~(b) Allowed amount minus the third-party payment amount.~~

~~(4) In response to direction from the legislature, the department may change the method for calculating OPPS payments to achieve the legislature's targeted expenditure levels for outpatient hospital services. The legislative direction may take the form of express language in the Biennial Appropriations Act or may be reflected in the level of funding appropriated to the department in the Biennial Appropriations Act.) If a client's third-party liability insurance has made a payment on a service, the agency subtracts any such payments made from the medicaid allowed amount.~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-550-7100 OPPS—Exempt hospitals.

WSR 14-14-055

PERMANENT RULES

DEPARTMENT OF

EARLY LEARNING

[Filed June 26, 2014, 11:33 a.m., effective July 27, 2014]

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

Purpose: To revise early childhood education and assistance program (ECEAP) eligibility, prioritization, and enrollment rules, and align them with clarified ECEAP Performance Standards Section B: Enrollment and Eligibility. This includes updating eligibility rules such that children ages three and four who are receiving child protective services or family assessment response services are eligible and prioritized for ECEAP services. Also, to update staff qualifications rules consistent with revised ECEAP Performance Standards Section C: Human Resources going into effect July 1, 2014.

Citation of Existing Rules Affected by this Order: Amending WAC 170-100-080 and 170-100-090.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070; chapter 43.215 RCW.

Adopted under notice filed as WSR 14-11-095 on May 21, 2014.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: June 26, 2014.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 10-20-059, filed 9/27/10, effective 10/28/10)

WAC 170-100-080 Eligibility for services. (1) ~~((Contractors must write and follow a recruitment procedure, including active recruitment of age-eligible homeless children, children in the foster care system, and children with disabilities.~~

~~((2)))~~ Children are eligible for ECEAP if they are at least three years old, but not yet five years old, by August 31st of the school year, and one of the following:

(a) Returning to the same ECEAP contractor from the previous school year.

(b) Qualified by their school district for special education services under RCW 28A.155.020. All children on a school district individualized education program (IEP) meet this requirement.

(c) Receiving child protective services under RCW 26.44.020(3) or family assessment response services under RCW 26.44.260.

(d) From a family with income at or below one hundred ten percent of the federal poverty guidelines established by the U.S. Department of Health and Human Services.

~~((d))~~ From a family that is not income-eligible but is impacted by either:

(i) ~~Developmental risk factors, such as developmental delay or disability, but not on an IEP.~~

(ii) ~~Environmental risk factors that could affect school success such as domestic violence, chemical dependency, homelessness, parental incarceration, or child protective services involvement.~~

~~Each contractor's maximum percentage of over-income children is in their ECEAP client services contract.~~

~~(3) Children cannot be simultaneously enrolled in Head Start and ECEAP. Children served by school district special education may be simultaneously enrolled in ECEAP.~~

~~((4)))~~ (e) From a family with income that exceeds one hundred ten percent federal poverty level and is impacted by specific developmental or environmental risk factors that are linked by research to school performance.

(f) Ninety percent of enrolled families statewide must qualify by income or IEP. DEL establishes over-income limits for each contractor annually.

(2) Children who are eligible for ECEAP are not automatically enrolled in ECEAP. They must still be prioritized.

(3) Eligible, enrolled children are allowed to remain in ECEAP until kindergarten, without reverification.

(4) Children may not be simultaneously enrolled in both ECEAP and Head Start.

(5) Children served by school district special education may be simultaneously enrolled in ECEAP.

(6) Contractors must ((write and follow a procedure for prioritizing enrollment of the eligible children who are most in need of ECEAP services. From the pool of eligible children,)) systematically review all applications of eligible children and prioritize them to determine which children to enroll in the available ECEAP slots. Contractors must prioritize children who are:

(a) Four years old by August 31st of the school year.

(b) From families ~~((with))~~ at the lowest ~~((incomes))~~ federal poverty levels, as published annually by the U.S. Department of Health and Human Services.

(c) Homeless, as defined by the federal McKinney-Vento Homeless Assistance Act.

~~((In the foster care system.~~

~~((e)))~~ Receiving child protective services under RCW 26.44.020(3) or family assessment response services under RCW 26.44.260.

(e) From families with multiple needs.

~~((5) Contractors may determine additional prioritization categories to best meet the needs of their community, such as:~~

~~(a) English language learners.~~

~~(b) Refugee status.~~

~~(c) Transferring from other ECEAP or Head Start sites.))~~

(7) Contractors must use either the standard or customized priority point system built into the early learning management system (ELMS). Contractors may customize the environmental risk factor section of the priority points built into ELMS to best meet the needs of families in their community.

AMENDATORY SECTION (Amending WSR 06-18-085, filed 9/5/06, effective 9/5/06)

WAC 170-100-090 Staff qualifications. (1) Contractors must provide adequate staff to comply with all ECEAP performance standards. ~~((Contractors must have written policies and procedures for recruitment and selection of staff, including procedures for advertising all position openings to the public.))~~

(2) All persons serving in the role of ECEAP lead teacher must meet one of the following qualifications:

(a) An associate or higher degree with the equivalent of thirty college quarter credits of early childhood education. These thirty credits may be included in the degree or in addition to the degree; or

(b) A valid Washington state teaching certificate with an endorsement in early childhood education (pre-K - grade 3) or early childhood special education.

(3) All persons serving in the role of ECEAP assistant teacher must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program assistant teacher in the same agency before July 1, 1999;

(b) The equivalent of twelve college quarter credits in early childhood education; ~~((or))~~

(c) Initial or higher Washington state early childhood education certificate; or

(d) A current Child Development Associate (CDA) credential awarded by the Council for Early Childhood Professional Recognition.

(4) All persons serving in the role of ECEAP family support (~~(specialist)~~) staff must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program family (~~(service worker)~~) support staff in the same agency before July 1, 1999; ~~((or))~~

(b) An associate's or higher degree with the equivalent of thirty college quarter credits of adult education, human development, human services, family support, social work, early childhood education, child development, psychology, or another field directly related to their job responsibilities. These thirty credits may be included in the degree or in addition to the degree; or

(c) A degree, credential or certificate from a comprehensive and competency-based program that increases knowledge and skills in providing direct family support services to families.

(5) All persons serving in the role of (~~(family support aide or)~~) ECEAP health (~~(aide)~~) advocate must meet one of the following qualifications:

(a) Employment as an early childhood education and assistance program family support aide or health aide in the same agency before July 1, (~~(1999)~~) 2014; or

(b) The equivalent of twelve college quarter credits in family support, public health, health education, nursing, or another field directly related to their job responsibilities.

(6) The early childhood education and assistance program health (~~(professional)~~) consultant must meet one of the following qualifications:

(a) Licensed in Washington state as a registered nurse (R.N.) or physician (M.D., N.D., D.O.); or

(b) A bachelor's or higher degree in public health, nursing, health education, health sciences, medicine, or related field.

(7) The early childhood education and assistance program (~~(dietitian)~~) nutrition consultant must meet (~~(at)~~) one of the following qualifications:

(a) (~~(A bachelor's or higher degree in nutrition science, public health nutrition, dietetics, or other related field; and~~

~~(b))~~) Registered dietitian (~~(with)~~) (RD) credentialed through the Commission on Dietetic Registration (CDR), the credentialing agency for the Academy of Nutrition and Dietetics (formerly the American Dietetic Association ((or certified as a dietitian))); or

(b) Washington state certified nutritionist under chapter 18.138 RCW.

(8) The early childhood education and assistance program mental health (~~(professional)~~) consultant must meet one of the following qualifications:

(a) Licensed by the Washington state department of health as a mental health counselor, marriage and family therapist, social worker, psychologist, psychiatrist, or psychiatric nurse; ~~((or))~~

(b) Approved by the Washington state department of health as an agency affiliated or certified counselor, with a master's degree in counseling, social work or related field; or

(c) Credentialed by the Washington state office of the superintendent of public instruction as a school counselor, social worker, or psychologist.

(9) (~~(Contractors may provisionally hire lead teachers, assistant teachers, family service workers, family service aides, or health aides who do not fully meet the qualifications for the position if all of the following conditions are met:~~

(a) ~~Contractors have attempted to recruit and hire fully qualified staff and are unable to because of a documented labor pool shortage;~~

(b) ~~Contractors are able to recruit a person competent to fulfill the role and implement all related performance standards; and~~

(c) ~~Contractors write a professional development plan describing how the provisional hire will obtain full qualifications within five years of appointment.)~~ Contractors must hire and employ staff who meet the qualifications for their position.

(a) If the best candidate for the position is not fully qualified, the contractor must ensure the newly hired staff person is on a professional development plan (PDP) to fully meet the qualifications of their role within five years from the date of hire.

(b) Contractors must monitor progress on all PDPs and ensure staff make adequate yearly progress to meet the required qualifications.

(10) Equivalent degrees and certificates from other states and countries are accepted for ECEAP staff qualifications.

WSR 14-14-056

PERMANENT RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed June 26, 2014, 1:46 p.m., effective August 1, 2014]

Effective Date of Rule: August 1, 2014.

Purpose: This rule requires that fluoride treatment and sealants be provided on the same day as an encounter-eligible service. If provided on another day, the rules for nonfederally qualified health centers services will apply.

Citation of Existing Rules Affected by this Order: Amending WAC 182-548-1400.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: RCW 41.05.160.

Adopted under notice filed as WSR 14-11-097 on May 21, 2014.

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

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

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

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

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

Date Adopted: June 26, 2014.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-16-060, filed 7/30/12, effective 8/30/12)

WAC 182-548-1400 Federally qualified health centers—Reimbursement and limitations. (1) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the 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:

$$\text{Specific FQHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each FQHC}}$$

(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.

(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:

(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. Rebasings 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.

~~((H))~~ (12) For clients enrolled with a managed care organization (MCO), covered FQHC services are paid for by that plan.

~~((I))~~ (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 ser-

vices. 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.

~~((J))~~ (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.

WSR 14-14-075

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed June 27, 2014, 2:28 p.m., effective July 28, 2014]

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

Purpose: To amend three existing rules and adopt a new rule: WAC 458-57-175 Qualified family-owned business interests, to incorporate language from chapter 2, Laws of 2013 2nd sp. sess., captioned: Education legacy trust account—Estate and transfer tax. These changes include explaining: The qualified family-owned business interest deduction; the applicable exclusion amount; the increases for the top four marginal tax rates; handling of certain "transfers" regarding qualified terminal interest property (QTIP); adding examples for the apportionment of estate taxes; adding a definition of "spouse;" and changing the definition of the "Washington taxable estate" to specifically include an interest in QTIP included in the gross estate under IRC § 2044 prospectively and retroactively to decedents dying on or after May 17, 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 458-57-105 Nature of estate tax, definitions, 458-57-115 Valuation of property, property subject to estate tax, and how to calculate the tax, and 458-57-125 Apportionment of tax when there are out-of-state assets.

Statutory Authority for Adoption: RCW 83.100.200, 82.32.300, and 82.01.060(2).

Other Authority: RCW 83.100.020, 83.100.040, 83.100.047, 83.100.048, 83.100.120, and 83.100.210.

Adopted under notice filed as WSR 14-09-070 on April 17, 2014.

Changes Other than Editing from Proposed to Adopted Version: WAC 458-57-105 (3)(t), which defines "Washington taxable estate," had at WAC 458-57-105 (3)(t) the words "family-owned" deleted and at WAC 458-57-105 (3)(t)(ii) (D) the words "under RCW 83.100.048" added. WAC 458-57-115 (2)(c)(iv)(D)(II) had the same change at two locations where the words "the applicable exclusion amount" were replaced with "\$2 million." WAC 458-57-125(2) had the words "or the family-owned business interest deduction" deleted. WAC 458-57-175 (2)(e) had the word "interest" added.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

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

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

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

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

Date Adopted: June 27, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-04-008, filed 1/22/09, effective 2/22/09)

WAC 458-57-105 Nature of estate tax, definitions. (1)

Introduction. This rule applies to deaths occurring on or after May 17, 2005, and describes the nature of Washington state's estate tax as it is imposed by chapter 83.100 RCW (Estate and Transfer Tax Act). It also defines terms that will be used throughout chapter 458-57 WAC (Washington Estate and Transfer Tax Reform Act rules). The estate tax rule on the nature of estate tax and definitions for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-005.

(2) **Nature of Washington's estate tax.** The estate tax is neither a property tax nor an inheritance tax. It is a tax imposed on the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share.

(a) **Relationship of Washington's estate tax to the federal estate tax.** The department administers the estate tax under the legislative enactment of chapter 83.100 RCW, which references the Internal Revenue Code (IRC) as it existed January 1, 2005. Federal estate tax law changes enacted after January 1, 2005, do not apply to the reporting requirements of Washington's estate tax. The department will follow federal Treasury Regulations section 20 (Estate tax regulations), in existence on January 1, 2005, to the extent they do not conflict with the provisions of chapter 83.100 RCW or 458-57 WAC. For deaths occurring January 1, 2009, and after, Washington has different estate tax reporting and filing requirements than the federal government. There will be estates that must file an estate tax return with the state of Washington, even though they are not required to file with the federal government. The Washington state estate and transfer tax return and the instructions for completing the return can be found on the department's web site at <http://www.dor.wa.gov/> under the heading titled forms. ~~((The return and instructions can also be requested by calling the department's estate tax section at 360-570-3265, option 2.))~~

(b) **Lifetime transfers.** Washington estate tax taxes lifetime transfers only to the extent included in the federal gross estate. The state of Washington does not have a gift tax.

(3) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

(a) "Absentee distributee" means any person who is the beneficiary of a will or trust who has not been located;

(b) "Applicable exclusion amount" means:

(i) One million five hundred thousand dollars for decedents dying before January 1, 2006;

(ii) Two million dollars for estates of decedents dying on or after January 1, 2006, and before January 1, 2014; and

(iii) For estates of decedents dying in calendar year 2014 and each calendar year thereafter, the amount in (b)(ii) of this subsection must be adjusted annually, except as otherwise provided in (b)(iii) of this subsection. The annual adjustment is determined by multiplying two million dollars by one plus the percentage by which the most recent October consumer price index exceeds the consumer price index for October 2012, and rounding the result to the nearest one thousand dollars. No adjustment is made for a calendar year if the adjustment would result in the same or a lesser applicable exclusion amount than the applicable exclusion amount for the immediately preceding calendar year. The applicable exclusion amount under (b)(iii) of this subsection for the decedent's estate is the applicable exclusion amount in effect as of the date of the decedent's death.

(c) "Consumer price index," for purposes of this subsection, means the consumer price index for all urban customers, all items, for the Seattle-Tacoma-Bremerton metropolitan area as calculated by the United States Bureau of Labor Statistics;

(d) "Decedent" means a deceased individual;

~~((e))~~ (e) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;

~~((f))~~ (f) "Escheat" of an estate means that whenever any person dies, whether a resident of this state or not, leaving property in an estate subject to the jurisdiction of this state and without being survived by any person entitled to that same property under the laws of this state, such estate property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through 11.08.300;

~~((g))~~ (g) "Federal return" means any tax return required by chapter 11 (Estate tax) of the Internal Revenue Code;

~~((h))~~ (h) "Federal tax" means tax under chapter 11 (Estate tax) of the Internal Revenue Code;

~~((i))~~ (i) "Federal taxable estate" means the taxable estate as determined under chapter 11 of the Internal Revenue Code without regard to:

(i) The termination of the federal estate tax under section 2210 of the IRC or any other provision of law; and

(ii) The deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the IRC.

~~((j))~~ (j) "Gross estate" means "gross estate" as defined and used in section 2031 of the Internal Revenue Code;

~~((k))~~ (k) "Internal Revenue Code" or "IRC" means, for purposes of this chapter, the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, 2005;

~~((l))~~ (l) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

~~((k))~~ (m) "Person required to file the federal return" means any person required to file a return required by chapter 11 of the Internal Revenue Code, such as the personal representative (executor) of an estate;

~~((h))~~ (n) "Property," when used in reference to an estate tax transfer, means property included in the gross estate;

~~((m))~~ (o) "Resident" means a decedent who was domiciled in Washington at time of death;

~~((n))~~ (p) "Spouse" means two individuals with a valid marriage recognized under this or another jurisdiction's laws and includes state registered domestic partners and same-sex spouses. It does not include a marriage prohibited under Washington state law because of close kinship, incest, or bigamy;

(q) "State return" means the Washington estate tax return required by RCW 83.100.050;

~~((o))~~ (r) "Taxpayer" means a person upon whom tax is imposed under this chapter, including an estate or a person liable for tax under RCW 83.100.120;

~~((p))~~ (s) "Transfer" means "transfer" as used in section 2001 of the Internal Revenue Code and includes any shifting upon death of the economic benefit in property or any power or legal privilege incidental to the ownership or enjoyment of property. However, "transfer" does not include a qualified heir disposing of an interest in property qualifying for a deduction under RCW 83.100.046;

~~((q))~~ (t) "Washington taxable estate" means the "federal taxable estate"(~~(~~

~~(i) Less one million five hundred thousand dollars for decedents dying before January 1, 2006, or two million dollars for decedents dying on or after January 1, 2006;~~

~~(ii) Less the amount of any deduction allowed under RCW 83.100.046 as a farm deduction;~~

~~(iii) Less the amount of the Washington qualified terminable interest property (QTIP) election made under RCW 83.100.047;~~

~~(iv) Plus any amount deducted from the federal estate pursuant to IRC § 2056 (b)(7) (the federal QTIP election);~~

~~(v) Plus the value of any trust (or portion of a trust) of which the decedent was income beneficiary and for which a Washington QTIP election was previously made pursuant to RCW 83.100.047; and~~

~~(vi) Less any amount included in the federal taxable estate pursuant to IRC § 2044 (inclusion of amounts for which a federal QTIP election was previously made) from a predeceased spouse that died on or after May 17, 2005)) and includes, but is not limited to, the value of any property included in the gross estate under section 2044 of the Internal Revenue Code, regardless of whether the decedent's interest in such property was acquired before May 17, 2005:~~

~~(i) Plus amounts required to be added to the Washington taxable estate under RCW 83.100.047 for the marital deduction and surviving spouse benefits that includes state registered domestic partners and same-sex spouses;~~

~~(ii) Less:~~

~~(A) The applicable exclusion amount;~~

~~(B) The amount of any deduction allowed under RCW 83.100.046 for a qualified farm;~~

(C) Amounts allowed to be deducted from the Washington taxable estate under RCW 83.100.047 for the marital deduction and surviving spouse benefits that includes state registered domestic partners and same-sex spouses; and

(D) The amount of any deduction allowed under RCW 83.100.048 for the qualified family-owned business interest.

AMENDATORY SECTION (Amending WSR 09-04-008, filed 1/22/09, effective 2/22/09)

WAC 458-57-115 Valuation of property, property subject to estate tax, and how to calculate the tax. (1)

Introduction. This rule applies to deaths occurring on or after May 17, 2005, and is intended to help taxpayers prepare their return and pay the correct amount of Washington state estate tax. It explains the necessary steps for determining the tax and ~~((provides examples of))~~ how the tax is calculated. The estate tax rule on valuation of property etc., for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-015.

(2) Determining the property subject to Washington's estate tax.

(a) **General valuation information.** The value of every item of property in a decedent's gross estate is its date of death fair market value. However, the personal representative may elect to use the alternate valuation method under section 2032 of the Internal Revenue Code ~~((IRC))~~, and in that case the value is the fair market value at that date, including the adjustments prescribed in that section of the ~~((IRC))~~ Internal Revenue Code. The valuation of certain farm property and closely held business property, properly made for federal estate tax purposes pursuant to an election authorized by section 2032A of the Internal Revenue Code of 2005 ((IRC)), is binding on the estate for state estate tax purposes.

(b) **How is the gross estate determined?** The first step in determining the value of a decedent's Washington taxable estate is to determine the total value of the gross estate. The value of the gross estate includes the value of all the decedent's tangible and intangible property at the time of death. In addition, the gross estate may include property in which the decedent did not have an interest at the time of death. A decedent's gross estate for estate tax purposes may therefore be different from the same decedent's estate for local probate purposes. Sections 2031 through 2046 of the ~~((IRC))~~ Internal Revenue Code provide a detailed explanation of how to determine the value of the gross estate.

(c) **Deductions from the gross estate.** The value of the taxable estate is determined by subtracting the authorized exemption and deductions from the value of the gross estate. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to a surviving spouse. While sections 2051 through 2056A of the ~~((IRC))~~ Internal Revenue Code provide a detailed explanation of how to determine the value of the taxable estate the following areas are of special note:

(i) Funeral expenses.

(A) Washington is a community property state and under *Estate of Julius C. Lang v. Commissioner*, 97 Fed. 2d 867 (9th Cir. 1938) affirming the reasoning of *Wittwer v. Pember-*

ton, 188 Wash. 72, 76, 61 P.2d 993 (1936) funeral expenses reported for a married decedent must be halved. Administration expenses are not a community debt and are reported at 100%.

(B) **Example.** John, a married man, died in 2005 with an estate valued at \$2.5 million. On Schedule J of the federal estate tax return listed following as expenses:

SCHEDULE J - Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims			
Item Number	Description	Expense Amount	Total Amount
1	A. Funeral expenses: Burial and services	\$4,000	
	(1/2 community debt)	(\$2,000)	
	Total funeral expenses		
	B. Administration expenses:		
	1. Executors' commissions - amount estimated/agreed upon paid. (Strike out the words that do not apply.)		\$10,000
	2. Attorney fees - amount estimated/agreed upon/paid. (Strike out the words that do not apply.)		\$5,000

The funeral expenses, as a community debt, were properly reported at 50% and the other administration expenses were properly reported at 100%.

(ii) **Mortgages and liens on real property.** Real property listed on Schedule A should be reported at its fair market value without deduction of mortgages or liens on the property. Mortgages and liens are reported and deducted using Schedule K.

(iii) **Washington qualified terminable interest property (QTIP) election.**

(A) A personal representative may choose to make a larger or smaller percentage or fractional QTIP election on the Washington return than taken on the federal return in order to reduce Washington estate liability while making full use of the federal unified credit.

