WSR 23-12-060
PERMANENT RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed June 2, 2023, 10:21 a.m., effective July 15, 2023]

Effective Date of Rule: July 15, 2023.

Purpose: The 2020 legislative change to Title 70 RCW renumbered the Washington Clean Air Act from chapter 70.94 RCW to chapter 70A.15 RCW. The Spokane regional clean air agency (SRCAA) amended Regulation I to update the RCW citing as well as to correct typographical errors; provide clarification; align the wood heating exemption to RCW 70A.15.3580; separate late fee from penalty fee; update formatting in Article III and VIII; and update adoption by reference. The amendments did not change fees or add new requirements for businesses or residents to meet.

The proposed amendments are necessary to support SRCAA's implementation of the Washington Clean Air Act. The amendments will allow SRCAA to meet the state legislature's deadline for agencies to update the RCW citing in agency regulations. The amendments anticipated effects include improved readability, accurate citing, and alignment of SRCAA's local regulations to state rules and regulations.

Citation of Rules Affected by this Order: Amending SRCAA Regulation I, Articles I, II, III, IV, V, VI, VIII, and X.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 23-07-092 on April 5 [March 17], 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 41, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 1, 2023.

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SPOKANE REGIONAL CLEAN AIR AGENCY (SRCAA)
AMENDMENTS TO SRCAA REGULATION I, ARTICLES I, II, III, IV, V, VI, VIII, and X

AMENDATORY SECTION
SECTION 1.01 POLICY

(A) Agency and Jurisdiction. The Agency, whose jurisdiction is coextensive with the boundaries of Spokane County, having been activated pursuant to the Washington Clean Air Act (WCAA), Chapter ((~~70.94~~)) 70A.15 RCW as amended, shall be known and cited as "Spokane Regional Clean Air Agency," and hereinafter may be cited as "SRCAA", or the "Agency". The Agency adopts the following Regulation I to control the

emissions of air contaminants from all stationary sources within the jurisdiction of the Agency; to provide for the uniform administration and enforcement of the Agency's Regulation I; and to carry out the requirements and purposes of the WCAA.

(B) Public Policy.

(1) It is hereby declared that the Agency adopts public policy per RCW 70A.15.1005 ((~~to be the public policy of the Agency~~)) to secure and maintain such levels of air quality that protect human health and safety, including the health and safety of the most sensitive members of the population, to comply with the requirements of the Federal Clean Air Act (FCAA), to prevent injury to plant and animal life and to property, to foster the comfort and convenience of its inhabitants, to promote the economic and social development of the County, and to facilitate the enjoyment of the natural attractions of the County.

(2) It is further the intent of Regulation I to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

(C) Applicability.

(1) Wherever the Agency's Regulation I constitutes a restatement of the requirements and purposes of Chapter ((~~70.94~~)) 70A.15 RCW, it is the intent of the Agency that the Regulation be interpreted in the same manner as the statute adopted by the Legislature. Any language deviation from the statute, except where the statute allows an Agency to be more stringent, is intended for purposes of clarity. As provided in Chapter ((~~70.94~~)) 70A.15 RCW and WAC 173-400-020(1), the provisions of Chapter 173-400 WAC apply statewide except where a local authority has adopted and implemented corresponding rules that apply only to sources subject to local jurisdiction, as provided in RCW ((~~70.94.141~~)) 70A.15.2040 and RCW ((~~70.94.331~~)) 70A.15.3000. The sections of the WAC adopted by reference are given in SRCAA Regulation I, Article II, Section 2.14.

(2) Agency regulations that have been or will be approved by the United States Environmental Protection Agency (EPA) for inclusion in the Washington State Implementation Plan (SIP) apply for purposes of Washington's SIP, only to the following:

(a) Those air contaminants for which EPA has established National Ambient Air Quality Standards (NAAQS) and precursors to such NAAQS pollutants as determined by EPA for the applicable geographic area; and

(b) Any additional air contaminants that are required to be regulated under Part C of Title I of the Federal Clean Air Act (FCAA), relating to prevention of significant deterioration and visibility, but only for the purpose of meeting the requirements of Part C of Title I of the FCAA or to the extent those additional air contaminants are regulated in order to avoid such requirements.

AMENDATORY SECTION

SECTION 1.04 GENERAL DEFINITIONS

(A) Unless otherwise defined in an Article of Regulation I, the following definitions apply to all of SRCAA Regulation I. In Article II, Section 2.14, the Agency adopts by reference certain definitions provided in WAC 173-400-030, not otherwise specified in Section 1.04.

(1) *Actual Emissions* means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with (a) through (c) below.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year at which the emissions unit actually emitted the pollutant during a two (2) year period which precedes the particular date and which is representative of normal stationary source operation. The Agency shall allow the use of a different time period upon a determination that it is more representative of normal stationary source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) The Agency may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit((~~,~~)) which has not begun normal operations on the particular date, actual emissions shall equal the potential-to-emit of the emissions unit on that date.

(2) *Agency* means and refers to "Spokane Regional Clean Air Agency (SRCAA)."

(3) *Air Contaminant* means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance or any combination thereof.

(4) *Air Operating Permit (AOP) Source* means any facility required to have an air operating permit per Chapter 173-401 WAC.

(5) *Air Pollutant* means the same as "Air Contaminant".

(6) *Air Pollution* means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property; or which unreasonably interferes with enjoyment of life and property. For the purposes of Regulation I, air pollution shall not include air contaminants emitted in compliance with Chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

(7) *Air Pollution Episode* means a period when a forecast, alert, warning, or emergency air pollution state is declared, as stated in Chapter 173-435 WAC.

(8) *Allowable Emissions* means the emission rate of a stationary source, calculated using the maximum rated capacity of the stationary source (unless the stationary source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as in 40 CFR Parts 60, 61, 62, or 63;

(b) Any applicable State Implementation Plan (SIP) emissions limitation including those with a future compliance date; or

(c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

(9) *Alteration* means to change or make different. Alteration includes, but is not limited to, any enlargement, replacement, change in the design, operation, capacity, or process arrangement, increase in the connected loading of process or control equipment, change in fuels, method of operation, or hours of operation, not previously approved by the Agency.

(10) *Ambient Air* means the surrounding outside air.

(11) *Ambient Air Quality Standard* means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air, which shall not be exceeded.

(12) *Approval Order* means the same as "Order of Approval".

(13) *Attainment Area* means a geographic area, designated by the Environmental Protection Agency (EPA) at 40 CFR Part 81, as having attained the National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant.

(14) *Authority* means the same as "Agency".

(15) *Begin Actual Construction or Establishment* means, in general, initiation of physical on-site construction activities on a new stationary source, emission units, or control equipment that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

(16) *Best Available Control Technology (BACT)* means an emission limitation, based on the maximum degree of reduction for each air pollutant subject to regulation under Chapter ((~~70.94~~)) 70A.15 RCW emitted from, or which results from, any new or modified stationary source, which the Agency, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such stationary source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, 62, and 63. Emissions from any stationary source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act (FCAA) as it existed prior to enactment of the Clean Air Act Amendments of 1990.

(17) *Best Available Control Technology for Toxics, or Toxic Best Available Control Technology (tBACT)* means an emission limitation applied to each, or each mixture of, Toxic Air Pollutants (TAPs) identified in Chapter 173-460 WAC discharged, taking into account the potency, quantity, and toxicity of each TAP or mixture of TAPs discharged, in addition to the meaning given for Best Available Control Technology (BACT), herein.

(18) *Best Available Retrofit Technology (BART)* means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(19) *Board* means Board of Directors of the Spokane Regional Clean Air Agency (SRCAA).

(20) *Brake Horsepower* means the measure of an engine's horsepower without the loss in power caused by the gearbox, alternator, differential, water pump, and other auxiliary components.

(21) *Bubble* means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, under RCW ((~~70.94.155~~)) 70A.15.2240 and WAC 173-400-120.

(22) *Burn Out Oven* means any oven used to clean or remove dirt, grease, grime, paint, varnish, or any other unwanted substance or contaminant, from any object by using controlled incineration, without burning the object itself. A burn out oven is considered an incinerator under Article VI, Section 6.03.

(23) *Closure, Closed* means permanently stopping or terminating all processes that produce air contaminant emissions at a stationary source or emissions unit.

(24) *Combustion and Incineration Unit* means units using combustion for waste disposal, steam production, chemical recovery, or other process requirements; excluding outdoor burning.

(25) *Commence* as applied to construction, means that the owner or operator has all the necessary preconstruction approvals or permits, and either has:

(a) Begun, or caused to begin, a continuous program of actual onsite construction of the stationary source, to be completed within a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the stationary source to be completed within a reasonable time.

(c) For the purposes of this definition, "necessary preconstruction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the State Implementation Plan (SIP).

(26) *Concealment* means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

(27) *Construction* means any physical change or change in method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit), which would result in a change in actual emissions.

(28) *Control Equipment* means any facility, device, or apparatus, which has the primary function of regulating, reducing, or controlling emissions from a process, fuel burning or refuse burning equipment, and thus reduces the formation of, or the emission of, air contaminants into the ambient air.

(29) *Control Officer* means the Air Pollution Control Officer for the Spokane Regional Clean Air Agency (SRCAA) or authorized representative.

(30) *Criteria Pollutant* means a pollutant for which there is established a National Ambient Air Quality Standard (NAAQS) in 40 CFR Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter (PM_{10} and $PM_{2.5}$), ozone (O_3) sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

(31) *Daylight Hours* means the hours between official sunrise and official sunset.

(32) *Director* means the same as "Control Officer".

(33) *Ecology* means the Washington State Department of Ecology.

(34) *Electronic Means* means email, fax, FTP site, or other electronic method approved by the Agency.

(35) *Emission* means a release of air contaminants into the ambient air.

(36) *Emission Point* means the point at which emissions are released into the ambient air, including ((~~such as~~)), but not limited to; a duct, vent, stack, pipe, or other opening to the ambient air.

(37) *Emission Reduction Credit (ERC)* means a credit granted by the Agency, to a stationary source for a voluntary reduction in actual emissions per WAC 173-400-131.

(38) *Emission Standard and Emission Limitation* means a requirement established under the Federal Clean Air Act (FCAA) or Chapter ((~~70.94~~)) 70A.15 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a stationary source to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the FCAA or Chapter ((~~70.94~~)) 70A.15 RCW.

(39) *Emissions Unit* means any part of a stationary source or source which emits, or would have the potential-to-emit, any pollutant subject to rules and regulation(s) per the Federal Clean Air Act (FCAA), the Washington State Clean Air Act (WCAA), Chapter ((~~70.94~~)) 70A.15 RCW, the Washington Nuclear Energy and Radiation Act, Chapter ((~~70.98~~)) 70A.388 RCW, or the Agency. This term does not include nonroad engines.

(40) *Episode* means a period when a forecast, alert, warning, or emergency air pollution stage is declared, as given in RCW ((~~70.94.715~~)) 70A.15.6010.

(41) *Excess Emissions* means emissions of an air pollutant in excess of any applicable emission standards.

(42) *Executive Director* means the same as "Control Officer".

(43) *Facility* means the same as "Stationary Source".

(44) *Federal Clean Air Act (FCAA)* means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 USC 7401 et seq., as amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990 and subsequent amendments.

(45) *Federally Enforceable* means all limitations and conditions which are enforceable by the Environmental Protection Agency (EPA), including those requirements developed under 40 CFR Parts 60, 61, 62, and 63; requirements within the Washington State Implementation Plan (SIP), requirements within any permit established under 40 CFR 52.21 or Order of Approval under a SIP approved new source review regulation, or any voluntary limits on emissions in an Order issued under WAC 173-400-091.

(46) *Fire Protection Agency* means a city fire department, county fire department, local fire protection district, or the Washington State Department of Natural Resources (DNR).

(47) *Fuel Burning Equipment* means equipment that produces hot air, hot water, steam, or other heated fluids by external combustion of any type of fuel.

(48) *Fugitive Dust* means particulate emissions made airborne by forces of wind, human activity, or both. Unpaved roads, construction sites, and tilled land are examples of sources of fugitive dust. Fugitive dust is a type of fugitive emission.

(49) *Fugitive Emissions* means emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(50) *Garbage* means putrescible animal or vegetable waste resulting from the handling, preparation, cooking or serving of food.

(51) *Good Engineering Practice (GEP)* means a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

(52) *Hazardous Air Pollutant (HAP)* means any air pollutant listed in Section 112(b) of the Federal Clean Air Act (FCAA), 42 USC, Section 7412.

(53) *Heat Input* means the maximum actual or design fuel capacity, whichever is greater, stated in British thermal units (Btu) per hour for the stationary source and will be expressed using the higher heating value of the fuel unless otherwise specified.

(54) *Incinerator* means a furnace used primarily for the thermal destruction of waste, including human and pet crematories, burn-out ovens, and other solid, liquid, and gaseous waste incinerators.

(55) *In Operation, Operation, or Operating* means engaged in activity related to the primary design function of the stationary source.

(56) *Installation* means the act of placing, assembling or constructing process equipment or control equipment at the premises where the equipment will be used. Installation includes all preparatory work at such premises.

(57) *Like-kind Replacement* means replacement of existing components (emission units, control equipment, etc.) with similar, equivalent, or comparable, new components (e.g. components that have the same throughput capacity, control efficiency, or utilization factor as the old component).

(58) *Lowest Achievable Emission Rate (LAER)* means for any stationary source, that rate of emissions which reflects the more stringent of:

(a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed new or modified stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation which is achieved in practice by such class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source.

(c) In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable New Source Performance Standards (NSPS).

(59) *Maintenance Area* means a geographical area within the jurisdiction of SRCAA which was formerly designated as a nonattainment area and which has been re-designated as an attainment area as provided under Section 107(d) of the Federal Clean Air Act (FCAA). The maintenance area designation shall be in effect as long as there is a federal or state requirement to have a maintenance plan in effect.

(60) *Malfunction* means any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner which causes, or has the potential to cause, the emission limitations

in an applicable standard to be exceeded. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(61) *Masking* means the mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

(62) *Materials Handling* means the handling, transporting, loading, unloading, storage, or transfer of materials with no significant chemical or physical alteration.

(63) *Modification* means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such stationary source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, 42 USC, and with rules implementing that section.

(64) *Multiple-Chambered Incinerator* means any incinerator consisting of two (2) or more combustion chambers in series, employing adequate design parameters necessary for maximum combustion of the material to be burned.

(65) *National Ambient Air Quality Standard (NAAQS)* means an ambient air quality standard set by the Environmental Protection Agency (EPA) at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O_3), sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

(66) *National Emission Standards for Hazardous Air Pollutants (NESHAP)* means the federal rules in 40 CFR Part 61.

(67) *National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories* means the federal rules in 40 CFR Part 63. These rules are commonly referred to as Maximum Available Control Technology (MACT) standards.

(68) *New Source* means one or more of the following:

(a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such stationary source or that results in the emission of any air contaminant not previously emitted;

(b) Any other project that constitutes a new source under the Federal Clean Air Act (FCAA);

(c) Restart of a stationary source after closure;

(d) Relocation of a stationary source to a new location;

(e) Like-kind replacement of existing emission unit(s) with a like-kind emission unit(s) (e.g. boilers, crushing equipment); or

(f) A portable source subject to the requirements in Article V, Section 5.08.

(69) *New Source Performance Standards (NSPS)* means the federal rules in 40 CFR Part 60.

(70) *Nonattainment Area* means a geographic area designated by the Environmental Protection Agency (EPA) at 40 CFR Part 81 as exceeding a National Ambient Air Quality Standards (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

(71) *Nonroad Engine* means:

(a) Except as provided in Article I, Section 1.04 (A)(71)(b), a nonroad engine is any internal combustion engine:

1. In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers);

2. In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

3. That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Methods of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

1. The engine is used to propel a motor vehicle, a vehicle used solely for competition, or is subject to standards promulgated under Section 202 of the Federal Clean Air Act (FCAA);

2. The engine is regulated by a New Source Performance Standard (NSPS) promulgated under Section 111 of the FCAA; or

3. The engine otherwise included in Section 1.04 (A)(71)(a)3. remains or will remain at a location for more than twelve (12) consecutive months, or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replace an engine at a location and is intended to perform the same or similar function as the engine replaced, will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two (2) years) and that operates at that single location approximately three (3) months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

(72) *North American Industry Classification System (NAICS)* means the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

(73) *Notice of Construction (NOC) application* means a written application to allow construction of a new source, modification of an existing stationary source, or replacement or substantial alteration of control technology at an existing stationary source.

(74) *Odor* means that property of a substance, which allows its detection by the sense of smell or through the use of instruments designed for that purpose.

(75) *Opacity* means the degree to which an object seen through a plume is obscured, stated as a percentage.