(B) Section 2056 (b)(7) of the ((IRC)) Internal Revenue Code states that a QTIP election is irrevocable once made. ((Section 2044 states that the value of any property for which a deduction was allowed under section 2056 (b)(7) must be included in the gross estate of the recipient. Similarly:)) For the taxpayer that makes this election, any amount deducted by reason of section 2056 (b)(7) of the Internal Revenue Code is added to, and the value of the property for which a Washington election is made is deducted from, the Washington taxable estate. For the estate of the surviving spouse, the amount included in the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of the Internal Revenue Code is deducted from, and the value of any property for which an election under this section was previously made is added to, the Washington taxable estate. A QTIP election made on the Washington return is irrevocable, and a surviving spouse who is the lifetime beneficiary of property for which a Washington QTIP election was made must include the value of the remaining property in his or her gross estate for Washington estate tax purposes. If the value of property for which a federal QTIP election was made is different, this value is not includible in the surviving spouse's gross estate for Washington estate tax purposes; instead, the value of property for which a Washington QTIP election was made is includible.

(C) The Washington QTIP election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return or, if those assets have not been determined when the estate tax return is filed, on a statement to that effect, prepared when the assets are definitively identified. Identification of the assets is necessary when reviewing the surviving spouse's return, if a return is required to be filed. This statement may be filed with the department at that time or when the surviving spouse's estate tax return is filed.

~~((D) **Example.** A decedent dies in 2009 with a gross estate of \$5 million. The decedent established a QTIP trust for the benefit of her surviving spouse in an amount to result in no federal estate tax. The federal unified credit is \$3.5 million for the year 2009. In 2009 the Washington statutory deduction is \$2 million. To pay no Washington estate tax the personal representative of the estate has the option of electing a larger percentage or fractional QTIP election resulting in the maximization of the individual federal unified credit and paying no tax for Washington purposes.~~

~~The federal estate tax return reflected the QTIP election with a percentage value to pay no federal estate tax. On the Washington return the personal representative elected QTIP treatment on a percentage basis in an amount so no Washington estate tax is due. Upon the surviving spouse's death the assets remaining in the Washington QTIP trust must be included in the surviving spouse's gross estate.)~~

(iv) **Washington qualified domestic trust (QDOT) election.**

(A) A deduction is allowed for property passing to a surviving spouse who is not a U.S. citizen in a qualified domestic trust (a "QDOT"). An executor may elect to treat a trust as a QDOT on the Washington estate tax return even though no QDOT election is made with respect to the trust on the federal return; and also may forgo making an election on the Washington estate tax return to treat a trust as a QDOT even though a QDOT election is made with respect to the trust on the federal return. An election to treat a trust as a QDOT may not be made with respect to a specific portion of an entire trust that otherwise would qualify for the marital deduction,

but if the trust is actually severed pursuant to authority granted in the governing instrument or under local law prior to the due date for the election, a QDOT election may be made for any one or more of the severed trusts.

(B) A QDOT election may be made on the Washington estate tax return with respect to property passing to the surviving spouse in a QDOT, and also with respect to property passing to the surviving spouse if the requirements of ~~((IRC))~~ section 2056 (d)(2)(B) of the Internal Revenue Code are satisfied. Unless specifically stated otherwise herein, all provisions of sections 2056(d) and 2056A of the ~~((IRC))~~ Internal Revenue Code, and the federal regulations promulgated thereunder, are applicable to a Washington QDOT election. Section 2056A(d) of the ~~((IRC))~~ Internal Revenue Code states that a QDOT election is irrevocable once made. Similarly, a QDOT election made on the Washington estate tax return is irrevocable. For purposes of this subsection, a QDOT means, with respect to any decedent, a trust described in ~~((IRC))~~ section 2056A(a) of the Internal Revenue Code, provided, however, that if an election is made to treat a trust as a QDOT on the Washington estate tax return but no QDOT election is made with respect to the trust on the federal return:

(I) The trust must have at least one trustee that is an individual citizen of the United States resident in Washington state, or a corporation formed under the laws of the state of Washington, or a bank as defined in ~~((IRC))~~ section 581 of the Internal Revenue Code that is authorized to transact business in, and is transacting business in, the state of Washington (the trustee required under this subsection is referred to herein as the "Washington Trustee");

(II) The Washington Trustee must have the right to withhold from any distribution from the trust (other than a distribution of income) the Washington QDOT tax imposed on such distribution;

(III) The trust must be maintained and administered under the laws of the state of Washington; and

(IV) The trust must meet the additional requirements intended to ensure the collection of the Washington QDOT tax set forth in (c)(iv)(D) of this subsection.

(C) The QDOT election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return, or, if those assets have not been determined when the estate tax return is filed, or a statement to that effect, prepared when the assets are definitively identified. This statement may be filed with the department at that time or when the first taxable event with respect to the trust is reported to the department.

(D) In order to qualify as a QDOT, the following requirements regarding collection of the Washington QDOT tax must be satisfied.

(I) If a QDOT election is made to treat a trust as a QDOT on both the federal and Washington estate tax returns, the Washington QDOT election will be valid so long as the trust satisfies the statutory requirements of Treas. Reg. Section 20.2056A-2(d).

(II) If an election is made to treat a trust as a QDOT only on the Washington estate tax return, the following rules apply:

If the fair market value of the trust assets exceeds \$2 million as of the date of the decedent's death, or, if applicable,

the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2 (d)(1)(i), except that: If the bank trustee alternative is used, the bank must be a bank that is authorized to transact business in, and is transacting business in, the state of Washington, or a bond or an irrevocable letter of credit meeting the requirements of Treas. Reg. Section 20.2056A-2 (d)(1)(i)(B) or (C) must be furnished to the department.

If the fair market value of the trust assets is \$2 million or less as of the date of the decedent's death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2 (d)(1)(ii), except that not more than 35 percent of the fair market value of the trust may be comprised of real estate located outside of the state of Washington.

A taxpayer may request approval of an alternate plan or arrangement to assure the collection of the Washington QDOT tax. If such plan or arrangement is approved by the department, such plan or arrangement will be deemed to meet the requirements of this (c)(iv)(D).

(E) The Washington estate tax will be imposed on:

(I) Any distribution before the date of the death of the surviving spouse from a QDOT (except those distributions excepted by ~~((IRC))~~ section 2056A (b)(3) of the Internal Revenue Code); and

(II) The value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under IRC section 2056A (b)(4)). The tax is computed using Table W. The tax is due on the date specified in IRC section 2056A (b)(5). The tax shall be reported to the department in a form containing the information that would be required to be included on federal Form 706-QDT with respect to the taxable event, and any other information requested by the department, and the computation of the Washington tax shall be made on a supplemental statement. If Form 706-QDT is required to be filed with the Internal Revenue Service with respect to a taxable event, a copy of such form shall be provided to the department. Neither the residence of the surviving spouse or other QDOT beneficiary nor the situs of the QDOT assets are relevant to the application of the Washington tax. In other words, if Washington state estate tax would have been imposed on property passing to a QDOT at the decedent's date of death but for the deduction allowed by this subsection (c)(iv)(E) (II), the Washington tax will apply to the QDOT at the time of a taxable event as set forth in this subsection (c)(iv)(E)(II) regardless of, for example, whether the distribution is made to a beneficiary who is not a resident of Washington, or whether the surviving spouse was a nonresident of Washington at the date of the surviving spouse's death.

(F) If the surviving spouse of the decedent becomes a citizen of the United States and complies with the requirements of section 2056A (b)(12) of the ~~((IRC))~~ Internal Revenue Code, then the Washington tax will not apply to: Any distribution before the date of the death of the surviving spouse from a QDOT; or the value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under ~~((IRC))~~ section 2056A (b)(4) of the Internal Revenue Code).

(d) **Washington taxable estate.** The estate tax is imposed on the "Washington taxable estate." The "Washington taxable estate" ((means the "federal taxable estate":

(i) ~~Less one million five hundred thousand dollars for decedents dying before January 1, 2006, or two million dollars for decedents dying on or after January 1, 2006;~~

(ii) ~~Less the amount of any deduction allowed under RCW 83.100.046 as a farm deduction;~~

(iii) ~~Less the amount of the Washington qualified terminable interest property (QTIP) election made under RCW 83.100.047;~~

(iv) ~~Plus any amount deducted from the federal estate pursuant to IRC § 2056 (b)(7) (the federal QTIP election);~~

(v) ~~Plus the value of any trust (or portion of a trust) of which the decedent was income beneficiary and for which a Washington QTIP election was previously made pursuant to RCW 83.100.047; and~~

(vi) ~~Less any amount included in the federal taxable estate pursuant to IRC § 2044 (inclusion of amounts for which a federal QTIP election was previously made) from a predeceased spouse that died on or after May 17, 2005)) is defined in WAC 458-57-105 (3)(t).~~

(e) **Federal taxable estate.** The "federal taxable estate" ((means the taxable estate as determined under chapter 11 of the IRC without regard to:

(i) ~~The termination of the federal estate tax under section 2210 of the IRC or any other provision of law; and~~

(ii) ~~The deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the IRC)) is defined in WAC 458-57-105 (3)(i).~~

(3) **Calculation of Washington's estate tax.**

(a) The tax is calculated by applying Table W to the Washington taxable estate.((See (d) of this subsection for the definition of "Washington taxable estate."))

Table W
(For deaths occurring on or after January 1, 2014)

Washington Taxable Estate is at Least	But Less Than	The Amount of Tax Equals Initial Tax Amount	Plus Tax Rate %	Of Washington Taxable Estate Value Greater Than
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	((17.00%)) <u>18.00%</u>	\$4,000,000
\$6,000,000	\$7,000,000	\$((890,000)) <u>910,000</u>	((18.00%)) <u>19.00%</u>	\$6,000,000
\$7,000,000	\$9,000,000	\$((1,070,000)) <u>1,100,000</u>	((18.50%)) <u>19.50%</u>	\$7,000,000
\$9,000,000		\$((1,440,000)) <u>1,490,000</u>	((19.00%)) <u>20.00%</u>	\$9,000,000

Table W
(For deaths occurring before January 1, 2014)

Washington Taxable Estate is at Least	But Less Than	The Amount of Tax Equals Initial Tax Amount	Plus Tax Rate %	Of Washington Taxable Estate Value Greater Than
<u>\$0</u>	<u>\$1,000,000</u>	<u>\$0</u>	<u>10.00%</u>	<u>\$0</u>
<u>\$1,000,000</u>	<u>\$2,000,000</u>	<u>\$100,000</u>	<u>14.00%</u>	<u>\$1,000,000</u>
<u>\$2,000,000</u>	<u>\$3,000,000</u>	<u>\$240,000</u>	<u>15.00%</u>	<u>\$2,000,000</u>
<u>\$3,000,000</u>	<u>\$4,000,000</u>	<u>\$390,000</u>	<u>16.00%</u>	<u>\$3,000,000</u>
<u>\$4,000,000</u>	<u>\$6,000,000</u>	<u>\$550,000</u>	<u>17.00%</u>	<u>\$4,000,000</u>
<u>\$6,000,000</u>	<u>\$7,000,000</u>	<u>\$890,000</u>	<u>18.00%</u>	<u>\$6,000,000</u>
<u>\$7,000,000</u>	<u>\$9,000,000</u>	<u>\$1,070,000</u>	<u>18.50%</u>	<u>\$7,000,000</u>
<u>\$9,000,000</u>		<u>\$1,440,000</u>	<u>19.00%</u>	<u>\$9,000,000</u>

(b) **(Examples:**

(i) A widow dies on September 25, 2005, leaving a gross estate of \$2.1 million. The estate had \$100,000 in expenses deductible for federal estate tax purposes. Examples of allow-

able expenses include funeral expenses, indebtedness, property taxes, and charitable transfers. The Washington taxable estate equals \$500,000.

Gross estate	\$2,100,000
Less allowable expenses deduction	-\$100,000
Less \$1,500,000 statutory deduction	-\$1,500,000
Washington taxable estate	\$500,000

Based on Table W, the estate tax equals \$50,000 (\$500,000 x 10% Washington estate tax rate).

(ii) John dies on October 13, 2005, with an estate valued at \$3 million. John left \$1.5 million to his spouse, Jane, using the unlimited marital deduction. There is no Washington estate tax due on John's estate.

Gross estate	\$3,000,000
Less unlimited marital deduction	-\$1,500,000
Less \$1,500,000 statutory deduction	-\$1,500,000
Washington taxable estate	\$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.) Each year the department will publish each calendar year's "applicable exclusion amount." The "applicable exclusion amount" is adjusted annually and is defined in WAC 458-57-105 (3)(b).

AMENDATORY SECTION (Amending WSR 06-07-051, filed 3/9/06, effective 4/9/06)

WAC 458-57-125 Apportionment of tax when ((there are)) out-of-state ((assets)) property is included in the gross estate of a decedent. (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and discusses how to apportion the estate tax when there is out-of-state property included in the gross estate. The estate tax rule on apportionment of estate tax for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-025.

(2) **Calculation of apportioned tax.** Apportionment of the tax is allowed for estate property located outside of Washington, even if the other state where the out-of-state property is located does not impose an estate tax. The amount of tax is determined by multiplying the preapportioned tax using Table W ((see WAC 458-57-115 multiplied)) by a fraction. The numerator of the fraction is the value of the property included in the decedent's gross estate that is located in Washington. The denominator of the fraction is the value of the decedent's gross estate. Intangible property is located in Washington if the decedent was a resident of this state at death. Property qualifying for the farm deduction is excluded from the numerator and denominator of the fraction. See WAC 458-57-155 ((f)), Farm deduction((g)), for additional information ((on the farm deduction)).

(3) **Example.** A widow dies in 2006 leaving a gross estate of \$3.1 million. The estate had \$100,000 in expenses deductible for federal estate tax purposes. The decedent also owned a home in Arizona valued at \$300,000.

Gross estate	\$3,100,000
Less allowable expenses deduction	-\$100,000

Less \$2,000,000 statutory deduction	-\$2,000,000
Washington taxable estate	\$1,000,000

Based on the tax table, the estate tax equals \$100,000 (\$1,000,000 x 10% Washington estate tax rate). Because the decedent owned an out-of-state asset, the tax due to Washington is prorated by multiplying the amount of tax owed by a fraction. The numerator of the fraction is the value of the property located in Washington divided by the denominator that equals the value of the decedent's gross estate. The fraction is then multiplied by the amount of tax:

$$(\$2,800,000 (\$3,100,000 - \$300,000) / \$3,100,000) \times \$100,000 = \$90,323$$

The estate does not have to pay estate tax to the state of Arizona in order to reduce the tax owed to Washington. The estate tax due to Washington is \$90,323).

((4)) (a) Example - Washington resident decedent. A widow dies during 2014 leaving a gross estate of \$4.1 million. The decedent was a Washington resident at death. Decedent's primary residence is located in Seattle, Washington. The decedent also owned a second home in Arizona valued at \$300,000 and unimproved real property in South Dakota valued at \$750,000. The estate had \$100,000 in expenses deductible for federal estate tax purposes. The applicable exclusion amount for 2014 after adjustment for inflation is \$2,012,000.

Under the facts of this example the estate owes Washington estate tax on a Washington taxable estate of \$1,988,000, computed as shown below:

Gross estate:	\$4,100,000
Less allowable deductions:	(\$100,000)
Less applicable exclusion amount:	(\$2,012,000)
Washington taxable estate:	\$1,988,000

The preapportionment Washington estate tax for this estate, using the table provided in WAC 458-57-115 (3)(a), equals \$238,320, computed as follows: \$100,000 + (\$988,000 x 14%) = \$238,320.

Because the decedent owned out-of-state property, a house in Arizona and unimproved real property in South Dakota that are not subject to Washington estate tax, the tax due to Washington is calculated by multiplying the amount of preapportionment tax computed above by the fraction described in this subsection (2). Also, because the decedent was a Washington resident at death, the numerator of the fraction is the value of all property included in the decedent's gross estate that is located in this state, including the decedent's intangible personal property. The denominator of the fraction is the value of the decedent's gross estate. Using the facts in our example, the tax owed to Washington equals \$177,287, computed as follows: (((\$4,100,000 - \$1,050,000) / \$4,100,000) x \$238,320 = \$177,287.

(b) Example - Nonresident decedent. A widow dies during 2013 leaving a gross estate of \$6 million. The decedent was a Colorado resident at death and all of the decedent's property is located in that state, except for a vacation home located in Washington valued at \$650,000. The estate had

\$100,000 in expenses deductible for federal estate tax purposes. The applicable exclusion amount for 2013 is \$2,000,000.

Under the facts of this example, the estate owes Washington estate tax on a Washington taxable estate of \$3,900,000, computed as shown below:

Gross estate:	\$6,000,000
Less allowable deductions:	(\$100,000)
Less applicable exclusion amount:	(\$2,000,000)
Washington taxable estate:	\$3,900,000

The preapportionment Washington estate tax for this estate, using the table provided in WAC 458-57-115 (3)(a), equals \$534,000, computed as follows: \$390,000 + (\$900,000 x 16%) = \$534,000.

Because the decedent owned property located outside Washington, the tax due to Washington is calculated by multiplying the amount of preapportionment tax computed above by the fraction described in this subsection (2). Also, because the decedent was not a Washington resident at death, the numerator of the fraction does not include the value of decedent's intangible personal property. The denominator of the fraction is the value of the decedent's gross estate. Using the facts in this example, the tax owed to Washington equals \$57,850, computed as follows: (\$650,000/\$6,000,000) x \$534,000 = \$57,850.

(3) When is property located in Washington? (A decedent's estate may have either real property or tangible personal property located in Washington)) The location of property owned by the decedent is determined at the time of death.

(a) All real property physically situated in this state, with the exception of federal trust lands, and all interests in such property, ~~(are deemed "is")~~ is located in ~~(the)~~ Washington. ~~(Such)~~ Interests in real property include, but are not limited to:

- ~~(i) Leasehold interests;~~
- ~~(ii) Mineral interests;~~
- ~~((iii) The vendee's (but not the vendor's) interest in an executory contract for the purchase of real property;~~
- ~~(iv) Trusts (i) Decedent's beneficial interest in real property held in trust(s of realty)); and~~
- ~~((v)) (iii) Decedent's interest in jointly owned property (e.g., tenants in common, joint with right of survivorship).~~

(b) Tangible personal property of a ~~(nonresident)~~ decedent ~~((shall be deemed))~~ is located in Washington ~~((only))~~ if:

- (i) At the time of death the property is situated in Washington; and
- (ii) It is present for a purpose other than transiting the state.

(c) Intangible personal property of a decedent is located in Washington if the decedent was a resident of this state at death.

(d) Example. A nonresident decedent was a construction contractor doing business as a sole proprietor. The decedent was constructing a large building in Washington. At the time of death, any of the decedent's equipment that was located at the job site ~~((in Washington)),~~ such as tools, earthmovers, bulldozers, trucks, etc., ~~((would be deemed))~~ is located in

Washington for estate tax purposes ~~((Also, the decedent had negotiated and signed a purchase contract for speculative property in another part of Washington. For estate tax purposes, that real property should also be considered a part of the decedent's estate located in Washington))~~ because that property was present in the state for a purpose other than transiting the state.

NEW SECTION

WAC 458-57-175 Qualified family-owned business interests. (1) **Introduction.** This rule applies to deaths occurring on or after January 1, 2014, and is intended to determine if the estate is eligible for the qualified family-owned business interest deduction and to correctly calculate the deduction.

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

(a) "Material participation" has the same meaning as provided in section 2032A (e)(6) of the Internal Revenue Code as amended or renumbered as of January 1, 2005. Under the federal tax provision, "material participation" generally means the individual is materially involved in making significant management decisions for the trade or business, but not necessarily the day-to-day operating decisions.

A decedent or a qualified heir will not be treated as materially participating in the family-owned business if:

(i) The income derived from carrying out the trade or business is from the management decisions of another individual or entity under an arrangement between the other individual or entity and the decedent or qualified heir.

(ii) The activities that constitute material participation of any agent of the decedent or qualified heir are not considered the activities of the decedent or qualified heir when determining their material participation in the family-owned business.

(iii) A trustee's activities managing a trust for the benefit of other individuals shall not be considered when determining whether any of the present interest beneficiaries of the trust materially participate in the family-owned business.

(b) "Member of the decedent's family" and "member of the family" have the same meaning as "member of the family" in RCW 83.100.046(10).

(c) "Qualified family-owned business interest" has the same meaning as provided in section 2057(e) of the Internal Revenue Code of 1986 as amended and renumbered as of December 31, 2003.

(d) "Qualified heir" has the same meaning as provided in section 2057(i) of the Internal Revenue Code of 1986 as amended and renumbered as of December 31, 2003.

(e) When a business interest is held in a trust, only the individuals with a present-beneficiary interest in the trust may qualify as a "qualified heir" or "member of decedent's family" under this rule.

(3) Criteria for claiming the deduction.

(a) For the purposes of determining the tax due under this chapter, a deduction is allowed for the value of the decedent's qualified family-owned business interests. The total deduction may not exceed two million five hundred thousand dollars.

(b) The deduction is available only if all the following criteria are met:

(i) The value of the decedent's qualified family-owned business interests must exceed fifty percent of the decedent's Washington taxable estate determined without regard to the deduction for the applicable exclusion amount provided in RCW 83.100.020 (1)(a);

(ii) During the eight-year period ending on the date of the decedent's death, there must have been periods aggregating five years or more during which:

(A) Such interests were owned by the decedent or a member of the decedent's family;

(B) There was material participation, within the meaning of section 2032A (e)(6) of the Internal Revenue Code, by the decedent or a member of the decedent's family in the operation of the trade or business to which such interests relate;

(iii) The qualified family-owned business interests are acquired by any qualified heir from, or passed to any qualified heir from, the decedent, within the meaning of RCW 83.100.046(2), and the decedent was at the time of his or her death a citizen or resident of the United States; and

(iv) The value of the decedent's qualified family-owned business interests is not more than six million dollars.

(4) Amounts deductible under this section.

(a) Only amounts included in the decedent's federal taxable estate may be deducted under this subsection.

(b) Amounts deductible under RCW 83.100.046 regarding property used for farming may not be deducted under this section.

(5) Additional estate tax imposed - Circumstances - Amount.