(76) *Order* means any order issued or adopted by Ecology or the Agency under Chapter ((~~70.94~~)) 70A.15 RCW, including, but not limited to RCW ((~~70.94.332, 70.94.152, 70.94.153, 70.94.154,~~)) 70A.15.2040(3), 70A.15.2210, 70A.15.2220, 70A.15.2230, and 70A.15.3010 ~~and 70.94.141(3)~~, and includes, where used in the generic sense, the terms: order, corrective action order, order of approval, permit, permission to operate, compliance schedule order, consent order, order of denial, notice of violation, and regulatory order.

(77) *Order of approval* means a regulatory order issued by Ecology or the Agency to approve the Notice of Construction (NOC) Application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

(78) *Outdoor Burning or Open Burning* means the combustion of material of any type in an open fire or in an outdoor container without

providing for the control of combustion or the control of emissions from the combustion.

(79) *Owner or Operator* means any person(s) who owns, leases, supervises, operates, or is in control of real property or a stationary or a portable source.

(80) *Ozone Depleting Substance* means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

(81) *Particulate Matter or Particulates* means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred (100) micrometers.

(82) *Particulate matter emissions* means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air, as measured by applicable reference methods, or an equivalent or alternative method specified in Title 40 Chapter I of the Code of Federal Regulations CFR or by a test method specified in the State Implementation Plan (SIP).

(83) *Parts per Million by Volume (ppmv)* means parts of a contaminant per million parts of gas or carrier medium, by volume, exclusive of water or particulate matter.

(84) *Parts per Million by Weight (ppmw)* means parts of a contaminant per million parts of gas or carrier medium, by weight.

(85) *Permission to Operate* means a regulatory order issued by the Agency to approve the Portable Source Permit (PSP) Application for the operation and relocation of a proposed portable source in Spokane County.

(86) *Permitting Authority or Permitting Agency* means Ecology or the Agency with jurisdiction over the source.

(87) *Person* means an individual, firm, public or private corporation, owner, owner's agent, operator, contractor, limited liability company, association, partnership, political subdivision, municipality, or government agency.

(88) $PM_{2.5}$ means particulate matter with an aerodynamic diameter less than or equal to a nominal two and one-half (2.5) micrometers (microns or µ[m]) as measured by a reference method based on 40 CFR Part 50 Appendix L and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(89) $PM_{2.5}$ *Emissions* means finely-divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal two and one-half (2.5) micrometers (microns or µ[m]) emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the State Implementation Plan (SIP).

(90) PM_{10} means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers (microns or µ[m]) as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(91) PM_{10} *Emissions* means finely-divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal (ten) 10 micrometers (microns or µ[m]) emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the State Implementation Plan (SIP).

(92) *Pollution Control Hearings Board of Washington (PCHB)* means the body established under Chapter 43.21 RCW to adjudicate hearings pertaining to decisions and orders of the Agency.

(93) *Portable Source* means a type of stationary source that emits air contaminants only while at a fixed location but which is capable of being transported to various locations. Examples include a portable asphalt plant or a portable package boiler.

(94) *Portable Source Permit (PSP) Application* means a written application to allow the operation or relocation of a proposed portable source in Spokane County.

(95) *Potential-to-Emit (PTE)* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable. Secondary emissions are not included in determining the PTE of a stationary source.

(96) *Prevention of Significant Deterioration (PSD)* means the program set forth in WAC 173-400-700 through 750.

(97) *Reasonably Available Control Technology (RACT)* means the lowest emission limit that a particular stationary source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual stationary source or source category, taking into account the impact of the stationary source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any stationary source or source category shall be adopted only after notice and opportunity for comment are afforded.

(98) *Refuse* means putrescible and non-putrescible solid wastes including, but not limited to, garbage, rubbish, ashes, incinerator residue, dead animals, abandoned automobiles, solid market wastes, street cleanings, and solid commercial and industrial waste (including waste disposal in industrial salvage).

(99) *Regulatory Order* means an order issued by Ecology or the Agency that requires compliance with any applicable provisions of Chapter ((~~70.94~~)) 70A.15 RCW, or the rules and regulations adopted thereunder.

(100) *Secondary Emissions* means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions. This includes emissions from any offsite support facility which would not be generated without the construction or operation of the major stationary source or major modification. Emissions which come directly from a mobile source such as a motor vehicle, train, or vessel are not secondary emissions.

(101) *Shutdown* means the cessation of operation of a source or portion of a source for any purpose.

(102) *Silvicultural Burning* means burning on unimproved land the Department of Natural Resources (DNR) protects under RCW ((~~70.94.030~~))

70A.15.1030(21), ((~~70.94.6534~~)) 70A.15.5120, ((~~70.94.6540~~)) 70A.15.5150, and Chapter 76.04 RCW.

(103) *Source* means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products.

(104) *Source Category* means all sources of the same type or classification.

(105) *Spokane Regional Clean Air Agency (SRCAA)* means the local air pollution agency empowered to enforce and implement the Federal Clean Air Act (FCAA), 42 USC 7401 et seq., the Washington Clean Air Act (WCAA), Chapter ((~~70.94~~)) 70A.15 RCW, and SRCAA Regulation I, in Spokane County, Washington State.

(106) *Stack* means any point in a stationary source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

(107) *Stack Height* means the height of an emission point measured between the ground-level elevation at the base of the stack and where the emissions exit the stack.

(108) *Stage I Vapor Recovery* means the capture of all gasoline vapors at gasoline dispensing facilities during the transfer of gasoline from a transport tank into a stationary storage tank, except motor vehicle refueling.

(109) *Stage II Vapor Recovery* means the capture of gasoline vapors at gasoline dispensing facilities during the transfer of gasoline from a stationary storage tank into a motor vehicle fuel tank.

(110) *Standard Conditions* means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

(111) *Standard Cubic Foot of Gas* means that amount of gas which would occupy a cube having dimensions of one foot on each side, if the gas were free of water vapor at a pressure of 14.7 psia and a temperature of 68°F.

(112) *Startup* means the setting in operation of a source or portion of a source for any purpose.

(113) *State Implementation Plan (SIP) or Washington SIP* means the Washington SIP in 40 CFR Part 52, subpart WW. The SIP contains state, local and federal regulations and orders, the state plan, and compliance schedules approved and promulgated by the Environmental Protection Agency (EPA), for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards (NAAQS).

(114) *Stationary Source* means any building, structure, facility, or installation that emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes, or from a nonroad engine, or nonroad vehicle, as defined in Section 216(11) of the Federal Clean Air Act (FCAA).

(115) *Synthetic Minor (SM)* means any source whose potential-to-emit has been limited below applicable thresholds by means of an enforceable order, rule, or approval condition.

(116) *Total Actual Annual Emissions* means the total of all criteria and toxic air pollutant emissions for the most recent complete year that is available to the Agency.

(117) *Total Reduced Sulfur (TRS)* means the sum of the mass of sulfur compounds, hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides, emitted and measured

by Environmental Protection Agency (EPA) Method 16 in Appendix A to 40 CFR Part 60 or an approved equivalent method, and expressed as hydrogen sulfide.

(118) *Total Suspended Particulate (TSP)* means the mass of particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

(119) *Toxic Air Pollutant (TAP) or Toxic Air Contaminant* means any toxic air pollutant listed in Chapter 173-460 WAC. The term toxic air pollutant may include particulate matter and volatile organic compounds, if an individual substance or a group of substances within either of these classes is listed in Chapter 173-460 WAC. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(120) *Unclassifiable Area* means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard (NAAQS) for the criteria pollutant and that is listed by the Environmental Protection Agency (EPA) at 40 CFR Part 81.

(121) *United States Environmental Protection Agency (USEPA) or (EPA)* means the federal agency empowered to enforce and implement the Federal Clean Air Act (FCAA), 42 USC 7401, et seq.

(122) *Upset Condition* means a failure, breakdown, or malfunction of any piece of process equipment or pollution control equipment that causes, or has the potential to cause, excess emissions.

(123) *Vent* means any opening through which air pollutants are exhausted into the ambient air.

(124) *Visibility Impairment* means any humanly perceptible change in visibility (light extinction, visual range, contrast, or coloration) from that which would have existed under natural conditions.

(125) *Volatile Organic Compound (VOC)* means the same as defined in 40 CFR 51.100 for the purposes of Regulation I.

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 errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 2.01 POWERS AND DUTIES OF THE BOARD

(A) Board Procedures and Actions. Pursuant to, and consistent with, the provisions of the Washington Clean Air Act (WCAA) Chapter ((~~70.94~~)) 70A.15 RCW, the Board shall establish such procedures and take such action as may be required to implement SRCAA Regulation I, Article I, Section 1.01. The Board may take such action as may be necessary to prevent air pollution, including control and measurement of the emission of any air contaminant from a source. The Board shall appoint a Control Officer, competent in the control of air pollution who shall, with the Board's advice and approval, enforce the provisions of all ordinances, orders, resolutions, rules, and regulations of this Agency, pertinent to the control and prevention of air pollution in Spokane County.

(B) Hearings. The Board shall have the power to hold hearings relating to any aspect of or matter in the administration of Regulation I and in connection therewith; issue subpoenas to compel the attendance of witnesses and production of evidence, administer oaths and take the testimony of any person under oath.

(C) Ordinances, Resolutions, Rules, Orders and Regulations. The Board shall have the power to adopt, amend, and repeal its own ordinances, resolutions, rules, orders, and regulations. Any adoption, amendment, or repeal of the Board's ordinances, resolutions, rules, orders, and regulations shall be made after due consideration at a public hearing held in accordance with Chapter 42.30 RCW, and shall have the same force and effect as all other of the Board's ordinances, resolutions, rules, orders, and regulations as soon as adopted by the Board. (See RCW ((~~70.94.141~~)) 70A.15.2040)

AMENDATORY SECTION

SECTION 2.03 CONFIDENTIAL OR PROPRIETARY INFORMATION

The Agency implements and enforces RCW ((~~70.94.205~~)) 70A.15.2510 - Confidentiality of records and information.

AMENDATORY SECTION

SECTION 2.04 VIOLATIONS

The Agency implements and enforces RCW ((~~70.94.211~~)) 70A.15.2520 - Enforcement actions by air authority - Notice to violators.

AMENDATORY SECTION

SECTION 2.05 ORDERS AND HEARINGS

The Agency implements and enforces RCW ((~~70.94.221~~)) 70A.15.2530 - Order final unless appealed to pollution control hearings board.

AMENDATORY SECTION

SECTION 2.08 FALSIFICATION OF STATEMENTS OR DOCUMENTS, AND TREATMENT OF DOCUMENTS

(A) False, Misleading Statements. No person shall willfully make a false or misleading statement to the Board or its ((~~their~~)) authorized representative as to any matter within the jurisdiction of the Board.

(B) Alter Documents. No person shall reproduce or alter, or cause to be reproduced or altered, any order, registration certificate, or other paper issued by the Agency if the purpose of such reproduction or alteration is to circumvent, evade, or violate any provision of Chapter ((~~70.94~~)) 70A.15 RCW, or any regulation, ordinance, resolution, permit, or order in force pursuant thereto.

(C) Available for Review. Any order or registration certificate required to be obtained by Chapter ((~~70.94~~)) 70A.15 RCW, or any regulation, ordinance, resolution, permit, or order in force pursuant thereto, shall be available for review on the premises designated on the order or certificate.

(D) Notice to be Displayed. In the event the Agency requires a notice to be displayed, it shall be posted. No person shall mutilate, obstruct or remove any notice unless authorized to do so by the Agency.

(E) False Statements. No person shall make any false material statement, representation, or certification in any form, notice or report required under Chapter ((~~70.94~~)) 70A.15 RCW, or any regulation, ordinance, resolution, permit, or order in force pursuant thereto.

(F) Render Inaccurate. No person shall render inaccurate any monitoring device or method required under Chapter ((~~70.94~~)) 70A.15 RCW, or any regulation, ordinance, resolution, permit, or order in force pursuant thereto.

AMENDATORY SECTION
SECTION 2.11 PENALTIES, CIVIL PENALTIES, AND ADDITIONAL MEANS FOR ENFORCEMENT

The Agency implements and enforces RCW ((~~70.94.430~~)) 70A.15.3150 - Penalties, RCW ((~~70.94.431~~)) 70A.15.3160 - Civil penalties,and RCW ((~~70.94.435~~)) 70A.15.3170 - Additional means of enforcement.

AMENDATORY SECTION
SECTION 2.12 RESTRAINING ORDERS - INJUNCTIONS

The Agency implements and enforces RCW ((~~70.94.425~~)) 70A.15.3140 - Restraining orders - Injunctions.

AMENDATORY SECTION
SECTION 2.13 FEDERAL AND STATE REGULATION REFERENCE DATE

(A) Federal Adoption by Reference. Federal rules in SRCAA Regulation I are adopted as they exist on ((~~January 1, 2020~~)) January 1, 2023.

(1) The term "Administrator" means the Administrator of EPA or the Control Officer of the Agency.

(2) Where EPA has delegated to the Agency the authority to receive reports, the affected facility will submit reports to the Agency, unless otherwise instructed.

(B) State Adoption by Reference. State rules in Regulation I are adopted as they exist on ((~~January 1, 2020~~)) January 1, 2023, or as amended((~~, unless a different date is listed in Section 2.14~~)).

AMENDATORY SECTION
SECTION 2.14 WASHINGTON ADMINISTRATIVE CODES (WACS)

(A) The Agency adopts by reference the following WACs:

(1) Chapter 173-400 WAC, including sections:

020 - Applicability.

030 - Definitions.

(a) The following definitions are adopted by reference: Adverse Impact on Visibility; Alternative Emission Limit; Capacity Factor; Class I Area; Dispersion Technique; Emission Threshold; Excess Stack Height; Existing Stationary Facility; Federal Class I Area; Federal Land Manager; Fossil Fuel-fired Steam Generator; General Process Unit; Greenhouse Gases; Hog Fuel; Industrial Furnace; Mandatory Class I Federal Area; Natural Conditions; Projected Width; Reasonably Attributable; Sulfuric Acid Plant; Transient Mode of Operation; Useful Thermal Energy; Wigwam/Silo Burner; Wood-fired Boiler; and Wood Waste.

040 - General standards for maximum emissions.

(a) Exceptions. The following subsections are not adopted by reference: 040(6) and 040(8). 040(6) is replaced by Article VI, Section 6.04(C). 040(8) is replaced by Article VI, Section 6.07.

050 - Emission standards for combustion and incineration units.

(a) Exceptions. The following subsections are not adopted by reference: 050 (4)(c)(ix) and 050 (5)(c)(xi).

060 - Emission standards for general process units.

070 - Emission standards for certain source categories.

075(8) - Emission standards for perchloroethylene dry cleaners.

081 - Emission limits during startup and shutdown.

082 - Alternative emission limit that exceeds an emission standard in the SIP.

091 - Voluntary limits on emissions.

105 - Records, monitoring, and reporting.

(a) Exceptions. The following subsections are not adopted by reference: 105(3, 4, 6, and 8)

107 - Excess emissions.

108 - Excess emission reporting.

109 - Unavoidable excess emissions.

112 - Requirements for new sources in nonattainment areas - Review for compliance with regulations.

113 - New sources in attainment or unclassifiable areas - Review for compliance with regulations.

114 - Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.

116 - Increment protection.

117 - Special protection requirements for federal Class I areas.

118 - Designation of Class I, II, and III areas.

120 - Bubble rules.

131 - Issuance of emission reduction credits.

136 - Use of emission reduction credits (ERC).

151 - Retrofit requirements for visibility protection.

161 - Compliance schedules.

175 - Public information.

180 - Variance.

190 - Requirements for nonattainment areas.

200 - Creditable stack height and dispersion techniques.

205 - Adjustment for atmospheric conditions.

210 - Emission requirements of prior jurisdictions.

220 - Requirements for board members.

240 - Criminal penalties.

260 - Conflict of interest.

560 - General order of approval.

700 - Review of major stationary sources of air pollution.

710 - Definitions.

720 - Prevention of significant deterioration (PSD).

(a) Ecology and EFSEC are the EPA-approved permitting agencies for the PSD program for Washington under the SIP. The Agency enforces PSD permits.

730 - Prevention of significant deterioration application processing procedures.

740 - PSD permitting public involvement requirements.

750 - Revisions to PSD permits.

800 - Major stationary source and major modification in a nonattainment area.

810 - Major stationary source and major modification definitions.

(a) Exceptions. The following definition is not adopted by reference: (13) lowest achievable emission rate.

820 - Determining if a new stationary source or modification to a stationary source is subject to these requirements.

830 - Permitting requirements.

840 - Emission offset requirements.

850 - Actual emissions plant wide applicability limitation (PAL).

860 - Public involvement procedures.

(2) Chapter 173-401 WAC - Operating permit regulation.

(3) Chapter 173-425 WAC - Outdoor burning.