(a) If the qualified heir, within three years of decedent's death and prior to the qualified heir's death, meets one of the four criteria listed below, that qualified heir will be assessed additional estate tax.

(i) The material participation requirements described in section 2032A (c)(6)(b)(ii) of the Internal Revenue Code are not met with respect to the qualified family-owned business interest which was acquired or passed from the decedent;

(ii) The qualified heir disposes of any portion of a qualified family-owned business interest, other than by a disposition to a member of the qualified heir's family or a person with an ownership interest in the qualified family-owned business or through a qualified conservation contribution under section 170(h) of the Internal Revenue Code;

(iii) The qualified heir loses United States citizenship within the meaning of section 877 of the Internal Revenue Code or with respect to whom section 877 (e)(1) applies, and such heir does not comply with the requirements of section 877(g) of the Internal Revenue Code; or

(iv) The principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.

(b) The amount of the additional estate tax imposed under this subsection if one of the four criteria in (a) of this subsection is met is equal to the amount of tax savings with respect to the qualified family-owned business interest acquired or passed from the decedent.

(c) Interest applies to the tax due under this subsection for the period beginning on the date that the estate tax liability

was due under this chapter and ending on the date the additional estate tax due under this subsection is paid. Interest under this subsection must be computed as provided in RCW 83.100.070(2).

(d) The additional estate tax imposed by this subsection is due the day that is six months after any taxable event described in (a) of this subsection occurred and must be reported on a return as provided by the department.

(e) The qualified heir is personally liable for the additional tax imposed by this subsection unless he or she has furnished a bond in favor of the department for such amount and for such time as the department determines necessary to secure the payment of amounts due under this subsection. The qualified heir, on furnishing a bond satisfactory to the department, is discharged from personal liability for any additional estate tax and interest under this subsection and is entitled to a receipt or writing showing such discharge.

(f) Amounts due under this subsection attributable to any qualified family-owned business interest are secured by a lien in favor of the state on the property in respect to which such interest relates. The lien arises at the time the Washington return is filed on which a deduction under this section is taken and continues in effect until:

(i) The additional estate tax liability under this subsection has been satisfied or has become unenforceable by reason of lapse of time; or

(ii) The department is satisfied that no further tax liability will arise under this subsection.

(g) Security acceptable to the department may be substituted for the lien imposed by (f) of this subsection.

(h) For purposes of the assessment or correction of an assessment for additional estate taxes and interest imposed under this subsection, the limitations period in RCW 83.100.095 begins to run on the due date of the return required under (d) of this subsection.

(i) For purposes of this subsection, a qualified heir may not be treated as disposing of an interest described in section 2057 (e)(1)(A) of the Internal Revenue Code by reason of ceasing to be engaged in a trade or business so long as the property to which such interest relates is used in a trade or business by any member of the qualified heir's family.

(6) Information to be furnished to the department:

(a) The personal representative of the estate claiming the deduction is required to provide the names and contact information of all qualified heirs on forms prescribed by the department.

(b) Any qualified heir upon the department's request, must submit to the department on an ongoing basis such information as the department determines necessary or useful in determining whether the qualified heir is subject to the additional tax imposed in subsection (5) of this section. The department may not require such information more frequently than twice per year. The department may impose a penalty on a qualified heir who fails to provide the information requested within thirty days of the date the department's written request for the information was sent to the qualified heir. The amount of the penalty under this subsection is five hundred dollars and may be collected in the same manner as the tax imposed under subsection (5) of this section.

WSR 14-14-078
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed June 27, 2014, 2:53 p.m., effective July 28, 2014]

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

Purpose: WAC 458-20-263, presently entitled ["Fuel cell, wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption"], and proposed as Exemptions from retail sales and use taxes for qualifying electric generating and thermal heat producing systems using renewable energy sources, is updated to incorporate legislative changes, including the most recent at chapter 13, Laws of 2013 2nd sp. sess.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-263 Fuel cell, wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 82.08.962, 82.08.963, 82.12.962, and 82.12.963.

Adopted under notice filed as WSR 14-09-047 on April 14, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: June 27, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-02-036, filed 12/30/04, effective 1/30/05)

~~WAC 458-20-263 ((Fuel cell, wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption.)) Exemptions from retail sales and use taxes for qualifying electric generating and thermal heat producing systems using renewable energy sources. ((+) Introduction. This rule explains the retail sales and use tax exemptions provided by RCW 82.08.02567 and 82.12.02567 for the sale and/or use of machinery and equipment used directly in generating electricity using fuel cells, wind, landfill gas, or solar energy as the principal source of power. These exemptions expire June 30, 2009.~~

~~(2) Retail sales and use tax exemptions. The following exemptions apply for retail sales and use taxes.~~

~~(a) For periods before July 1, 2001, the retail sales tax does not apply to the purchase or lease of machinery and equipment used directly in generating electricity using wind, landfill gas, or solar energy as the principal power source, but only if the purchaser develops with such machinery and equipment a facility capable of generating at least two hundred kilowatts of electricity.~~

~~For this period, RCW 82.12.02567 provided a corresponding use tax exemption for the use of machinery and equipment for these purposes.~~

~~(b) Effective July 1, 2001, the retail sales tax does not apply to the purchase or lease of machinery and equipment used directly in generating electricity using fuel cells, wind, landfill gas, or solar energy as the principal power source, but only if the purchaser develops with such machinery and equipment a facility capable of generating at least two hundred watts of electricity. See RCW 82.08.02567.~~

~~For this period, RCW 82.12.02567 provides a corresponding use tax exemption for the use of machinery and equipment for these purposes, except that no use tax exemption existed with regard to fuel cells until June 10, 2004. Between July 1, 2001, and June 10, 2004, although the purchase of machinery and equipment used directly in generating electricity using fuel cells is exempt from sales tax, the purchaser owes use tax upon the first use in this state of the machinery and equipment.~~

~~(3) What is "machinery and equipment"? "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, landfill gas, or solar energy as the principal source of power.~~

~~A "support facility" is a part of a building, or a structure or improvement, used to contain or steady an industrial fixture or device. A support facility must be specially designed and necessary for the proper functioning of the industrial fixture or device and must perform a function beyond being a building or a structure or an improvement. It must have a function relative to an industrial fixture or a device. To determine if some portion of a building is a support facility, the parts of the building are examined. For example, a highly specialized structure, like a vibration reduction slab under generators in a landfill gas generating facility, is a support facility. Without the slab, the generators would not function properly. The ceiling and walls of the building housing the generator are not support facilities if they only serve to define the space and do not have a function relative to an industrial fixture or a device.~~

~~"Machinery and equipment" does not include:~~

- ~~(a) The utility grid system;~~
- ~~(b) Hand-powered tools;~~
- ~~(c) Property with a useful life of less than one year;~~
- ~~(d) Repair parts required to restore machinery and equipment to normal working order;~~
- ~~(e) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and equipment;~~
- ~~(f) Buildings; or~~
- ~~(g) Building fixtures that:~~
 - ~~(i) Are permanently affixed to and become a physical part of a building; but~~

(ii) Are not integral and necessary to the generation of electricity.

(4) ~~When is machinery and equipment "used directly" in generating electricity?~~ Machinery and equipment is used directly to generate electricity when it is used to:

(a) Capture the energy of fuel cells, the wind, landfill gas, or solar energy;

(b) Convert that energy to electricity; or

(c) Store, transform, or transmit that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(5) ~~Examples of qualifying machinery and equipment.~~ This subsection provides examples of machinery and equipment that is used directly in generating electricity and qualifies for the retail sales tax exemption provided by RCW 82.08.02567 and the use tax exemption provided by RCW 82.12.02567. This list is illustrative only and is not intended to provide an exhaustive list of possible qualifying machinery and equipment.

(a) Where solar energy is the principal source of power: Solar modules; power conditioning equipment; batteries; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

(b) Where wind is the principal source of power: Turbines; blades; generators; towers and tower pads; substations; guy wires and ground stays; power conditioning equipment; anemometers; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(c) Where landfill gas is the principal source of power: Turbines; blades; blowers; burners; heat exchangers; generators; towers and tower pads; substations; guy wires and ground stays; pipe; valves; power conditioning equipment; pressure control equipment; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(d) Where fuel cells are the principal source of power: Fuel cell assemblies; fuel storage and delivery systems; power inverters; transmitters; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

(6) ~~Installation charges.~~ Retail sales and use taxes do not apply to installation charges for qualifying machinery and equipment. This includes charges for labor and services rendered to install the machinery and equipment. However, there is no exemption for charges for labor and services rendered in respect to constructing buildings or access roads that may be necessary to install or use qualifying machinery and equipment. Nor is there an exemption for tangible personal property, such as a crane or forklift, used by the buyer to install qualifying machinery and equipment.

(7) ~~Required documentation.~~ The prior approval of the department of revenue is not required to claim the retail sales tax exemption. The seller, at the time of sale, must retain in its records an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "buyer's retail sales tax exemption certificate," or another certificate with substantially the same information as it relates to the exemption provided by RCW 82.08.02567.

A blank exemption certificate can be obtained through the following means:

(a) From the department's internet web site at <http://dor.wa.gov>;

(b) By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options); or

(c) By writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478.)) RCW 82.08.962, 82.08.963, 82.12.962, and 82.12.963 provide exemptions from the "retail sales tax" described in chapter 82.08 RCW and the "use tax" described in chapter 82.12 RCW paid with respect to the sale or use of machinery and equipment used directly in generating electricity or producing thermal heat using qualified renewable energy sources. This rule explains how these exemptions apply and is divided into four parts as follows:

PART 1: Exemptions as Applied to Qualified Solar Systems.

PART 2: Exemptions as Applied to Qualified Nonsolar Renewable Energy Systems.

PART 3: Exemptions as Applied to Qualifying Solar-Heat Systems.

PART 4: General Provisions.

PART 1

Exemptions as Applied to Qualified Solar Systems

(101) Solar systems that generate ten kilowatts or less.

(a) **Exemptions.** RCW 82.08.963 and 82.12.963 provide exemptions from retail sales and use taxes paid with the respect to the sale or use of machinery and equipment that is used directly in a solar energy system capable of generating ten kilowatts of electricity or less. The nameplate DC power rating of a system, which is an industry standard, is used to determine whether the energy system is capable of generating ten kilowatts of electricity or less. Labor charges to install the qualified machinery and equipment are also exempt from retail sales and use taxes. Both state and local retail sales and use taxes are exempt. These exemptions are effective from July 1, 2009, and expire June 30, 2018.

(b) **Exemption certificate required.** The buyer must document this exemption at the time of sale by providing the seller (and installer, if different from the seller), a completed *Buyers' Retail Sales Tax Exemption Certificate*. The seller or installer must keep the completed form in its records for five years.

(c) **Instructions for sellers that E-file.** For sellers that E-file, the exemption permitted under Part 1, subsection (101)(a) of this rule should be listed on the line entitled *Sales of Solar Machinery/Equipment; Install Labor* on the retail sales tax deduction page of E-file.

(102) Solar systems that generate more than ten kilowatts.

(a) **Partial exemptions.** For buyers that do not qualify for the full exemption described in Part 1, subsection (101)(a) of this rule, there is an alternative partial exemption. RCW 82.08.962 and 82.12.962 provide an exemption, in the form of a remittance (refund) from the department, equal to seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of machinery and equipment used

directly in solar energy systems capable of generating at least 1000 watts (one kilowatt) of electricity. The exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment, and may only be claimed if the exemption permitted in Part 1, subsection (101)(a) of this rule has not been claimed. The nameplate DC power rating of a system, which is an industry standard, is used to determine whether the solar energy system is capable of generating 1000 watts (one kilowatt) or more of electricity. The buyer must pay the total amount of the retail sales or use taxes paid with the respect to the sale or use of the qualifying machinery, equipment, and labor charges to install the same. The buyer may then apply to the department for a refund of seventy-five percent of the state and local retail sales and use taxes paid. This partial exemption is effective from July 1, 2011, and expires January 1, 2020.

(b) From July 1, 2009, through June 30, 2011, these systems qualified for a one hundred percent exemption for retail sales and use taxes paid with the respect to the sale and use of qualified machinery, equipment, and labor charges to install the same at the point of sale. For documentation requirements see Part 1, subsection (101) of this rule.

(c) **Required annual survey.** Beginning July 1, 2013, buyers applying for a refund must complete and submit an annual tax incentive survey. The survey must be filed with the department by April 30th, following the year for which the refund is claimed. For more information see Part 4, subsection (401)(c) of this rule.

PART 2

Exemptions as Applied to Qualified Nonsolar Renewable Energy Systems

(201) Qualified nonsolar renewable energy systems generating one kilowatt or more.

(a) **Partial exemptions.** RCW 82.08.962 and 82.12.962 provide an exemption equal to seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of machinery and equipment used directly in a renewable energy system employing a qualified power source that generates at least 1000 watts (one kilowatt) or more of electricity. This exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment. The buyer is eligible for the exemption in the form of a remittance (refund) from the department and must have paid to the seller or to the department the total amount of retail sales or use taxes paid with the respect to the sale or use of the machinery, equipment, and labor charges to install the same. To claim the exemption, the buyer must apply to the department for a refund. See Part 4, subsection (401) of this rule for instructions on how to file a claim for refund. This partial exemption is effective from July 1, 2011, and expires January 1, 2020.

(b) **Refund procedure.** Beginning July 1, 2011, the buyer is eligible for the exemption in the form of a remittance (refund) from the department. The buyer must pay the total amount of the retail sales or use taxes due with the respect to the sale or use of qualifying machinery or equipment and labor charges to install the same. The buyer may then apply to the department for a refund of seventy-five percent of the

state and local retail sales and use taxes paid. These exemptions expire on January 1, 2020.

(c) **Required survey.** Beginning July 1, 2013, buyers applying for a refund must complete and submit an annual tax incentive survey. The survey must be filed with the department by April 30th, following the year for which the refund is claimed. For more information see Part 4, subsection (401)(c) of this rule.

(202) **Qualified power sources.** The partial exemption permitted under Part 2, subsection (201)(a) of this rule applies only with respect to a renewable energy system that employs one of the following qualified power sources:

- Fuel cells;
- Wind;
- Biomass energy;
- Tidal or wave energy;
- Geothermal resources;
- Anaerobic digestion;
- Technology that converts otherwise lost energy from exhaust; and
- Landfill gas.

(203) **Definitions for these power sources.** For purposes of Part 2, the terms below are defined as or include within their definition the following:

(a) **Biomass energy.** "Biomass energy" includes:

- (i) **By-products of pulping and wood manufacturing processes;**
- (ii) **Animal waste;**
- (iii) **Solid organic fuels from wood;**
- (iv) **Forest or field residues;**
- (v) **Wooden demolition or construction debris;**
- (vi) **Food waste;**
- (vii) **Liquors derived from algae and other sources;**
- (viii) **Dedicated energy crops;**
- (ix) **Biosolids; and**
- (x) **Yard waste.**

"Biomass energy" does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests; or municipal solid waste.

(b) **Fuel cell.** "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(c) **Landfill gas.** "Landfill gas" means biomass fuel, of the type that qualifies for federal tax credits under Title 26 U.S.C. § 45K (formerly Title 26 U.S.C. § 29) of the federal Internal Revenue Code, collected from a "landfill" as defined in RCW 70.95.030.

PART 3

Exemptions as Applied to Qualifying Solar-Heat Systems

(301) Solar-heat systems.

(a) **Exemption.** RCW 82.08.963 and 82.12.963 provide exemptions from retail sales and use taxes paid with the respect to the sale and use of machinery and equipment used directly in producing thermal heat using solar energy and the labor charges to install the qualified equipment, if the buyer installs a system capable of producing no more than three million BTU per day. These exemptions are valid July 1, 2013, and expire June 30, 2018.

(b) **Exemption certificate required.** The buyer must document this exemption at the time of sale by providing the seller (and installer if different from the seller) a completed *Buyers' Retail Sales Tax Exemption Certificate*. The seller or installer must keep the completed form in its records for five years.

(c) **Instructions for sellers that E-file.** For sellers that E-file, the exemption permitted under Part 3, subsection (301)(a) of this rule should be listed on the line entitled *Sales of Solar Machinery/Equipment; Install Labor* on the retail sales tax deduction page of E-file.

PART 4 **General Provisions**

(401) Requirements for a refund from the department of taxes paid, referred to as the seventy-five percent remittance.

(a) **Required application.** This exemption, in the form of a remittance (refund) from the department, equals seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of the qualifying machinery and equipment. The form that the buyer must submit to the department is the *Application for Sales Tax Refund on Purchases & Installation of Qualified Renewable Energy Equipment*. This form is available through the department's web site at dor.wa.gov under *Get a form or publication*. The application must be completed in full and mailed to the address provided on the form.

(b) **Required records.** The purchaser must provide records that will allow the department to determine whether the purchaser is entitled to a refund. The records include:

- Invoices;
 - Proof of tax paid;
 - Documents describing the machinery and equipment;
- and
- Electrical capacity of the system.

(c) **File annual tax incentive survey.** Effective July 1, 2013, any person claiming a seventy-five percent refund must electronically file an annual tax incentive survey with the department each year. This applies to buyers of solar systems generating electricity of more than ten kilowatts and other qualified renewable energy systems generating electricity of one kilowatt or more.

(d) **Separate survey for each system.** The buyer must file a separate survey for each system owned or operated in Washington. The annual survey is due April 30th, following the year for which the exemption is claimed. (Systems installed in 2013 require a survey to be completed by April 30, 2014.)

(e) **Limitation on frequency for claiming exemption.** A buyer may not apply to the department for a remittance (refund) more frequently than once a quarter.

(f) **Qualified retail sales and use taxes.** These exemptions apply to both state and local retail sales and use taxes.

(402) **What is "machinery and equipment"?** For purposes of RCW 82.08.962 and 82.12.962, "machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity from qualifying sources of power. For purposes of RCW 82.08.963 and 82.12.963, "machinery and equipment" means

fixtures, devices, and support facilities that are integral to the generation of electricity or production and use of thermal heat from solar energy.

A "support facility" is a part of a building, structure, or improvement used to contain or steady a fixture or device. A support facility must be specially designed and necessary for the proper functioning of the fixture or device and must perform a function beyond being a building, structure, or improvement. It must have a function relative to a fixture or a device. To determine if some portion of a building is a support facility, the parts of the building are examined. For example, a highly specialized structure, like a vibration reduction slab under generators in a landfill gas generating facility, is a support facility. Without the slab, the generators would not function properly. The ceiling and walls of the building housing the generator are not support facilities if they only serve to define the space and do not have a function relative to a fixture or a device.

"Machinery and equipment" does not include:

- (a) The utility grid system;
- (b) Hand-powered tools;
- (c) Property with a useful life of less than one year;
- (d) Repair parts required to restore machinery and equipment to normal working order;
- (e) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and equipment;
- (f) Buildings; or
- (g) Building fixtures that:
 - (i) Are permanently affixed to and become a physical part of a building; but
 - (ii) Are not integral and necessary to the generation of electricity.

(403)(a) **When is machinery and equipment "used directly" in generating electricity?** Machinery and equipment is used directly to generate electricity when it is used to:

- (i) Capture the energy of the qualifying source of power;
- (ii) Convert that energy to electricity; and
- (iii) Store, transform, or transmit that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(b) **When is machinery and equipment "used directly" in producing thermal heat?** Machinery and equipment is "used directly" in producing thermal heat with solar energy if it uses a solar collector or a solar hot water system that:

- (i) Meets the certification standards for solar collectors and solar hot water systems developed by the solar rating and certification corporation; or
- (ii) The Washington State University extension energy program determines a solar collector or solar hot water system is an equivalent collector or system.

(404) **Examples of qualifying machinery and equipment.** This section provides examples of machinery and equipment that may be used directly in generating electricity and could qualify for the exemptions from retail sales and use taxes. This list is illustrative only and is not intended to provide an exhaustive list of possible qualifying machinery and equipment.

(a) Solar. Where solar energy is the principal source of power: Solar modules; inverters; Stirling converters; power conditioning equipment; batteries; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

(b) Wind. Where wind is the principal source of power: Turbines; blades; generators; towers and tower pads; substations; guy wires and ground stays; power conditioning equipment; anemometers; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(c) Landfill. Where landfill gas is the principal source of power: Turbines; blades; blowers; burners; heat exchangers; generators; towers and tower pads; substations; guy wires and ground stays; pipe; valves; power conditioning equipment; pressure control equipment; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(d) Fuel cells. Where fuel cells are the principal source of power: Fuel cell assemblies; fuel storage and delivery systems; power inverters; transmitters; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

(405) Installation charges. The exemptions from retail sales and use taxes addressed in this rule apply to installation charges for qualifying machinery and equipment, including charges for labor and services. There are no exemptions from retail sales and use taxes for charges for labor and services rendered in respect to constructing buildings or access roads that may be necessary to install or use qualifying machinery and equipment. Further, there are no exemptions from retail sales and use taxes paid with respect to tangible personal property, such as a crane or forklift, purchased or rented by the buyer, the contractor, or the installer to be used to install qualifying machinery and equipment. Further, there are no exemptions from retail sales and use taxes for services that were included in the construction contract for design, planning, studies, project management, or other charges not directly related to the actual labor for installing the qualifying machinery and equipment.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 84.33.096.

Other Authority: RCW 84.33.091.

Adopted under notice filed as WSR 14-10-051 on May 1, 2014.

A final cost-benefit analysis is available by contacting Mark E. Bohe, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 534-1574, fax (360) 534-1606, e-mail markbohe@dor.wa.gov.

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

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

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

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

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

Date Adopted: June 27, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-01-097, filed 12/17/13, effective 1/1/14)

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

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2014:

WSR 14-14-079
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed June 27, 2014, 3:02 p.m., effective July 1, 2014]

Effective Date of Rule: July 1, 2014.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The stumpage value rule is required by statute (RCW 84.33.091) to be effective on July 1, 2014.

Purpose: WAC 458-40-660 contains the stumpage values used by harvesters of timber to calculate the timber excise tax. This rule is being revised to provide the stumpage values to be used during the second half of 2014.