(4) Chapter 173-430 WAC - Agricultural burning.

(5) Chapter 173-433 WAC - Solid fuel burning devices.

(6) Chapter 173-434 WAC - Solid waste incinerator facilities.

(7) Chapter 173-435 WAC - Emergency episode plan.

(8) Chapter 173-460 WAC - Controls for new sources of toxic air pollutants.

(9) Chapter 173-476 WAC - Ambient air quality standards.

(10) Chapter 173-490 WAC - Emission standards and controls for sources emitting volatile organic compounds (VOC).

(11) Chapter 173-491 WAC - Emission standards and controls for sources emitting gasoline vapors.

(12) Chapter 197-11 WAC - SEPA Rules

NEW SECTION

SECTION 2.20 40 CFR PART 62 - APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

(A) The Agency adopts by reference these subparts of 40 CFR Part 62, in effect on the date referenced in Section 2.13.

(1) Subpart OOO, Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction On or Before July 17, 2014 and Have Not Been Modified or Reconstructed Since July 17, 2014.

AMENDATORY SECTION

SECTION 3.01 VARIANCES - APPLICATION FOR - CONSIDERATIONS - LIMITATIONS - RENEWALS - REVIEW

((~~A.~~)) (A) Applicability (RCW ((~~70.94.181~~)) 70A.15.2310). Any person, or group of persons, who is directly impacted by ((~~any~~)) SRCAA ((~~rule or regulation~~)) Regulation I, may apply to the Board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the Board may require. The total time period for a variance and renewal of such variance shall not exceed one year.

((~~B.~~)) (B) General Process. The Board may grant a variance from ((~~to~~)) SRCAA Regulation I. However, if the variance sought also requires a variance from state rules, Ecology must first issue its approval of the variance in writing.

((~~1.~~)) (1) If the variance pertains to ((~~a~~)) SRCAA ((~~regulation~~)) Regulation I only, the applicant must submit the variance application to SRCAA and the decision to approve or deny the variance will be made by the Board.

((~~2.~~)) (2) If the variance pertains to ((~~a~~)) SRCAA ((~~regulation~~)) Regulation I and a state rule, the applicant must submit the variance application concurrently to both SRCAA and Ecology. If approved by Ecology, the variance application may then be reviewed and processed by SRCAA with the decision to approve or deny the variance being made by the Board. Approval of such a variance is contingent upon approval by both Ecology and SRCAA. If denied by Ecology, SRCAA will not make a determination on ((~~review~~)) the variance request.

((~~a.~~)) (a) Per 40 CFR 52.2476(b), any change to a provision of the state implementation plan described in 40 CFR 52.2476(a) must be submitted by Ecology for approval by EPA in accordance with the requirements of 40 CFR 51.104. In accordance with 40 CFR 51.104, variances approved under ((~~this~~)) Article III ((~~shall~~)) will not be included in orders or permits provided for in RCW ((~~70.94.152~~)) 70A.15.2210 (Notice of Construction) or RCW ((~~70.94.161~~)) 70A.15.2260 (Operating Permits) until such time as the variance has been accepted by the EPA as part of an approved State Implementation Plan in 40 CFR Part 52, subpart WW.

((~~C.~~)) (C) Conditions for Granting a Variance.

(1) Pursuant to RCW ((~~70.94.181~~)) 70A.15.2310(1), variances may be issued by the Board if it finds that:

((~~1.~~)) (a) The emissions occurring or proposed to occur do not endanger public health, safety, or the environment; and

((~~2.~~)) (b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) The interests of the applicant, other owners of property likely to be affected by the emissions, and the general public must also be considered pursuant to Section 3.01((~~.E~~))(E) and RCW ((~~70.94.181~~)) 70A.15.2310(2).

((~~D.~~)) (D) Complete Application. In addition to the requirements of Section 3.01((~~.A~~))(A) ((~~above~~)), applicants seeking a variance must submit an accurate and complete application. Application must be made using ((~~forms provided by~~)) SRCAA prepared and furnished forms. An application is not deemed complete until all of the information identified below is received. At a minimum, applicants must submit all of the following information:

((~~1.~~)) (1) A list of interested parties and neighbors within five hundred (500) feet or more of the property on which the variance is proposed to occur, including mailing addresses, or as deemed necessary by the Control Officer.

((~~2.~~)) (2) The specific laws and/or regulations from which a variance is being sought.

((~~3.~~)) (3) How compliance with rules or regulations from which the variance is sought would produce serious hardship to the applicant without equal or greater benefits to the public.

((~~4.~~)) (4) An explanation of the time period for which the variance is sought; not to exceed one (1) year.

((~~5.~~)) (5) How the applicant will comply with the applicable laws and/or regulations following expiration of the variance so as to alleviate the need for a renewal of a variance, if one is approved.

((~~6.~~)) (6) An explanation, if applicable, as to why there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved.

((~~7.~~)) (7) If alternatives are available, what the cost of the alternatives are. Supporting documentation must be provided.

((~~8.~~)) (8) Detailed maps of the site subject to the variance application.

((~~9.~~)) (9) Any additional information requested by SRCAA prior to, during, or following submittal of the application.

((~~10.~~)) (10) The variance application must be complete and accurate and a statement to this effect by the applicant must be included in the application. Incomplete or inaccurate applications may be returned to the applicant for completion or correction.

((~~11.~~)) (11) If the variance application requires Ecology's approval pursuant to Section 3.01((~~.B~~))(B), the applicant must demonstrate to SRCAA that a variance application has been approved by Ecology (i.e. by submitting a copy of Ecology's written decision ((~~to approve the variance~~)) to SRCAA).

((~~E.~~)) (E) Public Notice and Public Hearing.

(1) Variance may be issued only after public involvement per ((~~WAC 173-400-171~~)) SRCAA Regulation I, Article V, Section 5.05. No variance shall be granted pursuant to this section until the Board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general pub-

lic. The Board shall conduct a fact-finding public hearing, upon due notice being published and sent to all interested parties within five hundred (500) feet of the property on which the variance is proposed. The Control Officer may require notice to parties beyond five hundred (500) feet, if deemed necessary. A thirty (30) ((~~-~~)) calendar day advance public notice shall be published in a newspaper of general circulation in the area of the proposed variance and shall include the following information:

((~~1.~~)) (a) The time, date, and place of the hearing;

((~~2.~~)) (b) The name and address of the owner or operator and the source;

((~~3.~~)) (c) A brief description of the variance request; and

((~~4.~~)) (d) The deadline for submitting written comments to SRCAA.

(2) For variances that pertain to SRCAA Regulation I and a state rule, ((~~from state rules,~~)) SRCAA may determine that public notice and public hearing conducted by Ecology under WAC 173-400-171 satisfies the provision in ((~~WAC 173-400-171~~)) Article V, Section 5.05.

((~~F.~~)) (F) Variance Limitations. Any variance or renewal thereof shall be granted within the requirements of Section 3.01((~~.A and C of this Regulation~~)) (A) and (C) for not more than one (1) year under conditions consistent with the reasons therefore, and within the following limitations:

((~~1.~~)) (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measure that the Board may prescribe.

((~~2.~~)) (2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time, as in the view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein, shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

((~~3.~~)) (3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in Sections 3.01((~~.F.1 and 3.01.F.2 of this Regulation~~)) (F)(1) and (2), it shall be for not more than one (1) year.

((~~G.~~)) (G) Renewal. Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the Board finds that renewal is justified. No renewal shall be granted except on application therefore. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of a complete and accurate application for renewal, the Board shall give public notice of such application in accordance with rules and regulations of Ecology or SRCAA.

((~~H.~~)) (H) Appeal Process. A variance or renewal shall not be a right of the applicant or holder thereof, but shall be granted at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board, may obtain

judicial review thereof only under the provisions of Chapter 34.05 RCW, as of the effective date of this regulation or thereafter amended.

((~~I.~~)) (I) Emergency Provisions. Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW ((~~70.94.710~~)) 70A.15.6000 through ((~~70.94.730~~)) 70A.15.6040 (Air Pollution Episodes) to any person or his or her property.

((~~J.~~)) (J) Processing Period. Unless the applicant and the Board agree to a continuance, an application for a variance, or for the renewal thereof, submitted to the Board pursuant to Section 3.01((~~.B.1~~)) (B)(1) shall be approved or disapproved by the Board within sixty-five (65) days of SRCAA determining that the application for a variance is accurate and complete and receiving the filing fee referenced in Section 3.02((~~.A~~))(A). If approval from Ecology is required per Section 3.01((~~.B.2~~)) (B)(2), and unless the applicant and the Board agree to a continuance, approval or denial by the Board shall occur within sixty-five (65) days of receipt of all of the following: an accurate and complete application, Ecology's written decision to approve the variance, and the filing fee referenced in Section 3.02((~~.A~~))(A).