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

Washington State Department of Revenue
STUMPAGE VALUE TABLE

~~((January))~~ July 1 through ~~((June 30))~~ December 31, 2014

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾
Starting July 1, 2012, there are no separate
Quality Codes per Species Code.

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
((Douglas-fir⁽²⁾))	DF	1	\$440	\$433	\$426	\$419	\$412
		2	462	455	448	441	434
		3	379	372	365	358	351
		4	476	469	462	455	448
		5	437	430	423	416	409
		6	250	243	236	229	222
Western Hemlock and	WH	1	380	373	366	359	352

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Other Conifer ⁽²⁾		2	392	385	378	371	364
		3	344	337	330	323	316
		4	357	350	343	336	329
		5	337	330	323	316	309
		6	253	246	239	232	225
Western Redcedar ⁽⁴⁾	RC	1-5	972	965	958	951	944
		6	654	647	640	633	626
Ponderosa Pine ⁽⁵⁾	PP	1-6	209	202	195	188	181
Red Alder	RA	1-5	464	457	450	443	436
Black Cottonwood	BC	1-5	52	45	38	31	24
Other Hardwood	OH	1-5	262	255	248	241	234
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	802	795	788	781	774
Western Redcedar Poles	RCL	1-5	1401	1394	1387	1380	1373
		6	913	906	899	892	885
Chipwood ⁽⁶⁾	CHW	1-5	6	5	4	3	2
		6	1	1	1	1	1
Small Logs ⁽⁶⁾	SML	6	30	29	28	27	26
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-5	178	171	164	157	150
Posts ⁽⁸⁾	LPP	1-5	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-5	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-5	0.50	0.50	0.50	0.50	0.50
Douglas-fir ⁽²⁾	DF	1	\$476	\$469	\$462	\$455	\$448
		2	516	509	502	495	488
		3	438	431	424	417	410
		4	530	523	516	509	502
		5	470	463	456	449	442
		6	265	258	251	244	237
Western Hemlock and Other Conifer ⁽²⁾	WH	1	408	401	394	387	380
		2	430	423	416	409	402
		3	396	389	382	375	368
		4	385	378	371	364	357
		5	407	400	393	386	379
6	273	266	259	252	245		
Western Redcedar ⁽⁴⁾	RC	1-5	943	936	929	922	915
		6	705	698	691	684	677
Ponderosa Pine ⁽⁵⁾	PP	1-6	222	215	208	201	194
Red Alder	RA	1-5	466	459	452	445	438

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Black Cottonwood	BC	1-5	54	47	40	33	26
Other Hardwood	OH	1-5	280	273	266	259	252
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	840	833	826	819	812
Western Redcedar Poles	RCL	1-5	1378	1371	1364	1357	1350
		6	935	928	921	914	907
Chipwood ⁽⁶⁾	CHW	1-5	6	5	4	3	2
		6	1	1	1	1	1
Small Logs ⁽⁶⁾	SML	6	30	29	28	27	26
		RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-6	178	171	164
Posts ⁽⁸⁾	LPP	1-6	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-6	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-6	0.50	0.50	0.50	0.50	0.50

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

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

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

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

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

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chip-

wood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

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

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

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

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

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

The following harvest adjustment tables apply from ((January)) July 1 through ((June 30)) December 31, 2014:

**TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, and 5
((January)) July 1 through ((June 30)) December 31, 2014**

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

**TABLE 10—Harvest Adjustment Table
Stumpage Value Area 6
((January)) July 1 through ((June 30)) December 31, 2014**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$((8.00)) 4.00
Note:	This adjustment only applies to published MBF sawlog values.	

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

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

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

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

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

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

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

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

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

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

WSR 14-14-085

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed June 30, 2014, 9:44 a.m., effective July 31, 2014]

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

Purpose: WAC 458-20-255 (Rule 255) Carbonated beverage syrup tax, this rule explains the carbonated beverage syrup tax imposed by chapter 82.64 RCW. The syrup tax is an excise tax on the syrup, sold in this state, for use in making carbonated beverages. Syrup tax.

Rule 255 has been revised to delete language in the introduction that has caused confusion now that beverage syrups are being sold to consumers for use in home soda machines. Examples have been added under the subsection "Taxation prohibited under the United States Constitution" that show if syrup tax is owed when sales involve Indian country.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-255 Carbonated beverage syrup tax.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: Chapter 82.64 RCW.

Adopted under notice filed as WSR 14-01-081 on December 16, 2013.

Changes Other than Editing from Proposed to Adopted Version: The introduction and the examples in subsection (5)(c) have been changed. The second paragraph of the introduction now reads: "For instance, consider the sales of syrup to Indian tribes when the syrup is delivered in Indian country. In the following examples, the assumption is that the sale to the tribal business qualifies under the subsection on preemption of state tax for "sales of tangible personal property or provisions of service by nonmembers in Indian country" in WAC 458-20-192 Indians—Indian country."

In the examples in subsection (5)(c):

- The "purchaser" was changed from "a tribal casino restaurant" to "a tribal business."

- It has been clarified that the syrup is being delivered, as well as sold, to a tribal business in Indian country.
- Most of the preemption language has been replaced with verbiage that states the syrup tax is not due.

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

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

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

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

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

Date Adopted: June 30, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-14-019, filed 6/20/08, effective 7/21/08)

WAC 458-20-255 Carbonated beverage syrup tax.

(1) **Introduction.** This ~~((section))~~ rule explains the carbonated beverage syrup tax (syrup tax) as imposed by chapter 82.64 RCW. The syrup tax is an excise tax on the number of gallons of carbonated beverage syrup sold in this state ~~((for use in producing carbonated beverages that are sold))~~ at wholesale or retail ~~((in this state))~~. The syrup tax is in addition to all other taxes.

Except as otherwise provided in this rule, the provisions of chapters 82.04, 82.08, 82.12 and 82.32 RCW regarding definitions, due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all general administrative provisions apply to the syrup tax.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the syrup tax. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **What is carbonated beverage syrup?** Carbonated beverage syrup (syrup) is a concentrated liquid that is added to carbonated water to produce a carbonated beverage. ~~((Syrup includes concentrated liquid marketed by manufacturers to which purchasers add water, carbon dioxide, or carbonated water to produce a carbonated beverage.))~~ "Carbonated beverage" includes any nonalcoholic liquid intended for human consumption that contains any amount of carbon dioxide. Examples include soft drinks, mineral waters, seltzers, and fruit juices, if carbonated, and frozen carbonated beverages known as FCBs. "Carbonated beverage" does not include products such as bromides or carbonated liquids commonly sold as pharmaceuticals.

(3) **When is syrup tax imposed and how is it determined?** Syrup tax is imposed on the wholesale or retail sales of syrup within this state. The syrup tax is determined by the number of gallons of syrup sold. Fractional amounts are taxed proportionally.

(a) **When should syrup tax be reported and paid?** The frequency of reporting and paying the syrup tax coincides with the reporting periods of taxpayers for their business and occupation (B&O) tax. For example, a wholesaler who reports B&O tax monthly would also report any syrup tax liability on the monthly excise tax return.

(b) **What if I sell both previously taxed and nontaxed syrups?** Persons selling syrups in this state, some of which have been previously taxed in this or other states and some of which have not, may contact the department of revenue (department) for authorization to use formulary tax reporting. Prior to reporting in this manner, the person must receive a special ruling from the department that allows formulary reporting. A ruling may be obtained by writing the department at dor.wa.gov/content/ContactUs/Default.aspx; or

Taxpayer Information and Education
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

Persons selling previously taxed syrups should refer to subsections (5)(a) and (6) of this ~~((section))~~ rule for information about an exemption or credit that may be applicable to such sales.

(4) **Who is responsible for paying the syrup tax?** This subsection explains who is responsible for payment of the syrup tax for both wholesale and retail sales of syrup in this state.

(a) **Wholesale sales.** A wholesaler making a wholesale sale of syrup in this state must collect the tax from the buyer and report and pay the tax to the department. If, however, the wholesaler is prohibited from collecting the tax under the Constitution of this state or the Constitution or laws of the United States, the wholesaler is liable for the tax. A wholesaler who fails or refuses to collect the syrup tax with intent to violate the provisions of chapter 82.64 RCW, or to gain some advantage directly or indirectly is guilty of a misdemeanor. The buyer is responsible for paying the syrup tax to the wholesaler. The syrup tax required to be collected by the wholesaler is a debt from the buyer to the wholesaler, until the tax is paid by the buyer to the wholesaler. Except as provided in subsection (5)(b)(ii) of this ~~((section))~~ rule, the buyer is not obligated to pay or report the syrup tax to the department.

(b) **Retail sales.** A retailer making a retail sale in this state of syrup purchased from a wholesaler who has not collected the tax must report and pay the tax to the department. Except as provided in subsection (5)(b)(ii) of this ~~((section))~~ rule, the buyer is not obligated to pay or report the syrup tax to the department.

(5) **Exemptions:** This subsection provides information on exemptions from the syrup tax.

(a) **Previously taxed syrup.** Any successive sale of previously taxed syrup is exempt. See RCW 82.64.030(1). "Pre-

viously taxed syrup" is syrup on which tax has been paid under chapter 82.64 RCW.

(i) All persons selling or otherwise transferring possession of taxed syrup, except retailers, must separately itemize the amount of the syrup tax on the invoice, bill of lading, or other instrument of sale. Beer and wine wholesalers selling syrup on which the syrup tax has been paid and who are prohibited under RCW 66.28.010 from having a direct or indirect financial interest in any retail business may, instead of a separate itemization of the amount of the syrup tax, provide a statement on the instrument of sale that the syrup tax has been paid. For purposes of the payment and the itemization of the syrup tax, the tax computed on standard units of a product (e.g., cases, liters, gallons) may be stated in an amount rounded to the nearest cent. In competitive bid documents, unless the syrup tax is separately itemized in the bid documents, the syrup tax will not be considered as included in the bid price. In either case, the syrup tax must be separately itemized on the instrument of sale except when the separate itemization is prohibited by law.

(ii) Any person prohibited by federal or state law, ruling, or requirement from itemizing the syrup tax on an invoice, bill of lading, or other document of delivery must retain the documentation necessary for verification of the payment of the syrup tax.

(iii) A subsequent sale of syrup sold or delivered upon an invoice, bill of lading, or other document of sale that contains a separate itemization of the syrup tax is exempt from the tax. However, a subsequent sale of syrup sold or delivered to the subsequent seller upon an invoice, bill of lading, or other document of sale that does not contain a separate itemization of the syrup tax is conclusively presumed to be previously untaxed syrup, and the seller must report and pay the syrup tax unless the sale is otherwise exempt.

(iv) The exemption for syrup tax previously paid is available for any person selling previously taxed syrup even though the previous payment may have been satisfied by the use of credits or offsets available to the prior seller.

(v) Example. Company A sells to Company B a syrup on which Company A paid a similar syrup tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid (see subsection (6) of this ~~((section))~~ rule). It provides Company B with an invoice containing a separate itemization of the syrup tax. Company B's subsequent sale is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) **Syrup transferred out-of-state.** Any syrup that is transferred to a point outside the state for use outside the state is exempt. See RCW 82.64.030(2). The exemption for the sale of exported syrup may be taken by any seller within the chain of distribution.

(i) **Required documentation.** The prior approval of the department is not required to claim an exemption from the syrup tax for exported syrup. The seller, at the time of sale, must retain in its records an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "Certificate of Tax Exempt Export Carbonated Beverage Syrup," or another certificate with substantially the same information.

A blank exemption certificate can be obtained through the following means:

(A) From the department's internet web site at (~~http://dor.wa.gov~~) dor.wa.gov; or

(B) (~~By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options); or~~

~~(C))~~ By writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478.

(ii) The exemption certificate may be used so long as some portion of the syrup is exported. Sellers are under no obligation to verify the amount of syrup to be exported by their buyers providing such certificates. (~~Buyers providing exemption certificates for exported syrup agree to become~~) The buyer is liable for tax (and any associated penalties and interest) on syrup that is not exported.

(iii) Example. Company A sells a previously untaxed syrup to Company C. Company C provides the seller with a completed exemption certificate as explained in (b)(i) of this subsection. Company C sells the syrup to Company D, who provides Company C with an exemption certificate. Company D decides to not export a portion of the purchased syrup. Companies A and C can both accept exemption certificates. Company D is responsible for paying syrup tax on the syrup not exported.

(iv) Persons who make sales of syrup to persons outside this state must keep the proofs required by WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) to substantiate the out-of-state sales.

(c) **Taxation prohibited under the United States Constitution.** Persons or activities that the state is prohibited from taxing under the United States Constitution are exempt. See RCW 82.64.050(1).

For instance, consider the sales of syrup to Indian tribes when the syrup is delivered in Indian country. In the following examples, the assumption is that the sale to the tribal business qualifies under the subsection on preemption of state tax for "sales of tangible personal property or provisions of service by nonmembers in Indian country" in WAC 458-20-192, Indians—Indian country.

(i) Example 1. Big Cola (an instate manufacturer) sells syrup wholesale to Little Cola Distribution (a nonbottler). Big Cola collects and pays the syrup tax and shows it on the invoice of Little Cola Distribution. Little Cola Distribution then sells and delivers the syrup to a tribal business in Indian country. In this situation the tax is due because the legal incidence of the tax is on Little Cola Distribution, a non-Indian outside of Indian country, as the first purchaser in a wholesale sale. Thus, the syrup tax is not preempted by the second wholesale sale to Indians in Indian country of syrup. In this circumstance, the legal incidence of the tax is not on the sale to the tribal business in Indian country. The syrup tax was previously owed and paid by Little Cola Distribution in its purchase from Big Cola. This tax is only collected once, notwithstanding that Little Cola Distribution separately itemized its syrup tax obligation as provided for in subsection (5)(a)(i) of this rule.

(ii) Example 2. Big Cola sells syrup wholesale to Little Cola Bottling (a trademarked bottler). Big Cola does not collect or pay the syrup tax from the sale to Little Cola Bottling

due to the trademarked bottler exemption under subsection (5)(d) of this rule. Little Cola Bottling then sells and delivers the bottled syrup to a tribal business in Indian country. The syrup tax is not due.

(ii) Example 3. Big Cola sells and delivers syrup directly to a tribal business in Indian country. The syrup tax is not due.

(d) **Wholesale sales of trademarked syrup to bottlers.** Any wholesale sale of a trademarked syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell the trademarked syrup within a specific geographic territory is exempt. See RCW 82.64.030(3).

(6) Syrup tax credits.

(a) **B&O tax credit for syrup tax paid.** (~~Chapter 245, Laws of 2006 (SSB 6533) provided~~) RCW 82.04.4486 provides a B&O tax credit that was effective July 1, 2006. The credit is available to any buyer of syrup using the syrup in making carbonated beverages that are then sold, provided that the syrup tax, imposed by RCW 82.64.020, has been paid. The tax credit is a percentage of the syrup tax paid.

(i) **How much is the credit?** For syrup purchased July 1, 2006, through June 30, 2007, the B&O tax credit for the buyer ~~(is)~~ was equivalent to twenty-five percent of the syrup tax paid. From July 1, 2007, through June 30, 2008, the allowable credit ~~(is)~~ was fifty percent. From July 1, 2008, through June 30, 2009, the credit ~~(is)~~ was seventy-five percent. As of July 1, 2009, the buyer is entitled to a B&O tax credit of one hundred percent of the syrup tax paid.

(ii) **When can the credit be taken?** The B&O tax credit can be claimed against taxes due for the tax reporting period in which the taxpayer purchased the syrup. The credit cannot exceed the amount of B&O tax due, nor can credit be refunded. Unused credit may be carried over and used for future reporting periods for a maximum of one year. The year starts at the end of the reporting period in which the syrup was purchased and credit was earned. See (b)(ii)(B)(iii) of this subsection for record documentation and retention.

(b) **Credit for syrup tax paid to another state.** Credit is allowed against the taxes imposed by chapter 82.64 RCW for any syrup tax paid to another state with respect to the same syrup. The amount of the credit cannot exceed the tax liability arising under chapter 82.64 RCW. The amount of credit is limited to the amount of tax paid in this state upon the wholesale sale of the same syrup in this state. In addition, the credit may not be applied against any tax paid or owed in this state other than the syrup tax imposed by chapter 82.64 RCW.

(i) **What is a state?** For purposes of the syrup tax credit, "state" is any state of the United States other than Washington, or any political subdivision of another state; the District of Columbia; and any foreign country or political subdivision of a foreign country.

(ii) **What is a syrup tax?** For purposes of the syrup tax credit, "syrup tax" means a tax that is:

(A) Imposed on the sale at wholesale of syrup and is not generally imposed on other activities or privileges; and

(B) Measured by the volume of the syrup.

(iii) **How and when to claim the credit.** Any tax credit available to the taxpayer should be claimed and offset against tax liability reported on the same excise tax return when pos-

sible. The excise tax return provides a line for reporting syrup tax, and the credit must be taken in the credit section under the credit classification "other credits." A statement showing the computation of the credit must be provided. It is not required that any other documents or other evidence of entitlement to credits be submitted with the return. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

WSR 14-14-090
PERMANENT RULES
DEPARTMENT OF
ENTERPRISE SERVICES

[Filed June 30, 2014, 10:03 a.m., effective July 31, 2014]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Under RCW 34.05.353 Expedited rule making, an agency may adopt the rule if no objections were filed with the agency or if all filed objections have been withdrawn. No objections were filed with the department of enterprise services.

Purpose: The purpose of this rule making is to make changes to chapters 200-300 and 200-310 WAC in order to align with current law under chapter 39.26 RCW and state-wide procurement policy.

Citation of Existing Rules Affected by this Order: Repealing chapter 200-310 WAC; and amending chapter 200-300 WAC.

Statutory Authority for Adoption: Chapters 39.26 and 43.19 RCW.

Adopted under notice filed as WSR 14-09-123 on April 23, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 35.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, Repealed 35.

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

Date Adopted: June 30, 2014.

Jack Zeigler
Policy and Rules Manager

Chapter 200-300 WAC

((OFFICE OF STATE PROCUREMENT)) CON-
TRACTING FOR GOODS AND SERVICES

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-300-010 Purpose. The purpose of this chapter is to set forth rules and regulations applicable to the purchase ~~((or sale))~~ of goods and services by, through, or under authority delegated by, the ~~((office of state procurement))~~ department of enterprise services.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-300-075 In-state preference bids. The ~~((office of state procurement))~~ department of enterprise services shall ~~((compile))~~ make available a list of each state, relating to state purchasing practices, whose statutes or regulations grant a preference to ~~((suppliers))~~ bidders located within that state or goods manufactured within that state. This list shall be updated on an annual basis ~~((and shall include only those states with currently active in-state preference clauses for procuring goods and services and the list shall contain the percentage of preference allowed. States with only reciprocity legislation will not be included on the list)).~~ The ~~((office of state procurement))~~ department of enterprise services shall ~~((compile the list and))~~ notify ~~((impacted state agency, college and university purchasing offices))~~ agencies when the list is updated. In determining whether to assess a percentage increase against a bidder, and the amount of that increase, the purchasing ~~((activity))~~ agency will consider only the business address from which the bid ~~((or proposal))~~ was submitted. The purchasing ~~((activity))~~ agency will add the appropriate percentage increase to each bid ~~((or proposal))~~ bearing the address from a state with in-state preference rather than subtracting a like amount from Washington state bidders.

This action will be used only when evaluating bids ~~((or proposals))~~ for award. In no instance shall the increase be paid to a ~~((supplier))~~ bidder whose bid is accepted.

This WAC section applies only to ~~((formal invitations for bid and requests for proposals solicited in accordance with chapter 43.19 RCW))~~ competitive solicitations in accordance with chapter 39.26 RCW.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-300-085 Bid award preference. In conducting purchases of goods and/or services, preference shall be given to the extent allowed by statute: ~~((1)) Under RCW 43.19.534, to those goods and services produced in whole or in part by Class II inmate programs operated by the department of corrections as described in WAC 236.49.055.~~

~~((2))~~ To goods containing ~~((recovered))~~ recycled material as outlined under RCW ~~((43.19.538))~~ 39.26.255 provided that the purchasing ~~((activity))~~ agency sets forth in the competitive solicitation a minimum percent content of ~~((reco-~~

ered)) recycled material that must be certified by the producer of the goods to qualify for the preference. Bids for goods so certified shall be given a preference of ten percent of the amount of the bid in determining the lowest responsive bid for any item or grouping of items to be awarded to a single bidder. This preference shall be separate from and applied after any other preferences allowed by statute. The minimum content of (~~recovered~~) recycled material shall be not less than fifteen percent provided that for those goods for which the Environmental Protection Agency has adopted procurement guidelines under the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. §6901 et seq.), as amended, the minimum content of (~~recovered~~) recycled material shall not be less than specified in the most current adopted issue of those guidelines. The producer of the goods shall certify the post consumer and (~~recovered~~) recycled or waste material content at the time of submitting bid. To qualify for the preference, the goods shall otherwise be at least functionally equal to all other specifications and use requirements. The preference shall be used for bid evaluation purposes only and the actual dollars bid shall be the contracted amount. In the event of a tie for lowest responsive bid between products otherwise meeting all bid specifications, the purchasing (~~activity~~) agency shall consider the larger post consumer material content as a factor in determining the award. Should the purchasing (~~activity~~) agency determine that the use of this preference does not encourage the use of more (~~recovered~~) recycled material for reasons including inadequate competition, economics, environmental constraints, quality or availability, the purchasing (~~activity~~) agency shall issue, consider and award bids without the preference. For the purpose of meeting Resource Conservation and Recovery Act requirements for state agency purchase of goods complying with Environmental Protection Agency (~~office of state procurement~~) department of enterprise services may adopt specifications requiring that only goods meeting these guidelines are responsive and may consider bids for such goods though the cost exceeds ten percent of goods not meeting such guidelines.

NEW SECTION

WAC 200-300-086 Preference for correctional industries Class II products. The following provisions outline purchase requirements for correctional industries, Class II goods and services:

(1) Correctional industries will identify the goods and services available for purchase through the department of enterprise services and confirm the same in writing to the director of the department of enterprise services at least one hundred twenty days before the expiration of any existing contract(s). The writing from correctional industries will include a request that the department of enterprise services tender to correctional industries a mandatory use contract to sell these goods and services to state agencies, the legislature and departments in accordance with RCW 43.19.534. A mandatory use contract as defined in the procurement document will be executed between the department of enterprise services and correctional industries that complies with state law

and covers all specified Class II goods and services that are produced in whole, or in part, by correctional industries.

(2) All goods and services covered by the department of enterprise services mandatory use contract are to be purchased from correctional industries. The department of enterprise services will administer these contracts.

(3) Any state agency, branch of the legislature or department may apply for an exemption from the correctional industries purchase preference by using the form developed by the department of enterprise services. If the request for exemption is approved, that approval shall apply for the specified product or product line for a period of one year from the date of approval of the exemption. The approval shall apply to all customers of that agency requesting that product or product line.

(4) However, goods or services produced by Class II correctional industries programs which primarily replace goods manufactured or services obtained from outside the state of Washington are not subject to the criteria contained in subsection (3) of this section, and shall be purchased solely from correctional industries.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 200-300-015 Definitions.
- WAC 200-300-020 Public notice.
- WAC 200-300-025 Receipt of bids, quotes or proposals.
- WAC 200-300-030 Amendment of invitation for bid, request for quotation or request for proposal.
- WAC 200-300-035 Supplier lists.
- WAC 200-300-040 Removal or suspension.
- WAC 200-300-045 Appeal, reapplication or reinstatement.
- WAC 200-300-050 Bid guarantee.
- WAC 200-300-055 Performance guarantees.
- WAC 200-300-060 Form of bid, quote or proposal.
- WAC 200-300-065 Standard specifications.
- WAC 200-300-070 Acceptance of alternate bid, quote or proposal.
- WAC 200-300-080 Partial award.
- WAC 200-300-090 Rejection.
- WAC 200-300-095 Acceptance of terms.
- WAC 200-300-100 Handling of bids and proposals if publicly opened.
- WAC 200-300-105 Mistakes in bid(s) or proposals detected prior to opening.
- WAC 200-300-110 Mistakes in bid(s) or proposals detected during or after bid opening.
- WAC 200-300-115 Disclosure of information.

WAC 200-300-120	Informalities in bids, quotes, or proposals.
WAC 200-300-125	Notice of cancellation or rejection of bids.
WAC 200-300-130	Protests and appeals—Form and substance.
WAC 200-300-135	Office of state procurement protest procedure prior to award.
WAC 200-300-140	Office of state procurement protest procedure after award.
WAC 200-300-145	Offset against contractor payments.
WAC 200-300-150	Delivery date.
WAC 200-300-155	Change in product offered.
WAC 200-300-160	Contract extension.
WAC 200-300-165	Additions or deletions to contract or purchase order.
WAC 200-300-170	Leases.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 200-310-001	Purpose.
WAC 200-310-010	Definitions.
WAC 200-310-020	Washington state purchasing structure.
WAC 200-310-055	Preference for correctional industries Class II products.
WAC 200-310-060	State purchasing cooperative.

WSR 14-14-091**PERMANENT RULES****DEPARTMENT OF REVENUE**

[Filed June 30, 2014, 10:41 a.m., effective July 31, 2014]

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

Purpose: WAC 458-20-210 (Rule 210) Sales of tangible personal property for farming—Sales of agricultural products by farmers.

This rule explains the application of business and occupation, retail sales, and use taxes to the sales of tangible personal property to farmers. It also explains the application of taxes to the sale of agricultural products by farmers.

Rule 210 has been revised to: Update information to conform to existing law on the taxability of manufacturing fresh fruits and vegetables; manufacturing dairy products; purchasing nutrient management equipment and facilities; and use of reseller permits. Information pertaining to a B&O tax credit for alternatives to field burning that expired January 1, 2006, has been removed.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-210 Sales of tangible personal property for farming—Sales of agricultural products by farmers.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 14-09-098 on April 22, 2014.

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

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

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

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

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

Date Adopted: June 30, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-18-024, filed 8/25/03, effective 9/25/03)

WAC 458-20-210 Sales of tangible personal property for farming—Sales of agricultural products by farmers.

(1) **Introduction.** This rule explains the application of business and occupation (B&O), retail sales, and use taxes to the sale and/or use of feed, seed, fertilizer, spray materials, and other tangible personal property for farming. This rule also explains the application of B&O, retail sales, and litter taxes to the sale of agricultural products by farmers. Farmers should refer to WAC 458-20-101 (Tax registration and tax reporting) to determine whether they must obtain a tax registration endorsement or a temporary registration certificate from the department of revenue (department).

(a) **Examples.** This rule contains examples which identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(b) **Other rules that may be relevant.** Farmers and persons making sales to farmers may also want to refer to the following rules for additional information:

~~((a))~~ (i) WAC 458-20-178, Use tax;

(ii) WAC 458-20-209 ~~((f))~~, Farming for hire and horticultural services ~~((provided to))~~ performed for farmers~~((t))~~;

~~((b))~~ (iii) WAC 458-20-222 ~~((f))~~, Veterinarians~~((t))~~;

~~((c))~~ (iv) WAC 458-20-239 ~~((f))~~, Sales to nonresidents of farm machinery or implements, and related services~~((t))~~; and

~~((d))~~ (v) WAC 458-20-262 ~~((f))~~, Retail sales and use tax exemptions for agricultural employee housing~~((t))~~.

(2) **Who is a farmer?** A "farmer" is any person engaged in the business of growing, raising, or producing, upon the person's own lands or ~~((upon))~~ on the lands in which the person has a present right of possession, any agricultural product to be sold. A "farmer" does not include a person growing, raising, or producing agricultural products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughterhouse, or packing house; or a person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213 ~~((and chapter 118, Laws of 2001)).~~

(3) **What is an agricultural product?** An "agricultural product" is any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035 ~~((as of July 22, 2001))~~; turf; or any animal, including, but not limited to, an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, a bird, an insect, or the substances obtained from such animals. An "agricultural product" does not include animals defined under RCW 16.70.020 as "pet animals." RCW 82.04.213 ~~((and chapter 118, Laws of 2001)).~~

(4) **Sales to farmers.** Persons making sales of tangible personal property to farmers are generally subject to wholesaling or retailing B&O tax, as the case may be, on the gross proceeds of sales. Sales of some services performed for farmers, such as installing or repairing tangible personal property, are retail sales and subject to retailing B&O tax on the gross proceeds of such sales. Persons making retail sales must collect retail sales tax from the buyer, unless the sale is specifically exempt by law. ~~((Readers should))~~ Refer to subsection (6) of this rule for information about specific sales tax exemptions available for sales to farmers.

(a) **Documenting wholesale sales.** A seller must ~~((obtain a resale certificate from the buyer to document the wholesale nature of any transaction. (Refer to WAC 458-20-102 for detailed information about resale certificates.))~~ take from the buyer a copy of the buyer's reseller permit, or a "Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions" to document the wholesale nature of any transaction.

(b) **Buyer's responsibility when the seller does not collect retail sales tax on a retail sale.** If the seller does not collect retail sales tax on a retail sale, the buyer must pay the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless the sale is specifically exempt by law. The ~~((Combined))~~ excise tax return ~~((s))~~ does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's ~~((Combined))~~ excise tax return. If a deferred sales tax or use tax liability is incurred by a farmer who is not required to obtain a tax registration endorsement from the department (see WAC 458-20-101), the farmer must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department. Refer to WAC 458-20-178 (Use tax) for detailed information regarding use tax.

The Consumer Use Tax Return ~~((can))~~ may be obtained by calling the department's telephone information center at 1-800-647-7706. The return may also be obtained from the department's web site at: ~~((http://))~~ dor.wa.gov.

(c) **Feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination.** Sales to farmers of feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination, including insects such as bees, to be used for the purpose of producing an agricultural product, whether for wholesale or retail sale, are wholesale sales.

However, when these items are sold to consumers for purposes other than producing agricultural products for sale, the sales are retail sales. For example, sales of feed to riding clubs, racetrack operators, boarders, or similar persons who do not resell the feed at a specific charge are retail sales. Sales of feed for feeding pets or work animals, or for raising animals for the purpose of producing agricultural products for personal consumption are also retail sales. Sales of seed, fertilizer, and spray materials for use on lawns and gardens, or for any other personal use, are likewise retail sales.

(i) **What is feed?** "Feed" is any substance used as food to sustain or improve animals, birds, fish, or insects, including whole and processed grains or mixtures thereof, hay and forages or meals made therefrom, mill feeds and feeding concentrates, stock salt, hay salt, bone meal, fish meal, cod liver oil, double purpose limestone grit, oyster shell, and other similar substances. Food additives that are given for their beneficial growth or weight effects are "feed."

Hormones or similar products that do not make a direct nutritional or energy contribution to the body are not "feed," nor are products used as medicines.

(ii) **What is seed?** "Seed" is the propagative portions of plants commonly used for seeding or planting whether true seed, bulbs, plants, seed-like fruits, seedlings, or tubers.

(iii) **What is fertilizer?** "Fertilizer" is any substance containing one or more recognized plant nutrients and is used for its plant nutrient content and/or is designated for use in promoting plant growth. "Fertilizer" includes limes, gypsum, and manipulated animal and vegetable manures. There is no requirement that fertilizers be applied directly to the soil.

(iv) **What are spray materials?** "Spray materials" are any substance or mixture of substances in liquid, powder, granular, dry flowable, or gaseous form, which is intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life normally considered to be a pest. The term includes treated materials, such as grains, that are intended to destroy, control, or repel such pests. "Spray materials" also include substances that act as plant regulators, defoliants, desiccants, or spray adjuvants.

(v) **Examples.** ~~((The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.))~~

(A) **Example 1.** Sue grows vegetables for retail sale at a local market. Sue purchases fertilizers and spray materials that she applies to the vegetable plants. She also purchases feed for poultry that she raises to produce eggs for her personal consumption. Because the vegetables are an agricul-

tural product produced for sale, retail sales tax does not apply to Sue's purchases of fertilizers and spray materials, provided she gives the seller a ~~((resale certificate))~~ copy of her reseller permit, or Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Retail sales tax ~~((does apply))~~ applies to her purchases of poultry feed, as the poultry ~~((are))~~ is raised to produce eggs for Sue's personal consumption.

(B) **Example 2.** WG Vineyards (WG) grows grapes that it uses to manufacture wine for sale. WG purchases pesticides and fertilizers that are applied to its vineyards. WG may purchase these pesticides and fertilizers at wholesale, provided WG gives the seller a ~~((resale certificate))~~ copy of their reseller permit, or Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions.

(C) **Example 3.** Seed Co. contracts with farmers to raise seed. Seed Co. provides the seed and agrees to purchase the crop if it meets specified standards. The contracts provide that ownership of the crop is retained by Seed Co., and the risk of crop loss is borne by the farmers. The farmers ~~((are obligated to))~~ must pay for the seed whether or not the crop meets the specified standard. The transfer of the possession of the seed to ~~((the))~~ each farmer~~((s))~~ is a wholesale sale, provided Seed Co. obtains a ~~((resale certificate))~~ copy of their reseller permit, or Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions from ~~((the))~~ that farmer~~((s))~~.

(d) **Chemical sprays or washes.** Sales of chemical sprays or washes, whether to farmers or other persons, for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay are wholesale sales.

(e) **Farming equipment.** Sales to farmers of farming equipment such as machinery, machinery parts and repair, tools, and cleaning materials are retail sales and subject to retailing B&O and retail sales taxes, unless specifically exempt by law. Refer to subsections (4)(i) and (6) of this rule for information about sales tax exemptions available to farmers.

(f) **Packing materials and containers.** Sales of packing materials and containers, or tangible personal property that will become part of a container, to a farmer who will sell the property to be contained therein are wholesale sales, provided the packing materials and containers are not put to intervening use by the farmer. Thus, sales to farmers of binder twine for binding bales of hay that will be sold or wrappers for fruit and vegetables to be sold are subject to wholesaling B&O tax. However, sales of packing materials and containers to a farmer who will use the items as a consumer are retail sales and subject to retailing B&O and retail sales taxes. Thus, sales of binder twine to a farmer for binding bales of hay that will be used to feed the farmer's livestock are retail sales.

(g) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property ~~((and not able))~~ that is unable to determine at the time of purchase whether the particular property purchased will be consumed or resold must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a ~~((resale certificate))~~ copy of its reseller permit for any part of the purchase. If the buyer principally resells the articles, the buyer may ~~((issue a~~

~~resale certificate))~~ provide a copy of its reseller permit for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

If a buyer makes a purchase for dual purposes and does not give a ~~((resale certificate))~~ copy of their reseller permit for any of the purchase and thereafter resells some of the articles purchased, the buyer may claim a "taxable amount for tax paid at source" deduction. Refer to WAC 458-20-102 (Reseller permits) for additional information regarding purchases for dual purposes and the "taxable amount for tax paid at source" deduction.

(i) **Potential deferred sales tax liability.** If the buyer gives a ~~((resale certificate))~~ copy of its reseller permit for all purchases and thereafter consumes some of the articles purchased, the buyer is liable for deferred sales tax and must remit the tax directly to the department. Refer to subsection (4)(b) of this rule ~~((and))~~, WAC 458-20-102 and 458-20-178 for more information regarding deferred sales tax and use tax.

(ii) **Example 4.** A farmer purchases binder twine for binding bales of hay. Some of the hay will be sold and some will be used to feed the farmer's livestock. More than fifty percent of the binder twine is used for binding bales of hay that will be sold. Because the farmer principally uses the binder twine for binding bales of hay that will be sold, the farmer may ~~((issue a resale certificate))~~ provide a copy of their reseller permit, or Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions to the seller for the entire purchase. The farmer is liable for deferred sales tax on the binder twine used for binding bales of hay that are used to feed the farmer's livestock and must remit the tax directly to the department.

(h) **"Fruit bin rentals" by fruit packers.** Fruit packers often itemize their charges to farmers for various services related to the packing and storage of fruit. An example is a charge for the bins which the packer uses in the receiving, sorting, inspecting, and storing of fruit (commonly referred to as "bin rentals"). The packer delivers the bins to the grower, who fills them with fruit for eventual storage in the packer's warehouse. Charges by fruit packers to farmers for such bin rentals do not constitute the rental of tangible personal property to the farmer where the bins are under the control of the packer for use in the receiving, sorting, inspecting, and storing of fruit. These charges are income to the packer related to the receipt or storage of fruit. The packer, as the consumer of the bins, is subject to retail sales or use tax on the purchase or use of the bins. ~~((Information regarding the taxability of fruit packing is contained in WAC 458-20-214.))~~ Refer to WAC 458-20-214 (Cooperative marketing associations and independent dealers acting as agents of others with respect to the sale of fruit and produce) for more information regarding the taxability of fruit packing.

(i) **Machinery and equipment used directly in a manufacturing operation.** Machinery and equipment used directly in a manufacturing operation by a manufacturer or processor for hire is exempt from sales ~~((or))~~ and use ~~((tax))~~ taxes provided that all requirements for the exemptions are met. RCW 82.08.02565 and 82.12.02565. ~~((This exemption is))~~ These exemptions are commonly referred to as the M&E exemption. Farmers who use agricultural products that they have grown, raised, or produced as ingredients in a manufac-

turing process may be entitled to the M&E exemption on the acquisition of machinery and equipment used directly in their manufacturing operation. Refer to WAC 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment) for ~~((detailed))~~ more information regarding the M&E exemption.

~~((See subsection (5)(b) of this rule for an example illustrating a farmer using agricultural products that the farmer has grown as an ingredient in a manufacturing process.))~~

(5) **Sales by farmers.** Farmers are not subject to B&O tax on wholesale sales of agricultural products. RCW 82.04.330. Farmers who manufacture products using agricultural products that they have grown, raised, or produced should refer to subsection (5)(b) of this rule for tax-reporting information.

Farmers are subject to retailing B&O tax on retail sales of agricultural products and retailing or wholesaling B&O tax on sales of nonagricultural products, as the case may be, unless specifically exempt by law. Also, B&O tax applies to sales of agricultural products that the seller has not grown, raised, or produced ~~((upon))~~ on the seller's own land or ~~((upon))~~ on land in which the seller has a present right of possession, whether these products are sold at wholesale or retail. Likewise, B&O tax applies to sales of animals or substances derived from animals in connection with the business of operating a stockyard, slaughterhouse, or packing house. Farmers may be eligible to claim a small business B&O tax credit if the amount of B&O tax liability in a reporting period is under a certain amount. ~~((For detailed information about this credit.))~~ Refer to WAC 458-20-104 (Small business tax relief based on income of business) for more information about this B&O tax credit.

(a) **Litter tax.** The gross proceeds of sales of certain products, including food for human or pet consumption, are subject to litter tax. RCW 82.19.020. Litter tax does not apply to sales of agricultural products that are exempt from B&O tax under RCW 82.04.330. RCW 82.19.050 ~~((and chapter 118, Laws of 2001))~~. Thus, farmers are not subject to litter tax on wholesale sales of agricultural products but are liable for litter tax on the gross proceeds of retail sales of agricultural products that constitute food for human or pet consumption. Also, farmers that manufacture products for use and consumption within this state (e.g., a farmer who produces wine from grapes that the farmer has grown) may be liable for litter tax measured by the value of the products manufactured. ~~((For detailed information about the litter tax.))~~ Refer to chapter 82.19 RCW and WAC 458-20-243 (Litter tax) for more information about the litter tax.

~~((For example.))~~ **Example 5.** RD Orchards (RD) grows apples at its orchards. Most apples are sold at wholesale, but RD operates a seasonal roadside fruit stand from which it ~~((makes retail sales of))~~ sells apples at retail. The wholesale sales of apples are exempt from both B&O and litter taxes. The retail sales of apples are subject to retailing B&O and litter taxes but are exempt from sales tax because the apples are sold as a food product for human consumption. ~~((See))~~ Refer to subsection (6)(d) of this rule for more information about the retail sales tax exemption applicable to sales of food products for human consumption.((†))

(b) **Farmers using agricultural products in a manufacturing process.** The B&O tax exemption provided by RCW 82.04.330 does not apply to any person selling manufactured substances or articles. Thus, farmers who manufacture products using agricultural products that they have grown, raised, or produced are subject to manufacturing B&O tax on the value of products manufactured. Farmers who sell their manufactured products at retail or wholesale in the state of Washington are also generally subject to the retailing or wholesaling B&O tax, as the case may be. In such cases, a multiple activities tax credit (MATC) may be available. ~~((For detailed information regarding the manufacturing B&O tax and the MATC.))~~ Refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) and WAC 458-20-19301 (Multiple activities tax credits), respectively, for more information about the manufacturing B&O tax and the MATC.

~~((For example, WG Vineyards (WG) produces wine from grapes that it grows in its vineyards located within this state. WG makes wholesale sales of its wine to customers both within and outside of this state. WG is subject to manufacturing B&O tax on the value of the wine it produces. WG is also subject to wholesaling B&O tax on wholesale sales of wine delivered to buyers within this state, and WG is entitled to a multiple activities tax credit. In addition, WG is subject to litter tax on the value of wine sold within this state. (See subsection (5)(a) of this rule for information on the litter tax.))~~

(i) ~~((Special B&O tax rate for))~~ **Manufacturing fresh fruits and vegetables.** ~~((A special lower B&O tax rate is provided by RCW 82.04.260))~~ RCW 82.04.4266 provides a B&O tax exemption to persons manufacturing fresh fruits or vegetables by canning, preserving, freezing, processing, or dehydrating.((Thus, farmers and other persons manufacturing fresh fruits and vegetables using these processes should report their manufacturing activity under the manufacturing fresh fruits and vegetables B&O tax classification)) fresh fruits or vegetables.

Wholesale sales of fresh fruits or vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport the goods out of this state in the ordinary course of business are also ~~((subject to the lower B&O tax rate provided by RCW 82.04.260))~~ eligible for this exemption. A seller must keep and preserve records for the period required by RCW 82.32.070 establishing that the purchaser transported the goods out of Washington state.

(A) A person claiming the exemption must file a complete annual survey with the department under RCW 82.32.585.

(B) RCW 82.04.4266 is scheduled to expire July 1, 2015, at which time the preferential B&O tax rate under RCW 82.04.260 will apply.

(ii) ~~((Special B&O tax rate for))~~ **Manufacturing dairy products.** ~~((Effective September 20, 2001, a special lower B&O tax rate is provided by RCW 82.04.260))~~ RCW 82.04.4268 provides a B&O tax exemption to persons manufacturing dairy products that, as of ((that date)) September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135. These products include milk, buttermilk, cream, yogurt, cheese, and ice cream, and also include by-

products from the manufacturing of dairy products such as whey and casein. ~~((Thus, farmers and other persons manufacturing qualifying dairy products should report their manufacturing activity under the manufacturing dairy products B&O tax classification. This special rate does not apply, however, when dairy products are used merely as an ingredient or component of a manufactured product that is not a dairy product (e.g., milk-based soups or pizza).~~

The special B&O tax rate provided by RCW 82.04.260)

The exemption also applies to persons selling manufactured dairy products to purchasers who transport the goods ((outside of this)) out of Washington state in the ordinary course of business. Unlike the ((special B&O tax rate)) exemption for certain wholesale sales of fresh fruits or vegetables (see subsection (5)(b)(i) of this rule), the ((special B&O tax rate)) exemption for sales of qualifying dairy products does not require that the sales be made ((by the person who manufactured the dairy products nor that they be sales)) at wholesale.

A seller must keep and preserve records for the period required by RCW 82.32.070 establishing that the purchaser transported the goods out of Washington state or the goods were sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(A) A person claiming the exemption must file a complete annual survey with the department under RCW 82.32.585.

(B) RCW 82.04.4268 is scheduled to expire July 1, 2015, at which time the preferential B&O tax rate under RCW 82.04.260 will apply.

(C) Effective October 1, 2013, the exemption provided by RCW 82.04.4268 expanded to include wholesale sales by a dairy product manufacturer to a purchaser who uses the dairy products as an ingredient or component in the manufacturing in Washington of another dairy product. The definition of dairy products was expanded to include products comprised of not less than seventy percent dairy products measured by weight or volume.

(D) Effective July 1, 2023, the preferential B&O tax rate will no longer apply to sales of dairy products, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing of a dairy product in Washington.