AMENDATORY SECTION

SECTION 3.02 FEES

((~~A.~~)) (A) Fees. Except as provided in Section 3.02((~~.B~~))(B), below, the filing fees, all legal fees, legal notice fees, and all hourly fees incurred by SRCAA must be paid by the applicant regardless of whether the variance is granted, denied, or determined to be incomplete.

((~~1.~~)) (1) Filing Fees. For applications submitted pursuant to Section 3.01((~~.B.1~~)) (B)(1) (SRCAA((~~-only regulations~~)) Regulation I only), a filing fee as specified in SRCAA Regulation I, Article X, Section 10.08 ((~~of this Regulation and SRCAA's fee schedule~~)) and Section 10.08 of the Consolidated Fee Schedule shall be submitted at the time of application and shall be applied to the final invoice fee. For applications submitted pursuant to Section 3.01((~~.B.2~~)) (B)(2) (SRCAA ((~~regulations~~))Regulation I and Ecology rules), a filing fee as specified in Section 10.08 in Article X and ((~~of this Regulation and SRCAA's fee schedule~~)) in the Consolidated Fee Schedule shall be submitted at the same time Ecology's written approval is submitted to SRCAA pursuant to Section 3.01((~~.J~~))J and shall be applied to the final invoice fee.

((~~2.~~)) (2) Legal Fees/Legal Notice Fees. The applicant shall also be responsible to pay all legal fees incurred by SRCAA directly attributed to the application for a variance and costs associated with any legal notice(s) required pursuant to ((~~this~~)) Article III.

((~~3.~~)) (3) Hourly Fees. An hourly fee, as established in Section 10.08 ((~~of this Regulation and SRCAA's fee schedule~~)) of the Consolidated Fee Schedule, shall also be assessed to, and paid by, the applicant for applications reviewed by SRCAA pursuant to ((~~this~~)) Article III.

((~~B.~~)) (B) Reduced Fees or Refunds. The applicant may request that some portion of the variance fees be waived or refunded if it is demonstrated to the Board that SRCAA's variance application process ((~~didn't~~)) did not fully and accurately inform the applicant of the variance process described in Sections 3.01-3.02((~~.A~~))(A) ((~~of this~~

~~Regulation~~)). Such request must be made in writing no later than thirty (30) days after denial or approval of the variance by the Board. Any fee reductions or refunds shall be at the full discretion of the Board.

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

SECTION 4.01 REGISTRATION REQUIRED

(A) Stationary Source Registration. The Agency regulates the classes of stationary sources and source categories listed in SRCAA Regulation I, Article IV, Section 4.04, under the authority of RCW ((~~70.94.151~~)) 70A.15.2200. A stationary source listed in Section 4.04, whether publicly or privately owned, must register with the Agency, unless exempted under Article IV, Section 4.03.

(B) Purpose. The registration program allows the Agency to maintain a current and accurate record of air contaminant sources. Information collected through registration is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

(C) Registration Program Components.

(1) Initial registration and annual or other periodic reports from stationary source owner or operator.

(2) On-site inspections necessary to verify compliance with registration requirements.

(3) Data storage and retrieval systems necessary for support of the registration program.

(4) Emission inventory reports and emission reduction credits computed from information provided by source owner/operator under the registration requirements.

(5) Staff review, including engineering analysis for accuracy and current information provided by source under the registration program.

(6) Clerical, administrative, and other office support of the registration program.

AMENDATORY SECTION

SECTION 4.04 STATIONARY SOURCES AND SOURCE CATEGORIES SUBJECT TO REGISTRATION

(A) Subject to Registration. The following stationary sources and source categories are subject to registration. Emission rates in SRCAA Regulation I, Article IV, Section 4.04 are based on uncontrolled PTE emissions, unless otherwise noted.

(1) Stationary sources or source categories subject to state requirements:

(a) Any stationary source that qualifies as a new major stationary source, or a major modification (173-400-820 WAC).

(b) Any modification to a stationary source that requires an increase either in a facility-wide emission limit or a unit specific emission limit.

(c) Any stationary source with significant emissions as defined in WAC 173-400-810.

(d) Any stationary source where the owner or operator has elected to avoid one or more requirements of the operating permit program established in Chapter 173-401 WAC, by limiting its PTE (synthetic minor) through an order issued by the Agency.

(2) Any stationary sources or source categories:

(a) Required to obtain an Order of Approval under Regulation I, Article V.

(b) Subject to General Order of Approval (GOA) under Article V and WAC 173-400-560.

(c) For which the Control Officer determines that emissions of the stationary source, including fugitive emissions, are likely to be injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

(3) Stationary sources with the following operations:

(a) Abrasive blasting operations, except portable blasting operations operating at a construction site, or at a site for less than thirty (30) days in any running twelve (12) month period and abrasive blasting operations that do not exhaust or release fugitive emissions to the ambient air.

(b) Acid production plants, including all acids listed in Chapter 173-460 WAC.

(c) Agricultural chemicals, manufacturing, mixing, packaging or other related air contaminant emitting operations (fertilizer concentrates, pesticides, etc.).

(d) Agricultural drying and dehydrating operations.

(e) Alumina processing operations.

(f) Ammonium sulfate manufacturing plants.

(g) Asphalt and asphalt products production operations (asphalt roofing and application equipment excluded).

(h) Brick and clay products manufacturing operations (tiles, ceramics, etc). Noncommercial operations are exempt.

(i) Cattle feedlots with an inventory of one thousand or more cattle in operation between June 1 and October 1, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season.

(j) Chemical manufacturing operations.

(k) Coffee roasting operations.

(l) Composting operations except noncommercial agricultural and noncommercial residential composting activities.

(m) Concrete production operations and ready mix plants.

(n) Flexible polyurethane foam, polyester resin, and styrene production operations.

(o) Flexible vinyl operations and urethane coating operations.

(p) Fuel refining operations, blending operations, production operations, including alternative commercial fuel production facilities (e.g. ethanol, bio-diesel, etc.)

(q) Gasoline and aviation gas storage and dispensing, including:

1. Gasoline dispensing facilities, subject to Chapter 173-491 WAC, and aviation gas dispensing facilities with total gasoline storage capacities greater than 10,000 gallons; and

2. Bulk gasoline, and aviation gas terminals, bulk gasoline and aviation gas plants, and gasoline and aviation gas loading terminals.

(r) Grainhandling; seed, pea, and lentil processing facilities. Registration shall be in accordance with Article IV, Section 4.03.

(s) Hay cubing or pelletizing operations established at a dedicated collection and processing site.

(t) Insulation manufacturing operations.

(u) Metal casting facilities and foundries, ferrous.

(v) Metal casting facilities and foundries, nonferrous.

(w) Metal plating and anodizing operations.

(x) Metallurgical processing operations.

(y) Mills; grain, seed, feed and flour production, and related operations.

(z) Mills; lumber, plywood, shake, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board, grass/stubble pressboard, pelletizing, or any combination thereof.

(aa) Mills; wood products manufacturing operations (including, but not limited to, cabinet works, casket works, furniture, and wood by-products).

(bb) Mineral processing (metallic and nonmetallic), including, but not limited to, rock crushing, sand and gravel mixing operations, except stand-alone rock, soil, or wood screening/conveying operations and blasting operations.

(cc) Mineralogical processing operations.

(dd) Natural gas transmission and distribution (SIC 4923/NAICS 486210 and 221210, respectively).

(ee) Paper manufacturing operations, except Kraft and sulfite pulp mills.

(ff) Perchloroethylene dry cleaning operations.

(gg) Pharmaceuticals production operations.

(hh) Plastics and fiberglass fabrication, including gelcoat, polyester resin, or vinylester coating operations using more than 55 gals/yr of all materials containing volatile organic compounds or toxic air pollutants.

(ii) Portland Cement production facilities.

(jj) Refuse systems (SIC 4953/NAICS 562213, 562212, 562211, and 562219, respectively), including municipal waste combustors; landfills with gas collection systems or flares; hazardous waste treatment, storage, and disposal facilities; and wastewater treatment plants other than POTWs.

(kk) Rendering operations.

(ll) Semiconductor manufacturing operations.

(mm) Sewerage systems, POTWs with a rated capacity of more than one million gallons per day (SIC 4952/NAICS 221320).

(nn) Stump and wood grinding established at a dedicated collection and processing site.

(oo) Surface coating, adhesive, and ink manufacturing operations.

(pp) Surface coating operations:

1. All motor vehicle or motor vehicle component surface coating operations; and

2. General surface coating operations with PTE emissions greater than 100 lbs/yr or with PTE toxic air pollutant emissions that exceed any SQER listed in Chapter 173-460 WAC.

(qq) Synthetic fiber production operations.

(rr) Synthetic organic chemical manufacturing operations.

(ss) Tire recapping operations.

(tt) Wholesale meat/fish/poultry slaughter and packing plants.

(4) Stationary sources with the following equipment:

(a) Fuel burning equipment, including but not limited to boilers, building and process heating units (external combustion) with per unit heat inputs greater than or equal to:

1. 500,000 Btu/hr using coal or other solid fuels with less than or equal to 0.5% sulfur;

2. 500,000 Btu/hr using used/waste oil, per the requirements of RCW ((~~70.94.610~~)) 70A.15.4510;

3. 1,000,000 Btu/hr using kerosene, #1, #2 fuel oil, or other liquid fuel, including alternative liquid fuels (i.e., biodiesel, biofuels, etc) except used/waste oil;

4. 4,000,000 Btu/hr using gaseous fuels, such as, natural gas, propane, methane, LPG, or butane, including but not limited to, boilers, dryers, heat treat ovens and deep fat fryers; or

5. 400,000 Btu/hr, wood, wood waste.

(b) Incinerators, including human and pet crematories, burn-out ovens, and other solid, liquid, and gaseous waste incinerators.

(c) Internal combustion engines

1. Used for standby, back-up operations only, and rated at or above 500 bhp.

2. Stationary internal combustion engines, other than those used for standby or back-up operations, rated at 100 bhp or more and are integral to powering a stationary source. This includes but is not limited to, rock crushing, stump and woodwaste grinding, and hay cubing operations.

(d) Particulate control at materials handling and transfer facilities that generate fine particulate and exhaust more than 1,000 acfm to the ambient air. This may include ((~~pneumatic conveying,~~)) cyclones, baghouses, or industrial housekeeping vacuuming systems.

(e) Storage tanks within commercial or industrial facilities, with capacities greater than 20,000 gallons and storing organic liquids with a vapor pressure equal to or greater than 1.5 psia at 68°F.

(5) Any stationary source or stationary source category not otherwise identified above, with uncontrolled emissions rates above those listed in (a) - (d):

(a) Any single criteria pollutant, or its precursors, as defined in 40 CFR 51.165, exceeding emission rates of 0.5 tons/yr, or in the case of lead, emissions rates greater than or equal to 0.005 tons/yr;

(b) TAPs with emission rates exceeding the SQER established in Chapter 173-460 WAC;

(c) Combined air contaminants (criteria pollutants, VOCs, or TAPs) in excess of one (1.0) ton/yr; or

(d) Combined TAPs and VOC emissions greater than 0.5 tons/yr.

(e) The criteria in Section 4.04 (A)(5)(a)-(d) applies to, but is not limited to the following stationary source categories:

1. Bakeries;

2. Bed lining or undercoating production or application operations;

3. Degreasers/solvent cleaners, not subject to 40 CFR Part 63, Subpart T (Halogenated Solvent Cleaners); including, but not limited to, vapor, cold, open top, and conveyorized cleaner;

4. Distilleries;

5. Dry cleaning non-perchloroethylene operations;

6. Evaporators;

7. General surface coating operations that only use non-spray application methods (e.g., roller coat, brush coat, flow coat, or prepackaged aerosol can);

8. Graphic art systems including, but not limited to, lithographic and screen printing operations;

9. Organic vapor collection systems within commercial or industrial facilities, including fume hoods;

10. Ovens, furnaces, kilns and curing with emissions other than combustion emissions;

11. Plasma or laser cutters;

12. Soil and groundwater remediation operations;

13. Sterilizing operations, including, but not limited to EtO and hydrogen peroxide, and other sterilizing operations;

14. Utilities, combination electric and gas, and other utility services (SIC 493/NAICS 221111 through 221210, not in order given);

15. Welding, brazing, or soldering operations; or

16. Wood furniture stripping and treatment operations (commercial only).

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

SECTION 5.02 NEW SOURCE REVIEW APPLICABILITY AND WHEN REQUIRED

(A) Purpose. SRCAA Regulation I, Article V contains the new source review requirements for stationary and portable sources in Spokane County.

(B) Applicability. Article V applies to all stationary sources, portable sources and source categories listed in Article IV, Section 4.04, unless specifically exempted Article V, Section 5.02(I).

(C) NOC Required for New or Modified Stationary Sources. A NOC application must be filed by the owner or operator and an Order of Approval issued by the Agency prior to the establishment of any of the following stationary source or source categories:

(1) New stationary sources and source categories subject to the applicability criteria in Article IV, Section 4.04;

(2) Establishment of a new major stationary source as defined in WAC 173-400-710 and 173-400-810;

(3) Modifications to an existing stationary source which results in an increase in actual emissions or that requires an increase in either a facility-wide or a unit specific emission limit;

(4) A major modification to an existing major stationary source as defined in WAC 173-400-710 and 173-400-810;

(5) Any stationary source with emissions that exceed the SQER in Chapter 173-460 WAC;

(6) Like-kind replacement of existing emissions unit(s);

(7) Existing stationary source replacement or substantial alteration of control equipment;

(8) A stationary source or emission unit(s) resuming operation after it has been closed per Article IV, Section 4.05;

(9) An existing stationary source that is relocated;

(10) A stationary source that applies for coverage under a GOA issued by the Agency under WAC 173-400-560 in lieu of filing a NOC application under Article V, Section 5.02; or

(11) Any stationary source the Agency determines must file a NOC application and obtain an Order of Approval in order to reduce the potential impact of air emissions on human health and safety, prevent injury to plant, animal life, and property, or which unreasonably interferes with enjoyment of life and property.

(D) PSP Required for New or Modified Portable Sources. A PSP application must be filed by the owner or operator and a Permission to Operate issued by the Agency prior to the establishment of any portable sources subject to the applicability criteria in Article IV, Section 4.04, which locate temporarily at locations in Spokane County, unless specifically exempted in 5.08(D).

(E) Modification Review. New source review of a modification is limited to the emissions unit(s) proposed to be added or modified at an existing stationary source and the air contaminants whose emissions would increase as a result of the modification. Review of a major mod-

ification must comply with WAC 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860, as applicable.

(F) AOP Integrated Review. An owner or operator seeking approval to construct or modify an air operating permit source, may elect to integrate review of the air operating permit application or amendment, required under RCW ((~~70.94.161~~)) 70A.15.2260, and the NOC application required by Article V. A NOC application designated for integrated review must be processed in accordance with the provisions in Chapter 173-401 WAC.

(G) New Major Stationary Source or Major Modification in Nonattainment Areas. The proposed project is subject to the permitting requirements of WAC 173-400-800 through 173-400-860 if:

(1) It is a new major stationary source or major modification, located in a designated nonattainment area;

(2) The project emits the air pollutant or its precursors for which the area is designated nonattainment; and

(3) The project meets the applicability criteria in WAC 173-400-820.

(H) PSD Permitting with New Major Stationary Source or Major Modification. If the proposed project is a new major stationary source or a major modification that meets the applicability criteria of WAC 173-400-720, the project is subject to the PSD permitting requirements of WAC 173-400-700 through 173-400-750.

(I) Stationary Sources Exempt from Article V.

(1) The following stationary sources are exempt from the requirement to file a NOC application and obtain an Order of Approval, provided that the source has registered with the Agency per Article IV, prior to placing the source in operation:

(a) Batch coffee roasters with a maximum rated capacity of five (5) kg per batch or less, unless air pollution controls are required because of documented nuisance odors or emissions.

(b) Motor vehicle or motor vehicle component surface coating operations with PTE emissions less than one hundred (100) lbs/yr and with PTE toxic air pollutant emissions that do not exceed any SQER listed in Chapter 173-460 WAC.

(c) General surface coating operations that only use non-spray application methods (e.g., roller coat, brush coat, flow coat, or prepackaged aerosol can) with PTE emissions above the thresholds listed in Article IV, Section 4.04 (A)(3)(pp)2., but below thresholds presented in Sections 4.04 (A)(5)(a - d).