(c) Raising cattle for wholesale sale. RCW 82.04.330 provides a B&O tax exemption to persons who raise cattle for wholesale sale ((are exempt from B&O tax under RCW 82.04.330)) provided that the cattle are held for at least sixty days prior to the sale. Persons who ((purchase and)) hold cattle for fewer than sixty days before reselling the cattle are not considered to be engaging in the normal activities of growing, raising, or producing livestock for sale.

~~((For example,))~~ **Example 6.** A feedlot operation purchases cattle and feeds them until they attain a good market condition. The cattle are then sold at wholesale. The feedlot operator is exempt from B&O tax on wholesale sales of cattle if it held the cattle ((are held)) for at least sixty days while they ((are)) were prepared for market. However, the feedlot operator is subject to wholesaling B&O tax on wholesale sales of cattle held for fewer than sixty days prior to the sale.

(d) B&O tax exemptions available to farmers. In addition to the exemption for wholesale sales of agricultural prod-

ucts, ~~((there are))~~ several other B&O tax exemptions available to farmers ~~((which))~~ that are discussed in this subsection.

(i) Growing, raising, or producing agricultural products owned by other persons. RCW 82.04.330 exempts amounts received by a farmer for growing, raising, or producing agricultural products owned by others, such as custom feed operations.

~~((For example,))~~ **Example 7.** A farmer is engaged in the business of raising cattle owned by others (commonly referred to as "custom feeding"). After the cattle attain a good market condition, the owner then sells them. Amounts received by the farmer for custom feeding are exempt from B&O tax under RCW 82.04.330, provided that the farmer held the cattle ((are held by the farmer)) for at least sixty days. Farmers are not considered to be engaging in the activity of raising cattle for sale unless the cattle are held for at least sixty days while the cattle are prepared for market. (See subsection (5)(c) of this rule.)

~~((ii))~~ ~~(Sales of hatching eggs or poultry.~~ RCW 82.04.410 exempts amounts received for the sale of hatching eggs or poultry by farmers producing hatching eggs or poultry, when these agricultural products are for use in the production for sale of poultry or poultry products.

~~((iii))~~ **Processed hops shipped outside Washington for first use.** RCW 82.04.337 exempts amounts received by hop growers or dealers for hops shipped outside the state of Washington for first use, if those hops have been processed into extract, pellets, or powder in this state. However, the processor or warehouse of such products is not exempt on amounts charged for processing or warehousing such products.

~~((e))~~ **B&O tax credit to encourage alternatives to field burning.** Persons who qualify for a sales or use tax exemption under RCW 82.08.840 or 82.12.840 (machinery, equipment, or structures that reduce emissions from field burning) also qualify for a B&O tax credit. RCW 82.04.4459. The amount of the credit is equal to fifty percent of the amount of costs expended for constructing structures or acquiring machinery and equipment for which an exemption was taken under RCW 82.08.840 or 82.12.840. (See subsection (6)(l) of this rule for information about the sales and use tax exemptions provided by RCW 82.08.840 and 82.12.840.) No application is necessary for the credit. Persons taking the credit must keep records necessary for the department to verify eligibility for the credit. This credit is subject to the following limitations:

~~(i) No credit may be taken in excess of the amount of B&O tax that would otherwise be due;~~

~~(ii) Credit may not be carried over to subsequent calendar years;~~

~~(iii) The credit must be claimed by the due date of the last tax return for the calendar year in which the payment is made;~~

~~(iv) Any unused credit expires;~~

~~(v) Refunds will not be given in place of credits;~~

~~(vi) The credit may not be claimed for expenditures that occurred before March 22, 2000; and~~

~~(vii) The credit expires on January 1, 2006.)~~ (iii) Sales of hatching eggs or poultry. RCW 82.04.410 exempts amounts received for the sale of hatching eggs or poultry by

farmers producing hatching eggs or poultry, when these agricultural products are for use in the production for sale of poultry or poultry products.

(6) **Retail sales tax and use tax exemptions.** This subsection provides information about a number of retail sales tax and corresponding use tax exemptions available to farmers and persons buying tangible personal property at retail from farmers. Some exemptions require the buyer to provide the seller with an exemption certificate. ~~((Readers should))~~ Refer to subsection (7) of this rule for additional information regarding exemption certificates.

~~((This subsection contains a number of examples which illustrate these exemptions. The examples identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.))~~

(a) **Pollen.** RCW 82.08.0277 and 82.12.0273 exempt the sale and use of pollen ~~((is exempt))~~ from retail sales and use taxes. ~~((RCW 82.08.0277 and 82.12.0273.))~~

(b) **Semen.** RCW 82.08.0272 and 82.12.0267 exempt the sale and use of semen used in the artificial insemination of livestock is exempt from retail sales and use taxes. ~~((RCW 82.08.0272 and 82.12.0267.))~~

(c) **Feed for livestock at public livestock markets.** RCW 82.08.0296 and 82.12.0296 exempt the sale and use of feed to be consumed by livestock at a public livestock market ~~((is exempt))~~ from retail sales and use taxes. ~~((RCW 82.08.0296 and 82.12.0296.))~~

(d) **Food products.** RCW 82.08.0293 and 82.12.0293 exempt the sale and use of food products for human consumption ~~((are exempt))~~ from retail sales and use taxes. ~~((RCW 82.08.0293 and 82.12.0293. This))~~ These exemptions also ~~((applies))~~ apply to the sale and/or use of livestock for personal consumption as food. ~~((For detailed))~~ Refer to WAC 458-20-244 (Food and food products) for more information about food products that qualify for this exemption ~~((refer to WAC 458-20-244)).~~

(e) **Auction sales of farm property.** RCW 82.08.0257 and 82.12.0258 exempt from retail sales and use taxes ~~((do not apply to))~~ tangible personal property, including household goods, which ~~((have))~~ has been used in conducting a farm activity, if the property ~~((was))~~ is purchased from a farmer at an auction sale held or conducted by an auctioneer ~~((upon))~~ on a farm. ~~((RCW 82.08.0257 and 82.12.0258.))~~

(f) **Poultry.** RCW 82.08.0267 and 82.12.0262 exempt from retail sales and use taxes the sale and use of poultry used in the production for sale of poultry or poultry products ~~((is exempt from retail sales and use taxes. RCW 82.08.0267 and 82.12.0262)).~~

~~((For example,))~~ **Example 8.** A poultry hatchery produces poultry from eggs. The resulting poultry are sold to egg producers. These sales are exempt from retail sales ~~((taxes))~~ tax under RCW 82.08.0267. (They are also exempt from B&O tax. See subsection (5)(d)(ii) of this rule.)

(g) **Leases of irrigation equipment.** ~~((Retail sales and use taxes do not apply to))~~ RCW 82.08.0288 and 82.12.0283 exempt the lease or use of irrigation equipment from retail sales and use taxes, but only if:

(i) The lessor purchased the irrigation equipment for the purpose of irrigating land controlled by the lessor;

(ii) The lessor has paid retail sales or use tax upon the irrigation equipment;

(iii) The irrigation equipment is attached to the land in whole or in part; and

(iv) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land and is used solely on such land. ~~((RCW 82.08.0288 and 82.12.0283.))~~

(h) **Beef and dairy cattle.** RCW 82.08.0259 and 82.12.0261 exempt the sale and use of beef and dairy cattle to be used by a farmer in producing an agricultural product ~~((are exempt))~~ from retail sales and use taxes. ~~((RCW 82.08.0259 and 82.12.0261.))~~

~~For example,))~~

Example 9. John operates a farm where he raises beef and dairy cattle for sale. He also raises other livestock for sale including hogs, sheep, and goats. ~~((All of))~~ John's sales of beef and dairy ~~((and beef))~~ cattle for use on a farm are exempt from retail sales tax. However, John must collect retail sales tax on all retail sales of sheep, goats, and hogs unless the sales qualify for either the food products exemption described in this subsection (6)(d) of this rule, or the exemption for sales of livestock for breeding purposes ~~((which is))~~ described ~~((immediately below))~~ in this subsection (6)(i) of this rule.

(i) **Livestock for breeding purposes.** RCW 82.08.0259 and 82.12.0261 exempt the sale or use of livestock, as defined in RCW 16.36.005, for breeding purposes where the animals are registered in a nationally recognized breed association ~~((is exempt))~~ from retail sales and use taxes. ~~((RCW 82.08.0259 and 82.12.0261. This exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.))~~

~~For example,))~~

Example 10. ABC Farms raises and sells quarter horses registered in the American Quarter Horse Association (AQHA). Quarter horses are generally recognized as a definite breed of horse, and the AQHA is a nationally recognized breed association. Therefore, ABC Farms is not required to collect sales tax on retail sales of quarter horses for breeding purposes, provided it receives a completed exemption certificate from the buyer.

(j) **Bedding materials for chickens.** RCW 82.08.920 and 82.12.920 exempt from retail sales and use taxes ~~((do not apply to))~~ the sale to and use of bedding materials ~~((used))~~ by farmers to accumulate and facilitate the removal of chicken manure provided that the farmer is raising chickens that are sold as agricultural products. ~~((RCW 82.08.920 and 82.12.920. The exemption became effective September 20, 2001, and is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.))~~

(i) **What are bedding materials?** "Bedding materials" are wood shavings, straw, sawdust, shredded paper, and other similar materials.

(ii) **Example 11.** Farmer raises chickens for use in producing eggs for sale. When the chickens are no longer useful for producing eggs, Farmer sells ~~((the chickens))~~ them to food processors for soup and stew meat. Farmer purchases bedding materials used to accumulate and facilitate the

removal of chicken manure. The purchases of bedding materials by Farmer are exempt from retail sales tax. The ~~((law))~~ exemption merely requires that the chickens be sold as agricultural products. It is immaterial that Farmer primarily raises the chickens to produce eggs.

(k) **Propane or natural gas used to heat structures housing chickens.** RCW 82.08.910 and 82.12.910 exempt from retail sales and use taxes ~~((do not apply to))~~ the sale to and use of propane or natural gas ~~((used))~~ by farmers to heat structures used to house chickens. The propane or natural gas must be used exclusively to heat the structures, and the structures must be used exclusively to house chickens that are sold as agricultural products. ~~((RCW 82.08.910 and 82.12.910. The exemption became effective September 20, 2001, and is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.))~~

(i) **What are "structures"?** "Structures" are barns, sheds, and other similar buildings in which chickens are housed.

(ii) **Example 12.** Farmer purchases natural gas that is used to heat structures housing chickens. The natural gas is used exclusively to heat the structures, and the structures are used exclusively to house chickens. The chickens are used to produce eggs. When the chickens are no longer useful for producing eggs, Farmer sells the chickens to food processors for soup and stew meat. The purchase of natural gas by Farmer is exempt from retail sales tax. The ~~((law))~~ exemption merely requires that the chickens be sold as agricultural products. It is immaterial that Farmer primarily houses these chickens to produce eggs.

(iii) **Example 13.** Farmer purchases natural gas that is used to heat structures used in the incubation of chicken eggs and structures used for washing, packing, and storing eggs. The natural gas used to heat these structures is not exempt from retail sales tax because the structures are not used exclusively to house chickens that are sold as agricultural products.

(l) Farm fuel used for agricultural purposes.

(i) Diesel, biodiesel and aircraft fuels. RCW 82.08.865 and 82.12.865 exempt from retail sales and use taxes the sale and use of diesel fuel, biodiesel fuel, and aircraft fuel, to farm fuel users for agricultural purposes. The exemptions apply to a fuel blend if all of the component fuels of the blend would otherwise be exempt if the component fuels were sold as separate products. The buyer must provide the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. See subsection (7) of this rule. The seller must retain a copy of the exemption certificate for its records.

(A) The exemptions apply to nonhighway uses for production of agricultural products and for providing horticultural services to farmers. Horticultural services include:

- (I) Soil preparation services;
- (II) Crop cultivation services;
- (III) Crop harvesting services.

(B) The exemptions do not apply to uses other than for agricultural purposes. Agricultural purposes do not include:

(I) Heating space for human habitation or water for human consumption; or

(II) Transporting on public roads individuals, agricultural products, farm machinery or equipment, or other tangible personal property, except when the transportation is incidental to transportation on private property and the fuel used for such transportation is not subject to tax under chapter 82.38 RCW.

(ii) Propane and natural gas. Effective October 1, 2013, RCW 82.08.220 and 82.12.220 exempt from retail sales and use taxes sales to and the use by farmers of propane or natural gas that is used exclusively to distill mint on a farm. The buyer must provide the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. The seller must retain a copy of an exemption certificate for its records. See subsection (7) of this rule. The seller must also report amounts claimed for exemption when electronically filing excise tax returns. This exemption is scheduled to expire July 1, 2017.

(m) Machinery, equipment, and structures used to reduce emissions from field burning. Prior to January 1, 2011, RCW 82.08.840 and 82.12.840 ~~((provide a))~~ provided retail sales and use tax exemptions for certain property and services used to reduce field burning of cereal grains and field and turf grass grown for seed, or to reduce air emissions resulting from such field burning. The ~~((retail sales tax))~~ exemptions ~~((applies))~~ applied to sales and uses of machinery and equipment, and ~~((to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or eligible machinery and equipment, and to))~~ sales and uses of tangible personal property that ~~((becomes))~~ became an ingredient or component of eligible structures or eligible machinery and equipment, if all of the requirements for the exemption listed below in this subsection ~~((are))~~ were met. The sales tax exemption ~~((is effective March 22, 2000.))~~ also applied to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or eligible machinery and equipment, and the use tax exemption ~~((applies))~~ also applied to the ~~((use of machinery and equipment, and of tangible personal property that becomes an ingredient or component of eligible machinery and equipment, if all of the requirements for the exemption listed below in this subsection are met. This use tax exemption is also effective March 22, 2000. The use tax exemption also applies to the))~~ use of services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, if all of the requirements for the exemption ~~((are))~~ were met. ~~((This component of the use tax exemption is effective June 1, 2002. These exemptions expire January 1, 2006.))~~

Persons taking an exemption must keep records necessary for the department to verify eligibility for the exemption. Persons who have taken an exemption and then discover that they do not meet the requirements for the exemption are subject to a deferred sales tax or use tax liability. ~~((For))~~ Refer to subsection (4)(b) of this rule for additional information about deferred sales tax and use tax ~~((, refer to subsection (4)(b) of this rule.))~~.

(i) **Majority use requirement.** To qualify for an exemption, the machinery, equipment, or structure must be used more than half (50%) of the time to:

(A) ~~((For gathering, densifying, processing, handling, storing, transporting, or incorporating))~~ Gather, densify, process, handle, store, transport, or incorporate straw or straw-based products that results in a reduction in field burning of cereal grains and field and turf grass grown for seed; or

(B) ~~((To))~~ Decrease air emissions resulting from field burning of cereal grains and field and turf grass grown for seed.

(ii) ~~((Exemption certificates. For the sales tax exemption, the buyer must provide the seller with an exemption certificate in a form and manner prescribed by the department.~~

~~((iii)))~~ Examples. The following examples illustrate this exemption:

(A) Example 14. Farmer cultivates turf grass. Farmer purchases spray equipment. As an alternative to field burning, the fields in which the spray equipment is used must be sprayed five times instead of twice. If the use of the spray equipment meets the requirement that the equipment be used more than half of the time to decrease air emissions resulting from field burning~~((; therefore,))~~ the purchase of the spray equipment is exempt.

(B) Example 15. Farmer, who performs custom baling, purchases a new baler for use in baling hay and straw. The purchase of the baler is exempt if it will be used more than half of the time to bale straw, which results in a reduction in field burning.

(C) Example 16. Farmer purchases a new combine for use in harvesting wheat. In addition to cutting the stalks, separating the kernels from the chaff, and unloading the kernels, the combine also chops the residual chaff before discharging it onto the field. While the need for field burning may decrease because the smaller residue more readily decomposes, the purchase of the combine does not qualify for the exemption. The combine is not used more than half of the time to decrease air emissions from field burning.

~~((m) Dairy))~~ (n) Nutrient management equipment and facilities. RCW 82.08.890 and 82.12.890 provide ~~((a))~~ retail sales and use tax exemptions for ~~((persons operating dairy nutrient management equipment and facilities. The retail sales tax exemption applies to sales to eligible persons of services rendered in respect to operating, repairing, cleaning, altering, or improving of dairy nutrient management equipment and facilities, or to sales of tangible personal property that becomes an ingredient or component of the equipment and facilities. The sales tax exemption became effective July 13, 2001. The use tax exemption applies to the use by an eligible person of tangible personal property that becomes an ingredient or component of dairy nutrient management equipment and facilities. This use tax exemption also became effective July 13, 2001. The use tax exemption also applies to the use of labor and services rendered in respect to repairing, cleaning, altering, or improving eligible tangible personal property. This component of the use tax exemption is effective June 1, 2002. The sales and use tax exemption applies to sales made or to the use of tangible personal property or labor and services made after the dairy nutrient management plan is certified under chapter 90.64 RCW.~~

(i) These exemptions are available only if all of the following requirements are met:

(A) The equipment and facilities must be used exclusively for activities necessary to maintain a dairy nutrient management plan as required under chapter 90.64 RCW; and

~~((B) The buyer provides the seller with an exemption certificate in a form and manner prescribed by the department which must be retained in the seller's files. The department will provide an exemption certificate to an eligible person upon application. A sample letter for use in applying for an exemption certificate can be obtained from the department as provided in subsection (7) of this rule))~~ the sale to or use by eligible persons of:

(i) Qualifying livestock nutrient management equipment;

(ii) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and

(iii) Labor and services rendered in respect to repairing, cleaning, altering, or improving qualifying livestock nutrient management facilities, or to tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving such facilities.

(iv) Nonqualifying labor and services. This subsection (6)(n)(iii) of this rule does not include the sale of or charge made for labor and services rendered in respect to the constructing of new, or replacing previously existing, qualifying livestock nutrient management facilities, or tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing qualifying livestock nutrient management facilities.

(v) Nutrient management plan must be certified or approved. The exemptions provided by RCW 82.08.890 and 82.12.890 apply to sales made after the livestock nutrient management plan is:

(A) Certified under chapter 90.64 RCW;

(B) Approved as part of the permit issued under chapter 90.48 RCW; or

(C) Approved by a conservation district and who possesses an exemption certificate under RCW 82.08.855.

~~((ii)))~~ (vi) Definitions. For the purpose(s of this) of these exemptions, the following definitions apply:

(A) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

• Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

• Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(B) "Conservation district" means a subdivision of state government organized under chapter 89.08 RCW.

(C) "Eligible person" means a person:

• Licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan ((by December 31, 2003)), as required by chapter 90.64 RCW((-

(B) "Dairy nutrient management equipment and facilities" means machinery, equipment, and structures used exclusively in the handling and treatment of dairy manure;

such as aerators, agitators, alley scrapers, augers, dams, gutter cleaners, loaders, lagoons, pipes, pumps, separators, and tanks. The term also includes tangible personal property that becomes an ingredient or component of the equipment and facilities, including repair and replacement parts:

(~~Ⓝ~~); or

• Who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or

• Who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who possesses an exemption certificate under RCW 82.08.855.

(D) "**Handling and treatment of livestock manure**" means the activities of collecting, storing, moving, or transporting livestock manure, separating livestock manure solids from liquids, or applying livestock manure to the agricultural lands of an eligible person other than through the use of pivot or linear type traveling irrigation systems.

(E) "**Permit**" means either a state waste discharge permit or a National Pollutant Discharge Elimination System permit, or both.

(F) "**Qualifying livestock nutrient management equipment**" means the tangible personal property listed below for exclusive use in the handling and treatment of livestock manure, including repair and replacement parts for the same equipment:

Aerators

Agitators

Augers

Conveyers

Gutter cleaners

Hard-hose reel traveler irrigation systems

Lagoon and pond liners and floating covers

Loaders

Manure composting devices

Manure spreaders

Manure tank wagons

Manure vacuum tanks

Poultry house cleaners

Poultry house flame sterilizers

Poultry house washers

Poultry litter saver machines

Pipes

Pumps

Scrapers

Separators

Slurry injectors and hoses

Wheelbarrows, shovels, and pitchforks.

(G) "**Qualifying livestock nutrient management facilities**" means the exclusive use in the handling and treatment of livestock manure of the facilities listed below:

Flush systems

Lagoons

Liquid livestock manure storage structures, such as concrete tanks or glass-lined steel tanks

Structures used solely for the dry storage of manure, including roofed stacking facilities.

(o) **Anaerobic digesters.** RCW 82.08.900 and 82.12.900 provide retail sales and use tax exemptions for purchases and uses by eligible persons establishing or operating anaerobic digesters or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving an anaerobic digester. The exemptions include sales of tangible personal property that becomes an ingredient or component of the anaerobic digester. The anaerobic digester must be used primarily (more than fifty percent measured by volume or weight) to treat livestock manure. Anaerobic digester is a facility that processes manure from livestock into biogas and dried manure using microorganisms in a decomposition process within a closed, oxygen-free container.

(i) **Exemption certificate.** The department must provide an exemption certificate to an eligible person when an application is made. An "eligible person" is any person establishing or operating an anaerobic digester to treat primarily livestock manure.

(ii) **Records retention.** Persons claiming the exemptions under RCW 82.08.900 and 82.12.900 must keep records necessary for the department to verify eligibility. A buyer must provide the seller with an exemption certificate, and the seller must retain a copy of the certificate for its files.

(p) **Animal pharmaceuticals.** RCW 82.08.880 and 82.12.880 exempt from retail sales and use taxes the sale of and use of certain animal pharmaceuticals (~~(are exempt from retail sales and use taxes)~~) when sold to, or used by, farmers or veterinarians. (~~(RCW 82.08.880 and 82.12.880.)~~) To qualify for the exemption, the animal pharmaceutical must be administered to an animal that is raised by a farmer for the purpose of producing an agricultural product for sale. Also, the animal pharmaceutical must be approved by the United States Department of Agriculture (USDA) or the United States Food and Drug Administration (FDA).

~~((This exemption became effective August 1, 2001, and is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.))~~

(i) ~~((**What**))~~ **Who is a (")veterinarian(")?** A "veterinarian" means a person who is licensed to practice veterinary medicine, surgery, or dentistry under chapter 18.92 RCW.

(ii) **How can I determine whether the FDA or USDA has approved an animal pharmaceutical?** The FDA and USDA have an established approval process set forth in federal regulations. The FDA maintains a list of all approved animal pharmaceuticals called the "*Green Book*." The USDA maintains a list of approved biotechnology products called the "*Veterinary Biologics Product Catalogue*." Pharmaceuticals that are not on either of these lists have not been approved and are not eligible for the exemption.

(iii) **Example 17.** Dairy Farmer purchases sterilizing agents. The sterilizing agents are applied to the equipment and facilities where Dairy Farmer's cows are milked. Dairy Farmer also purchases teat dips, antiseptic udder washes, and salves that are not listed in either the FDA's *Green Book* of approved animal pharmaceuticals or the USDA's *Veterinary Biologics Product Catalogue* of approved biotechnology products. The purchases of sterilizing agents are not exempt as animal pharmaceuticals because the sterilizing agents are not administered to animals. The teat dips, antiseptic udder

washes, and salves are likewise not exempt because they have not been approved by the FDA or USDA. ~~((This is the case even if these products are approved by the United States Environmental Protection Agency or any other governmental agency.))~~

(iv) **What type of animal must the pharmaceutical be administered to?** As ~~((noted))~~ explained above, the exemptions ~~((is))~~ are limited to the sale ~~((and/or))~~ and use of animal pharmaceuticals administered to an animal that is raised by a farmer for the purpose of producing an agricultural product for sale. The conditions under which a farmer may purchase and use tax-exempt animal pharmaceuticals are similar to those under which a farmer may purchase and use feed at wholesale. Both types of purchases and uses require that the particular product be sold to or used by a farmer (or a veterinarian in the case of animal pharmaceuticals), and that the product be given or administered to an animal raised by a farmer for the purpose of producing an agricultural product for sale.

(v) **Examples of animals raised for the purpose of producing agricultural products for sale.** ~~((The animal pharmaceutical exemption is available in the following non-exclusive list of examples because the))~~ For purposes of the exemptions, the following is a nonexclusive list of examples of animals that are being raised for the purpose of producing an agricultural product for sale, presuming all other requirements for the exemption are met:

(A) Horses, cattle, or other livestock raised by a farmer for sale;

(B) Cattle raised by a farmer for the purpose of slaughtering, if the resulting products are sold;

(C) Milk cows raised and/or used by a dairy farmer for the purpose of producing milk for sale;

(D) Horses raised by a farmer for the purpose of producing foals for sale;

(E) Sheep raised by a farmer for the purpose of producing wool for sale; and

(F) "Private sector cultured aquatic products" as defined by RCW 15.85.020 (e.g., salmon, catfish, and mussels) raised by an aquatic farmer for the purpose of sale.

(vi) **Examples of animals that are not raised for the purpose of producing agricultural products for sale.** ~~((The animal pharmaceutical exemption is not available in))~~ For purposes of the exemptions, the following nonexclusive list of examples do not qualify because the animals are not being raised for the purpose of producing an agricultural product for sale:

(A) Cattle raised for the purpose of slaughtering if the resulting products are not produced for sale;

(B) Sheep and other livestock raised as pets;

(C) Dogs or cats, whether raised as pets or for sale. Dogs and cats are pet animals; therefore, they are not considered to be agricultural products. (See subsection (3) of this rule); and

(D) Horses raised for the purpose of racing, showing, riding, and jumping. However, if at some future time ~~((in the future))~~ the horses are no longer raised for racing, showing, riding, or jumping and are instead being raised by a farmer for the purpose of producing foals for sale, the exemption will apply if all other requirements for the exemption are met.

(vii) **Do products that are used to administer animal pharmaceuticals qualify for the exemption?** Sales and uses of products that are used to administer animal pharmaceuticals (e.g., syringes) do not qualify for the exemptions, even if they are later used to administer a tax-exempt animal pharmaceutical. However, sales and uses of tax-exempt animal pharmaceuticals contained in a product used to administer the animal pharmaceutical (e.g., a dose of a tax-exempt pharmaceutical contained in a syringe or cotton applicator) ~~((do))~~ qualify for the exemption.

(q) Replacement parts for qualifying farm machinery and equipment. RCW 82.08.855 and 82.12.855 exempt from retail sales and use taxes sales to and uses by eligible farmers of replacement parts for qualifying farm machinery and equipment. Also included are: Labor and services rendered during the installation of repair parts; and labor and services rendered during repair as long as no tangible personal property is installed, incorporated, or placed in, or becomes an ingredient or component of the qualifying equipment other than replacement parts.

(i) The following definitions apply to this subsection:

(A) "Eligible farmer" as defined in RCW 82.08.855(4).

(B) "Qualifying farm machinery and equipment" means machinery and equipment used primarily by an eligible farmer for growing, raising, or producing agricultural products.

(C) "Qualifying farm machinery and equipment" does not include:

- Vehicles as defined in RCW 46.04.670, other than farm tractors as defined in RCW 46.04.180, farm vehicles and other farm implements. "Farm implements" means machinery or equipment manufactured, designed, or reconstructed for agricultural purposes and used primarily by an eligible farmer to grow, raise, or produce agricultural products, but does not include lawn tractors and all-terrain vehicles;

- Aircraft;

- Hand tools and hand-powered tools; and

- Property with a useful life of less than one year.

(D) "Replacement parts" means those parts that replace an existing part, or which are essential to maintain the working condition, of a piece of qualifying farm machinery or equipment. Paint, fuel, oil, hydraulic fluids, antifreeze, and similar items are not replacement parts except when installed, incorporated, or placed in qualifying farm machinery and equipment during the course of installing replacement parts as defined here or making repairs as described above in this subsection (6)(q) of this rule.

(ii) Exemption certificate. Prior to June 12, 2014, the department was required to provide an exemption certificate to an eligible farmer or renew an exemption certificate when the eligible farmer applied for a renewal. See the department's web site for the "Application for Exemption Certificate for Replacement Parts and/or Services for Farm Machinery and Equipment."

(A) Persons claiming the exemptions must keep records necessary for the department to verify eligibility. Eligible farmers must provide sellers with their department issued exemption certificate.

(B) The exemptions provided by RCW 82.08.890 and 82.12.890 do not apply to sales made from July 1, 2010, through June 30, 2013.

(7) Sales tax exemption certificates. As indicated in subsection (6) of this rule, certain sales of tangible personal property and retail services either to or by farmers are exempt from retail sales tax. A person claiming an exemption must keep records necessary for the department to verify eligibility for each claimed exemption. Except as provided below, for those exemptions that require the buyer to provide the seller with an exemption certificate at the time of sale, farmers may use the department's (~~"Farmers' Retail Sales Tax Exemption Certificate" or another certificate with substantially the same information as it relates to the claimed exemption~~) Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Refer to the department's web site at dor.wa.gov for the exemption certificate. In lieu of an exemption certificate, a seller may capture the relevant data elements as provided under the streamlined sales and use tax agreement as allowed under RCW 82.08.050. Sellers must retain a copy of the exemption certificate or the data elements in their files. Without proper documentation, sellers are liable for payment of the retail sales tax on sales claimed as exempt.

~~((The Farmers' Retail Sales Tax Exemption Certificate cannot be used for the dairy nutrient management exemption discussed in subsection (6)(m) of this rule. However, as noted above, the department will provide eligible persons, upon application, with an exemption certificate for this exemption. The Farmers' Retail Sales Tax Exemption Certificate and a sample letter for use in applying for the Dairy Nutrient Management Exemption Certificate can be obtained by calling the department's taxpayer information center at 1-800-647-7706. These documents can also be downloaded from the department's web site at <http://dor.wa.gov>.) Effective June 12, 2014, chapter 97, Laws of 2014, § 602 removed the requirement for the department to issue certificates for RCW 82.08.890 when qualified farmers applied for them. Sellers making tax-exempt sales of livestock nutrient management equipment may obtain a Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions certificate from the buyer in lieu of the department issued certificate. A seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement in lieu of the exemption certificate. The department is still required to issue an exemption certificate to eligible persons for exemptions under RCW 82.08.900.~~

WSR 14-14-092

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed June 30, 2014, 10:46 a.m., effective July 31, 2014]

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

Purpose: The rule-making effort amended WAC 458-20-245, presently entitled "Telephone business, telephone service" and to update it to present technology with the new title of: "Taxation of competitive telephone service, telecommunications service, and ancillary service." This updating of the

rule also incorporates the legislative changes from chapter 8, Laws of 2013 2nd sp. sess., 63rd Legislature.

This rule making identifies what constitutes competitive telephone services, telecommunications services, and ancillary services; how these products are taxed; and the statutes that apply for determining if the sales of these products are subject to taxation in Washington state, including issues of sourcing and apportionment. This rule applies to tax periods commencing on or after July 1, 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-245 Taxation of competitive telephone service, telecommunications service, and ancillary service.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 82.04.065 and 82.08.190.

Adopted under notice filed as WSR 14-05-052 on February 14, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: June 30, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 83-17-099, filed 8/23/83)

~~WAC 458-20-245 ((Telephone business, telephone service.)) Taxation of competitive telephone service, telecommunications service, and ancillary service. ((Under the provisions of various sections of chapter 3, Laws of 1983 2nd ex. sess., the retail sales tax is extended to "telephone service." The effective date is July 1, 1983 and the tax applies to all sales of "telephone service" billed on or after that date, whether or not such service was rendered before that date.~~

~~Persons engaged in the "telephone business" or rendering "telephone service" are taxable under the retailing of wholesaling classification of the business and occupation tax, whichever is applicable, on total gross revenues, as described herein. Such persons who are taxable under retailing must also collect retail sales tax from consumers, subject to certain exemptions explained more fully herein.~~

Definitions

~~As used herein: The term "telephone service" includes competitive telephone service and network telephone service.~~

The term "telephone business" means the business of providing network telephone service and includes cooperative or farmers line telephone companies or associations operating an exchange.

The term "competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as installation, repair, or maintenance services, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW.

The term "network telephone service" means the providing by any person of access to a local telephone network, switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, over a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes interstate service, including toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio or television stations.

The term "residential customer" means an individual subscribing to a residential class of telephone service.

The term "toll service" means the charge for services outside the local telephone network except customer access line charges for access to a toll calling network.

The term "telephone company" means a person engaged in the telephone business or rendering telephone service.

Business and Occupation Tax

Retailing and wholesaling. Persons making retail sales of telephone service to consumers are taxable upon the gross proceeds of sales under the retailing classification. Persons making sales of telephone services for resale in the regular course of business are taxable upon the gross proceeds of sales under the wholesaling classification. The tax shall apply to the gross income from all sales of competitive telephone service and network telephone service, as described more fully below.

For purposes of applying the business and occupation tax to telephone service, a sale takes place in Washington when a call originates from or is received on any telephone or other telecommunications equipment, instrument, or apparatus in Washington and the cost for the telephone service is charged to that equipment, instrument, or apparatus, regardless of where the actual billing invoice is sent.

The business and occupation tax shall apply to the gross proceeds of sales of competitive telephone service to customers. The tax shall be measured by total gross billings to such customers. The business and occupation tax shall also apply to the gross proceeds of sales of network telephone service, other than interstate and intrastate toll service, measured by total gross billings to customers. The tax as applied to interstate and intrastate service, including toll service, shall be determined under the apportionment guidelines set forth in the following paragraph.

With respect to interstate and intrastate toll service, the business and occupation tax shall apply to the income received from the interstate or intrastate division of revenue pool. The income subject to tax shall include amounts received for expenses incurred in furnishing the interstate or intrastate services plus any amounts received as return. Persons who are not members of the interstate or intrastate division of revenue pool but who receive shared interstate or intrastate revenues through a member of the division of revenue pool, are liable for business and occupation tax on the income received.

Persons engaged in the telephone business or rendering telephone service shall report on the combined excise tax return their total gross income received from billings to customers under column 2 of the appropriate classification line on the return (wholesaling or retailing). An adjustment may be made under column 3 of the excise tax return for revenues received from providing interstate and intrastate toll service, as described in the previous paragraph. On the reverse side of the return it should be explained that such adjustment was the result of income received from the interstate or intrastate division of revenue pool. The reported gross income under column 2 shall be the same under the retailing business and occupation tax and retail sales tax classifications, with appropriate adjustments and deductions noted under column 3.

Service. Persons engaged in the telephone business or rendering telephone service are taxable under the service and other activities classification on their income from services which are not included within the definition of the terms "sale at retail" in RCW 82.04.050 or "competitive telephone service" and "network telephone service," as defined herein. Included under this classification are, among others, gross income from the sale of advertising in telephone directories; gross income from charges made for processing NSF checks; and any other miscellaneous income.

Retail Sales Tax

The retail sales tax applies to all sales of competitive telephone service provided to both residential and business (nonresidential) customers. The retail sales tax also applies to all sales of network telephone service provided to business (nonresidential) customers.

The retail sales tax applies upon sales to a telephone company of all tangible personal property used as a consumer in providing telephone service. A consumer is liable for retail sales tax on all telephone service, as described herein, in situations where the tax was not paid to a telephone company as a result of a billing or other invoice rendered by that company.

The retail sales tax must be collected and accounted for in every case where retailing business and occupation tax is due as outlined herein, except for the following. The retail sales tax shall not apply to sales of network telephone service, other than toll service, provided to residential customers nor to sales of network telephone service paid for by inserting coins in coin-operated telephones.

The retail sales tax does not apply to sales of network telephone service, other than toll service, provided to residential customers.

The retail sales tax does not apply to sales of network telephone service which is paid for by inserting coins in coin-operated telephones. However, the retail sales tax does apply if the network telephone service is provided through a coin-operated telephone, the service originates from or is received on equipment in this state, and the charge for the service is billed to a telephone or other telecommunications equipment, instrument, or apparatus which is located in Washington.

The sales tax does not apply to network telephone service which is merely billed to a telephone or other telecommunications equipment, instrument, or apparatus whose situs is in Washington if the service neither originated from nor was received on equipment in this state.

Use Tax

The use tax applies to telephone or other telecommunications equipment, instrument, or apparatus purchased at retail and upon which the sales tax has not been paid. (See WAC 458-20-178.) A telephone company is liable for use tax on all tangible personal property purchased at retail and upon which the sales tax has not been paid. A telephone company is not liable for use tax on its own use as a consumer of its own network telephone service.

Special Situations

Persons making sales of telephone service for resale in the regular course of business must follow the provisions of WAC 458-20-102 concerning resale certificates.

The local retail sales tax applies to sales of telephone services as described herein. (See WAC 458-20-145.)

Persons engaged in telephone business or rendering telephone service are not taxable under the public utility tax, except with respect to gross income from engaging in telegraph or any other public service business as defined in WAC 458-20-179.

All retail telephone services including sales of equipment are taxable at the same state retail sales tax rate of 6.5 percent, regardless that such sales may be made in a border county. (See WAC 458-20-237.) This rule identifies what constitutes competitive telephone services, telecommunications services, and ancillary services; how these products are taxed; and the statutes that apply for determining if the sale of these products are subject to taxation in Washington (sourcing and apportionment). The rule applies to tax periods commencing on or after July 1, 2008. This rule is divided into three parts as follows:

- Part I: What are competitive telephone services, telecommunications services, and ancillary services?
- Part II: How are competitive telephone services, telecommunications services, and ancillary services taxed in Washington?
- Part III: When is the sale of competitive telephone services, telecommunications services, or ancillary services subject to taxation in Washington (sourcing and apportionment)?

Part I: What are competitive telephone services, telecommunications services, and ancillary services?

(101) **Introduction.** Washington law imposes tax on the three following distinct products: Competitive telephone service, telecommunications service, and ancillary service. Sub-

sections (102), (103), and (104) of this section describe these three services. The statutes for the 911 tax and the prepaid wireless 911 tax are not addressed in this rule and are found in chapter 82.14B RCW, with the definitions found in RCW 82.14B.020.

(102) What is a competitive telephone service? A "competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as installation, repair, or maintenance services, if the equipment or apparatus is of a type that can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW. See RCW 82.04.065.

(103) What is a telecommunications service? A "telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. Telecommunications service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. See RCW 82.04.065.

(a) What services are included within the definition of telecommunications service? Table A below provides a nonexclusive list of services considered to be telecommunications services in Washington.

Table A

Type of Service	Description
800 Service	A service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers designated by the federal communications commission.
900 Service	An inbound toll service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: Collection services provided by the seller of the telecommunications services to the subscriber or services or products sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900 service," and any subsequent numbers designated by the federal communications commission.

<u>Type of Service</u>	<u>Description</u>
<u>Fixed wireless service</u>	<u>A service that provides radio communication between fixed points.</u>
<u>Mobile telecommunications service</u>	<u>A commercial mobile radio service, as defined in Title 47 C.F.R., Section 20.3 as in effect on June 1, 1999.</u>
<u>Mobile wireless service</u>	<u>A service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance, or routing are not fixed including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.</u>
<u>Paging service</u>	<u>A service that provides transmission of coded radio signals, which may include messages or sounds, for the purpose of activating specific pagers.</u>
<u>Private communications service</u>	<u>A service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels.</u>
<u>Value-added non-voice data service</u>	<u>A service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.</u>
<u>Prepaid calling service</u>	<u>Means the right to access exclusively telecommunications services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of</u>

<u>Type of Service</u>	<u>Description</u>
	<u>which the number declines with use in a known amount.</u>
<u>Prepaid telephone calling service</u>	<u>Means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.</u>
<u>Prepaid wireless calling service</u>	<u>Means a service that provides the right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.</u>

(b) What services or items are excluded from the definition of telecommunications service? Table B below provides a list of services or items not considered to be telecommunications services in Washington.

Table B

<u>Item</u>	<u>Description</u>
<u>Data processing and information services</u>	<u>Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information.</u>
<u>Tangible personal property</u>	<u>Tangible personal property.</u>
<u>Advertising</u>	<u>Advertising services including, but not limited to, directory advertising.</u>
<u>Billing and collection</u>	<u>Billing and collection services provided to third parties.</u>
<u>Internet access</u>	<u>Internet access. See RCW 82.04.297.</u>

<u>Item</u>	<u>Description</u>
<u>Audio and video programming</u>	<u>Radio and television audio and video programming services, regardless of the medium, including furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include, but are not limited to, cable service as defined in 47 U.S.C. Section 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in Title 47 C.F.R., Section 20.3.</u>
<u>Ancillary services</u>	<u>Ancillary services. See subsection (104) of this section.</u>
<u>Digital products</u>	<u>Digital products delivered electronically including, but not limited to, music, video, reading materials, or ring tones.</u>
<u>Software</u>	<u>Software delivered electronically.</u>

(104) **What is an ancillary service?** An ancillary service is a service associated with or incidental to the provision of a telecommunications service.

What services are considered to be ancillary services? Table C below provides a nonexclusive list of services considered to be ancillary services in Washington.

Table C

<u>Type of Ancillary Service</u>	<u>Description</u>
<u>Conference bridging</u>	<u>A service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. "Conference bridging service" does not include the telecommunications services used to reach the conference bridge.</u>
<u>Detailed telecommunications billing</u>	<u>A service of separately stating information pertaining to individual calls on a customer's billing statement.</u>
<u>Directory assistance</u>	<u>A service of providing telephone number information and/or address information.</u>

<u>Type of Ancillary Service</u>	<u>Description</u>
<u>Vertical service</u>	<u>A service that is offered in connection with one or more telecommunications services that offers advanced calling features allowing customers to identify callers and to manage multiple calls and call connections, including conference bridging services.</u>
<u>Voice mail</u>	<u>A service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to use the voice mail service.</u>

Part II: How are competitive telephone services, telecommunications services, and ancillary services taxed in Washington?

(201) **Introduction.** Washington law imposes tax on the three following distinct products: Competitive telephone service, telecommunications service, and ancillary service.

(202) **Are competitive telephone services, telecommunications services, and ancillary services taxable in Washington?** Yes. The sale of a competitive telephone service, telecommunications service, and ancillary service to a consumer is a retail sale. See RCW 82.04.050. A sale of these same services that is not a retail sale constitutes a wholesale sale (a sale for resale). See RCW 82.04.060. Washington imposes taxes on retail and wholesale sales of these services as follows:

(a) **Retail sales tax:** The retail sale of any of these services is subject to the retail sales tax unless an exemption applies. See RCW 82.04.050, 82.04.190, and 82.08.020. Generally, the retail sales tax is paid by the consumer and collected and remitted by the seller. Exemptions for local service and coin-operated telephone service, previously provided by RCW 82.08.0289, expired August 1, 2013.

(b) **Retailing business and occupation (B&O) tax classification:** Persons making retail sales of any of these services are subject to the B&O tax on the gross proceeds of these sales under the retailing classification. See RCW 82.04.050, 82.04.190, and 82.04.250.

(c) **Wholesaling B&O tax classification:** Persons making sales of the services for resale in the regular course of business are subject to tax on the gross proceeds of these sales under the wholesaling classification. See RCW 82.04.060 and 82.04.270. See WAC 458-20-102 for information on how sales for resale are administered by the department.

(d) **Deferred retail sales tax:** If the seller does not collect retail sales tax, a buyer who is not reselling the products must pay the retail sales tax (commonly referred to as "deferred retail sales tax"), unless the specific services purchased are exempt under the law.

(e) **Local retail sales tax:** The services are subject to sales tax in local jurisdictions that impose a retail sales tax. See RCW 82.14.030.

(203) **Tangible personal property used in providing competitive telephone service, telecommunications service, and ancillary service.** The retail sales tax applies to sales to a provider of telecommunications service, competitive telephone service, or ancillary service of all tangible personal property used as a consumer in providing these services.

(204) **How are "bundled transactions" containing telecommunications or ancillary services treated for sales tax purposes?** The taxability of bundled transactions is addressed in RCW 82.08.190 and 82.08.195. This subsection (204)(a), (b), and (c) of this section briefly describe what a bundled transaction is and how these transactions are treated for sales tax purposes.

(a) **What is a "bundled transaction"?** A bundled transaction refers to the retail sale of two or more products, except real property and services to real property, if:

(i) The products are otherwise distinct and identifiable; and

(ii) The products are sold for one nonitemized price.

(b) **What is not a "bundled transaction"?** A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction. There are a number of specified transactions that otherwise meet the definition of a bundled transaction, but that are not considered to be bundled transactions for Washington state tax purposes. For more information about these exclusions please see RCW 82.08.190(4).

(c) **How are "bundled transactions" taxed?** Under statute, if a transaction contains one or more products that is subject to retail sales tax, the entire bundled transaction will be subject to retail sales tax. Because both telecommunications service and ancillary service are subject to retail sales tax in Washington, a transaction that contains one of these services will generally be fully subject to retail sales tax. However, if the price of a bundled transaction includes charges for telecommunications service or ancillary service and products that are not retail sales taxable:

(i) Then the portion of the price attributable to the nontaxable products is subject to the retail sales tax;

(ii) Unless the seller can identify by reasonable and verifiable standards, the nontaxable portion from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes.

Part III: How is the sale of competitive telephone services, telecommunications services or ancillary services sourced?

(301) **Sourcing and apportionment.** This section provides references to the rules for determining if the sale of competitive telephone service, telecommunications service, or ancillary service is deemed to take place (sourced) in Washington and is subject to the retail sales tax and the rules for determining when the gross proceeds from the sale of these services is apportioned to and taxable under Washington's retailing and wholesaling B&O tax classifications.

(a) **Retail sales tax:** RCW 82.32.520 and 82.32.730 provide the rules that must be used for determining when a sale of competitive telephone services, telecommunications services, or ancillary services is sourced to and subject to retail sales tax in Washington.

(b) **Retailing and wholesaling B&O tax:** RCW 82.04.530 and 82.04.535 provide the rules for determining when gross proceeds from the sale of telecommunications service or ancillary service must be apportioned to and subject to Washington wholesaling and retailing B&O tax classifications.

(302) **Does Washington's public utility tax apply?** Persons engaged in providing competitive telephone services, telecommunications services, and ancillary services are not taxable under the public utility tax, except with respect to gross income from engaging in telegraph or any other public service business as defined in WAC 458-20-179. See RCW 82.04.310 and 82.16.020.

WSR 14-14-095

PERMANENT RULES

TRANSPORTATION COMMISSION

[Filed June 30, 2014, 12:21 p.m., effective July 1, 2014]

Effective Date of Rule: July 1, 2014.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: These rate changes change starting on July 1, 2014, as required in RCW 47.56.785 and per the schedule created by the transportation commission.

Purpose: The commission must consider toll rates that will help maintain travel time, speed, and reliability on the SR 520 corridor and must set and adjust toll rates to generate revenue sufficient and necessary to cover costs and obligations described in RCW 47.56.830 and 47.56.850.

WAC 468-270-040, as adopted by the Washington state transportation commission on January 5, 2011, and filed under WSR 11-04-007, January 20, 2011, provides that "Starting July 1, 2012, the toll rates will increase two and one-half percent annually, subject to review and potential adjustment by the commission, in order to generate toll revenue sufficient to meet the costs and obligations listed in RCW 47.56.830 through 47.56.850."

This is a clarifying amendment that updates the toll rate tables in WAC 468-270-071 to reflect the average annual two and one-half percent increase adopted in 2011 and does not change the toll rules effect or otherwise make any substantive changes to the rule.

Citation of Existing Rules Affected by this Order: Amending 468-270-071.

Statutory Authority for Adoption: RCW 47.56.785, 47.56.795, 47.56.830, 47.56.850, 47.56.870.

Adopted under notice filed as WSR 14-09-059 on April 16, 2014.

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

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

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

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

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

Date Adopted: June 30, 2014.

Reema Griffith
Executive Director

AMENDATORY SECTION (Amending WSR 13-12-005, filed 5/23/13, effective 7/1/13)

WAC 468-270-071 What are the toll rates on the SR 520 Bridge? Tables 3 through 7 show the applicable toll rates by vehicle axles, day and time of travel, and method of payment.

**TABLE 3
SR 520 BRIDGE
TWO-AXLE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.	\$(1.70) <u>1.75</u>	\$(3.25) <u>3.35</u>	\$(1.95) <u>2.00</u>	\$(2.75) <u>2.85</u>
6 a.m. to 7 a.m.	\$(2.95) <u>3.00</u>	\$(4.50) <u>4.60</u>	\$(3.20) <u>3.25</u>	\$(4.00) <u>4.10</u>
7 a.m. to 9 a.m.	\$(3.70) <u>3.80</u>	\$(5.25) <u>5.40</u>	\$(3.95) <u>4.05</u>	\$(4.75) <u>4.90</u>
9 a.m. to 10 a.m.	\$(2.95) <u>3.00</u>	\$(4.50) <u>4.60</u>	\$(3.20) <u>3.25</u>	\$(4.00) <u>4.10</u>
10 a.m. to 2 p.m.	\$(2.35) <u>2.40</u>	\$(3.95) <u>4.05</u>	\$(2.60) <u>2.65</u>	\$(3.45) <u>3.55</u>
2 p.m. to 3 p.m.	\$(2.95) <u>3.00</u>	\$(4.50) <u>4.60</u>	\$(3.20) <u>3.25</u>	\$(4.00) <u>4.10</u>
3 p.m. to 6 p.m.	\$(3.70) <u>3.80</u>	\$(5.25) <u>5.40</u>	\$(3.95) <u>4.05</u>	\$(4.75) <u>4.90</u>
6 p.m. to 7 p.m.	\$(2.95) <u>3.00</u>	\$(4.50) <u>4.60</u>	\$(3.20) <u>3.25</u>	\$(4.00) <u>4.10</u>
7 p.m. to 9 p.m.	\$(2.35) <u>2.40</u>	\$(3.95) <u>4.05</u>	\$(2.60) <u>2.65</u>	\$(3.45) <u>3.55</u>
9 p.m. to 11 p.m.	\$(1.70) <u>1.75</u>	\$(3.25) <u>3.35</u>	\$(1.95) <u>2.00</u>	\$(2.75) <u>2.85</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Saturdays and Sundays⁴	Good To Go!TM Pass¹	Pay By Mail¹	Pay By Plate²	Short-Term Account³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.	\$(1.15) <u>1.20</u>	\$(2.75) <u>2.80</u>	\$(1.40) <u>1.45</u>	\$(2.25) <u>2.30</u>
8 a.m. to 11 a.m.	\$(1.75) <u>1.80</u>	\$(3.30) <u>3.40</u>	\$(2.00) <u>2.05</u>	\$(2.80) <u>2.90</u>
11 a.m. to 6 p.m.	\$(2.30) <u>2.35</u>	\$(3.90) <u>4.00</u>	\$(2.55) <u>2.60</u>	\$(3.40) <u>3.50</u>
6 p.m. to 9 p.m.	\$(1.75) <u>1.80</u>	\$(3.30) <u>3.40</u>	\$(2.00) <u>2.05</u>	\$(2.80) <u>2.90</u>

Saturdays and Sundays ⁴	Good To Go! TM Pass ¹	Pay By Mail ¹	Pay By Plate ²	Short-Term Account ³
9 p.m. to 11 p.m.	\$((1.15)) <u>1.20</u>	\$((2.75)) <u>2.80</u>	\$((1.40)) <u>1.45</u>	\$((2.25)) <u>2.30</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.

²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.

⁴The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 4
SR 520 BRIDGE
THREE-AXLE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go! TM Pass ¹	Pay By Mail ¹	Pay By Plate ²	Short-Term Account ³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.	\$((2.50)) <u>2.55</u>	\$((4.90)) <u>5.00</u>	\$((2.75)) <u>2.80</u>	\$((4.40)) <u>4.50</u>
6 a.m. to 7 a.m.	\$((4.40)) <u>4.50</u>	\$((6.80)) <u>6.95</u>	\$((4.65)) <u>4.75</u>	\$((6.30)) <u>6.45</u>
7 a.m. to 9 a.m.	\$((5.50)) <u>5.65</u>	\$((7.90)) <u>8.10</u>	\$((5.75)) <u>5.90</u>	\$((7.40)) <u>7.60</u>
9 a.m. to 10 a.m.	\$((4.40)) <u>4.50</u>	\$((6.80)) <u>6.95</u>	\$((4.65)) <u>4.75</u>	\$((6.30)) <u>6.45</u>
10 a.m. to 2 p.m.	\$((3.60)) <u>3.70</u>	\$((5.95)) <u>6.10</u>	\$((3.85)) <u>3.95</u>	\$((5.45)) <u>5.60</u>
2 p.m. to 3 p.m.	\$((4.40)) <u>4.50</u>	\$((6.80)) <u>6.95</u>	\$((4.65)) <u>4.75</u>	\$((6.30)) <u>6.45</u>
3 p.m. to 6 p.m.	\$((5.50)) <u>5.65</u>	\$((7.90)) <u>8.10</u>	\$((5.75)) <u>5.90</u>	\$((7.40)) <u>7.60</u>
6 p.m. to 7 p.m.	\$((4.40)) <u>4.50</u>	\$((6.80)) <u>6.95</u>	\$((4.65)) <u>4.75</u>	\$((6.30)) <u>6.45</u>
7 p.m. to 9 p.m.	\$((3.60)) <u>3.70</u>	\$((5.95)) <u>6.10</u>	\$((3.85)) <u>3.95</u>	\$((5.45)) <u>5.60</u>
9 p.m. to 11 p.m.	\$((2.50)) <u>2.55</u>	\$((4.90)) <u>5.00</u>	\$((2.75)) <u>2.80</u>	\$((4.40)) <u>4.50</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Saturdays and Sundays ⁴	Good To Go! TM Pass ¹	Pay By Mail ¹	Pay By Plate ²	Short-Term Account ³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.	\$((1.75)) <u>1.80</u>	\$((4.10)) <u>4.20</u>	\$((2.00)) <u>2.05</u>	\$((3.60)) <u>3.70</u>
8 a.m. to 11 a.m.	\$((2.60)) <u>2.65</u>	\$((5.00)) <u>5.15</u>	\$((2.85)) <u>2.90</u>	\$((4.50)) <u>4.65</u>
11 a.m. to 6 p.m.	\$((3.45)) <u>3.55</u>	\$((5.85)) <u>6.00</u>	\$((3.70)) <u>3.80</u>	\$((5.35)) <u>5.50</u>
6 p.m. to 9 p.m.	\$((2.60)) <u>2.65</u>	\$((5.00)) <u>5.15</u>	\$((2.85)) <u>2.90</u>	\$((4.50)) <u>4.65</u>

Saturdays and Sundays ⁴	Good To Go! TM Pass ¹	Pay By Mail ¹	Pay By Plate ²	Short-Term Account ³
9 p.m. to 11 p.m.	\$((1.75)) <u>1.80</u>	\$((4.10)) <u>4.20</u>	\$((2.00)) <u>2.05</u>	\$((3.60)) <u>3.70</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.

²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.

⁴The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 5
SR 520 BRIDGE
FOUR-AXLE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go! TM Pass ¹	Pay By Mail ¹	Pay By Plate ²	Short-Term Account ³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.	\$((3.35)) <u>3.45</u>	\$((6.50)) <u>6.65</u>	\$((3.60)) <u>3.70</u>	\$((6.00)) <u>6.15</u>
6 a.m. to 7 a.m.	\$((5.90)) <u>6.05</u>	\$((9.05)) <u>9.30</u>	\$((6.15)) <u>6.30</u>	\$((8.55)) <u>8.80</u>
7 a.m. to 9 a.m.	\$((7.35)) <u>7.55</u>	\$((10.50)) <u>10.75</u>	\$((7.60)) <u>7.80</u>	\$((10.00)) <u>10.25</u>
9 a.m. to 10 a.m.	\$((5.90)) <u>6.05</u>	\$((9.05)) <u>9.30</u>	\$((6.15)) <u>6.30</u>	\$((8.55)) <u>8.80</u>
10 a.m. to 2 p.m.	\$((4.75)) <u>4.85</u>	\$((7.90)) <u>8.10</u>	\$((5.00)) <u>5.10</u>	\$((7.40)) <u>7.60</u>
2 p.m. to 3 p.m.	\$((5.90)) <u>6.05</u>	\$((9.05)) <u>9.30</u>	\$((6.15)) <u>6.30</u>	\$((8.55)) <u>8.80</u>
3 p.m. to 6 p.m.	\$((7.35)) <u>7.55</u>	\$((10.50)) <u>10.75</u>	\$((7.60)) <u>7.80</u>	\$((10.00)) <u>10.25</u>
6 p.m. to 7 p.m.	\$((5.90)) <u>6.05</u>	\$((9.05)) <u>9.30</u>	\$((6.15)) <u>6.30</u>	\$((8.55)) <u>8.80</u>
7 p.m. to 9 p.m.	\$((4.75)) <u>4.85</u>	\$((7.90)) <u>8.10</u>	\$((5.00)) <u>5.10</u>	\$((7.40)) <u>7.60</u>
9 p.m. to 11 p.m.	\$((3.35)) <u>3.45</u>	\$((6.50)) <u>6.65</u>	\$((3.60)) <u>3.70</u>	\$((6.00)) <u>6.15</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Saturdays and Sundays ⁴	Good To Go! TM Pass ¹	Pay By Mail ¹	Pay By Plate ²	Short-Term Account ³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.	\$((2.30)) <u>2.35</u>	\$((5.45)) <u>5.60</u>	\$((2.55)) <u>2.60</u>	\$((4.95)) <u>5.10</u>
8 a.m. to 11 a.m.	\$((3.45)) <u>3.55</u>	\$((6.60)) <u>6.75</u>	\$((3.70)) <u>3.80</u>	\$((6.10)) <u>6.25</u>
11 a.m. to 6 p.m.	\$((4.60)) <u>4.70</u>	\$((7.80)) <u>8.00</u>	\$((4.85)) <u>4.95</u>	\$((7.30)) <u>7.50</u>
6 p.m. to 9 p.m.	\$((3.45)) <u>3.55</u>	\$((6.60)) <u>6.75</u>	\$((3.70)) <u>3.80</u>	\$((6.10)) <u>6.25</u>

Saturdays and Sundays ⁴	Good To Go! TM Pass ¹	Pay By Mail ¹	Pay By Plate ²	Short-Term Account ³
9 p.m. to 11 p.m.	\$((2.30)) <u>2.35</u>	\$((5.45)) <u>5.60</u>	\$((2.55)) <u>2.60</u>	\$((4.95)) <u>5.10</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

- Notes:
- ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
 - ²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
 - ³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.
 - ⁴The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 6
SR 520 BRIDGE
FIVE-AXLE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go! TM Pass ¹	Pay By Mail ¹	Pay By Plate ²	Short-Term Account ³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.	\$((4.20)) <u>4.30</u>	\$((8.15)) <u>8.35</u>	\$((4.45)) <u>4.55</u>	\$((7.65)) <u>7.85</u>
6 a.m. to 7 a.m.	\$((7.35)) <u>7.55</u>	\$((11.30)) <u>11.60</u>	\$((7.60)) <u>7.80</u>	\$((10.80)) <u>11.10</u>
7 a.m. to 9 a.m.	\$((9.20)) <u>9.45</u>	\$((13.15)) <u>13.50</u>	\$((9.45)) <u>9.70</u>	\$((12.65)) <u>13.00</u>
9 a.m. to 10 a.m.	\$((7.35)) <u>7.55</u>	\$((11.30)) <u>11.60</u>	\$((7.60)) <u>7.80</u>	\$((10.80)) <u>11.10</u>
10 a.m. to 2 p.m.	\$((5.95)) <u>6.10</u>	\$((9.90)) <u>10.15</u>	\$((6.20)) <u>6.35</u>	\$((9.40)) <u>9.65</u>
2 p.m. to 3 p.m.	\$((7.35)) <u>7.55</u>	\$((11.30)) <u>11.60</u>	\$((7.60)) <u>7.80</u>	\$((10.80)) <u>11.10</u>
3 p.m. to 6 p.m.	\$((9.20)) <u>9.45</u>	\$((13.15)) <u>13.50</u>	\$((9.45)) <u>9.70</u>	\$((12.65)) <u>13.00</u>
6 p.m. to 7 p.m.	\$((7.35)) <u>7.55</u>	\$((11.30)) <u>11.60</u>	\$((7.60)) <u>7.80</u>	\$((10.80)) <u>11.10</u>
7 p.m. to 9 p.m.	\$((5.95)) <u>6.10</u>	\$((9.90)) <u>10.15</u>	\$((6.20)) <u>6.35</u>	\$((9.40)) <u>9.65</u>
9 p.m. to 11 p.m.	\$((4.20)) <u>4.30</u>	\$((8.15)) <u>8.35</u>	\$((4.45)) <u>4.55</u>	\$((7.65)) <u>7.85</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Saturdays and Sundays ⁴	Good To Go! TM Pass ¹	Pay By Mail ¹	Pay By Plate ²	Short-Term Account ³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.	\$((2.90)) <u>2.95</u>	\$((6.85)) <u>7.00</u>	\$((3.15)) <u>3.20</u>	\$((6.35)) <u>6.50</u>
8 a.m. to 11 a.m.	\$((4.35)) <u>4.45</u>	\$((8.30)) <u>8.50</u>	\$((4.60)) <u>4.70</u>	\$((7.80)) <u>8.00</u>
11 a.m. to 6 p.m.	\$((5.80)) <u>5.95</u>	\$((9.70)) <u>9.95</u>	\$((6.05)) <u>6.20</u>	\$((9.20)) <u>9.45</u>
6 p.m. to 9 p.m.	\$((4.35)) <u>4.45</u>	\$((8.30)) <u>8.50</u>	\$((4.60)) <u>4.70</u>	\$((7.80)) <u>8.00</u>

Saturdays and Sundays ⁴	Good To Go! TM Pass ¹	Pay By Mail ¹	Pay By Plate ²	Short-Term Account ³
9 p.m. to 11 p.m.	\$((2.90)) <u>2.95</u>	\$((6.85)) <u>7.00</u>	\$((3.15)) <u>3.20</u>	\$((6.35)) <u>6.50</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.

²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.

⁴The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

**TABLE 7
SR 520 BRIDGE
SIX-AXLE OR MORE VEHICLE TOLL RATES**

Mondays through Fridays	Good To Go! TM Pass ¹	Pay By Mail ¹	Pay By Plate ²	Short-Term Account ³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 6 a.m.	\$((5.05)) <u>5.20</u>	\$((9.75)) <u>10.00</u>	\$((5.30)) <u>5.45</u>	\$((9.25)) <u>9.50</u>
6 a.m. to 7 a.m.	\$((8.85)) <u>9.05</u>	\$((13.55)) <u>13.90</u>	\$((9.10)) <u>9.30</u>	\$((13.05)) <u>13.40</u>
7 a.m. to 9 a.m.	\$((11.05)) <u>11.35</u>	\$((15.75)) <u>16.15</u>	\$((11.30)) <u>11.60</u>	\$((15.25)) <u>15.65</u>
9 a.m. to 10 a.m.	\$((8.85)) <u>9.05</u>	\$((13.55)) <u>13.90</u>	\$((9.10)) <u>9.30</u>	\$((13.05)) <u>13.40</u>
10 a.m. to 2 p.m.	\$((7.10)) <u>7.30</u>	\$((11.80)) <u>12.10</u>	\$((7.35)) <u>7.55</u>	\$((11.30)) <u>11.60</u>
2 p.m. to 3 p.m.	\$((8.85)) <u>9.05</u>	\$((13.55)) <u>13.90</u>	\$((9.10)) <u>9.30</u>	\$((13.05)) <u>13.40</u>
3 p.m. to 6 p.m.	\$((11.05)) <u>11.35</u>	\$((15.75)) <u>16.15</u>	\$((11.30)) <u>11.60</u>	\$((15.25)) <u>15.65</u>
6 p.m. to 7 p.m.	\$((8.85)) <u>9.05</u>	\$((13.55)) <u>13.90</u>	\$((9.10)) <u>9.30</u>	\$((13.05)) <u>13.40</u>
7 p.m. to 9 p.m.	\$((7.10)) <u>7.30</u>	\$((11.80)) <u>12.10</u>	\$((7.35)) <u>7.55</u>	\$((11.30)) <u>11.60</u>
9 p.m. to 11 p.m.	\$((5.05)) <u>5.20</u>	\$((9.75)) <u>10.00</u>	\$((5.30)) <u>5.45</u>	\$((9.25)) <u>9.50</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

Saturdays and Sundays ⁴	Good To Go! TM Pass ¹	Pay By Mail ¹	Pay By Plate ²	Short-Term Account ³
Midnight to 5 a.m.	\$0.00	\$0.00	\$0.00	\$0.00
5 a.m. to 8 a.m.	\$((3.45)) <u>3.55</u>	\$((8.20)) <u>8.40</u>	\$((3.70)) <u>3.80</u>	\$((7.70)) <u>7.90</u>
8 a.m. to 11 a.m.	\$((5.20)) <u>5.35</u>	\$((9.95)) <u>10.20</u>	\$((5.45)) <u>5.60</u>	\$((9.45)) <u>9.70</u>
11 a.m. to 6 p.m.	\$((6.95)) <u>7.10</u>	\$((11.65)) <u>11.95</u>	\$((7.20)) <u>7.35</u>	\$((11.15)) <u>11.45</u>
6 p.m. to 9 p.m.	\$((5.20)) <u>5.35</u>	\$((9.95)) <u>10.20</u>	\$((5.45)) <u>5.60</u>	\$((9.45)) <u>9.70</u>

Saturdays and Sundays ⁴	Good To Go! TM Pass ¹	Pay By Mail ¹	Pay By Plate ²	Short-Term Account ³
9 p.m. to 11 p.m.	\$((3.45)) <u>3.55</u>	\$((8.20)) <u>8.40</u>	\$((3.70)) <u>3.80</u>	\$((7.70)) <u>7.90</u>
11 p.m. to 11:59 p.m.	\$0.00	\$0.00	\$0.00	\$0.00

- Notes:
- ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
 - ²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
 - ³For this type of payment method, the customer is given a \$0.50 discount off the Pay By Mail toll rate as provided in WAC 468-270-300.
 - ⁴The weekend rates will be assessed for the following holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.