(2) Exemption documentation. The owner or operator of any stationary source exempted under Article V must maintain documentation in order to verify the stationary source remains entitled to the exemption status and must present said documentation to an authorized Agency representative upon request. If an owner or operator of any source that is exempt from new source review under Article V as a result of the exemption in Section 5.02 (I)(1) exceeds the emission thresholds in those exemptions, the owner or operator must immediately notify the Agency of the exceedance and submit and NOC application and receive an Order of Approval from the Agency.

(3) Compliance with SRCAA Regulation I. An exemption from new source review under Section 5.02 (I)(1) is not an exemption from registration under Article IV or any other provision of Regulation I. ((~~Portable sources are exempt from registration [Section 4.03 (A)(3)].~~))

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
SECTION 5.04 INFORMATION REQUIRED

(A) NOC and PSP Information. Each NOC application or PSP application must be accompanied by appropriate documentation that provides a detailed description of the stationary source or portable source to enable the Agency to determine that the source or emissions unit will comply with Chapter ((~~70.94~~)) 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s). Information must be submitted on Agency prepared and furnished forms. Such information must include:

(1) The new or modified stationary source, portable source, emissions unit, or control equipment;

(2) Any equipment connected to, serving, or served by the new or modified stationary source or portable source;

(3) A plot plan, including the distance to, length, width, and height of; buildings within two hundred (200) feet, or other distance specified by the Agency, from the place where the new or modified stationary source or portable source will be installed;

(4) The proposed means for the prevention or control of the emissions of air contaminants;

(5) Estimated emissions resulting from the proposal and the basis for the estimates, or sufficient information for the Agency to determine the expected emissions;

(6) Any additional information required by the Agency to show that the proposed new or modified stationary source or portable source will meet the applicable air quality requirements of Chapter ((~~70.94~~)) 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s);

(7) Any additional information required under WAC 173-400-112 or WAC 173-400-113; and

(8) The owner or operator must provide documentation that the requirements of Chapter 197-11 WAC, State Environmental Policy have been met. If the Agency is the lead agency for review of an Environmental Checklist (SEPA) or EIS related to the NOC or PSP application being submitted, then the owner or operator filing the SEPA must pay a SEPA review fee according to SRCAA Regulation I, Article X, Section 10.07. This fee must be paid without regard to the final SEPA determination. The cost of publishing any required public notice must be paid by the owner or operator.

(B) Signature. Each NOC or PSP application must be signed by the owner or operator of the new or modified stationary source or portable source.

AMENDATORY SECTION
SECTION 5.05 PUBLIC INVOLVEMENT

(A) Public Notice and Opportunity for Public Comment.

(1) SRCAA Regulation I, Article V, Section 5.05 specifies the requirements for notifying the public about air quality actions and provides opportunities of the public to participate in those actions.

(2) Applicability to Prevention of Significant Deterioration (PSD). This Section does not apply to a NOC designated for integrated review with actions regulated by WAC 173-400-700 through 173-400-750. In such cases, compliance with the public notification of WAC 173-400-740 is required.

(B) Public Notice of Application.

(1) A notice must be published on the Agency's website announcing the receipt of NOC applications and PSP applications. Notice will be published for a minimum fifteen (15) consecutive days. Duration does not require uninterrupted website access. Each notice will include the following information:

(a) Notice of the receipt of the application;

(b) The type of proposed action; and

(c) A statement that the public may request a public comment period on the proposed action per Article V, Section 5.05 (B)(2).

(2) Requests for a thirty (30) day public comment period concerning applications, orders, proposed projects, or actions must be submitted to the Agency in writing via letter, fax, or electronic means within fifteen (15) days of the posting date on the Agency's website.

(a) A thirty (30) day public comment period must be provided per Article V, Section 5.05(D) for any application or proposed action that receives such a request.

(b) Any application or proposed action for which a thirty (30) day public comment period is not requested may be processed without further public involvement at the end of the fifteen (15) day comment period referenced in Section 5.05 (B)(1).

(3) If state or federal regulations require public notice, the public notice must occur in a manner that complies with Section 5.05 and those sections of the state or federal regulations that are applicable.

(C) Mandatory Public Comment Period. A thirty (30) day public comment period must be provided per Article V, Section 5.05(D) before approving or denying any of the following:

(1) An application, order, or proposed action for which a public comment period is requested in compliance with Section 5.05 (B)(2);

(2) An order for a new stationary source or modification of an approved stationary source that increases the annual allowable emissions of the approved source to ten (10) tons or more of any air contaminant, criteria pollutant, or toxic air pollutant;

(3) A NOC or PSP application for a new or modified source if there is an increase in emissions of any air pollutant at a rate above the emission threshold rate (defined in WAC 173-400-030), or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under Chapter 173-460 WAC;

(4) Use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51, as part of review under Article V, Sections 5.02 and 5.08, WAC 173-400-112, WAC 173-400-113, or WAC 173-400-117;

(5) ~~Any~~ An order to determine RACT;

(6) An order to establish a compliance schedule or a variance. A variance shall be in accordance with Regulation I, Article III;

(7) An order to demonstrate the creditable height of a stack which exceeds the GEP formula height and sixty-five (65) meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation;

(8) An order to authorize a bubble, under RCW ((~~70.94.155~~)) 70A.15.2240 and WAC 173-400-120;

(9) An action to discount the value of an ERC, issued to a source per WAC 173-400-136;

(10) A regulatory order to establish BART for an existing stationary facility;

(11) A NOC application or regulatory order used to establish a creditable emission reduction;

(12) An order issued under WAC 173-400-091 that establishes limitations on PTE;

(13) An extension of the deadline to begin actual construction of a major stationary source or major modification in a nonattainment area;

(14) The original issuance and the issuance of all revisions to a GOA issued under WAC 173-400-560;

(15) An order issued under WAC 173-400-081(4) or 173-400-082 that establishes an emission limitation that exceeds a standard in the SIP; or

(16) An NOC application or other proposed action for which the Agency determines there is a significant public interest.

(D) Public Comment Period.

(1) After all information required by the Agency has been submitted and applicable preliminary determinations, if any, have been made, a public comment period on actions listed under Section 5.05(C) must be provided for a minimum of thirty (30) days following the date the notice is first published on the Agency website. If a public hearing is held, the comment period must ((~~extent~~)) extend through the hearing date.

(2) Availability for public inspection.

(a) Administrative record. The information submitted by the owner or operator, and any applicable preliminary determinations, including analyses of the effect(s) on air quality, must be available for public inspection in at least one (1) location near the proposed project or on the Agency website for the duration of the public comment period. Duration does not require uninterrupted website access.

(b) The Agency must post the following information on their website for the duration of the public comment period. Duration does not require uninterrupted website access.

1. Public notice must include the information described in Section 5.05 (D)(4);

2. Draft permit, order, or action; and

3. Information on how to access the administrative record.

(3) Publication of comment period notice.

(a) Public notice of all applications, orders, hearings, or actions listed in Article V, Section 5.05(C) must be posted on the Agency's website for the duration of the public comment period. Duration does not require uninterrupted website access.

(b) The Agency may supplement Agency website notification by advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community.

(4) Notice for a public comment period must include the following information:

(a) Date the public notice is posted;

(b) The name and address of the owner or operator and the affected facility;

(c) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;

(d) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;

(e) The location where those documents made available for public inspection may be reviewed;

(f) Start date and end date for the thirty (30) day public comment period;

(g) A statement that a public hearing may be held if the Agency determines within a thirty (30) day period that significant public interest exists;

(h) The name, address, telephone number, and e-mail address of a person at the Agency where interested persons may obtain additional information, including copies of the permit draft, application, relevant supporting materials, compliance plan, permit, monitoring, compliance certification report, and all other materials available to the Agency that are relevant to the permit decision;

(i) For projects subject to special protection requirements for federal Class I areas in WAC 173-400-117, the public notice must explain the Agency's decision; and

(j) Any other information required under state or federal laws or regulations.

(5) The cost of publishing any public notice required by Article V, Section 5.05 must be paid by the owner or operator.

(6) EPA notification. The Agency must send a copy of the notice for all actions subject to a mandatory public comment period to the EPA Region 10 regional administrator.

(7) Consideration of public comment. The Agency must make a final decision after the public comment period has ended and comments timely received have been considered.

(8) Public hearings.

(a) The owner or operator, any interested governmental entity, group, or person may request a public hearing within the thirty (30) day public comment period. All hearing requests must be submitted to the Agency in writing via letter, fax, or electronic means. A request must indicate the interest of the entity filing it and why a hearing is warranted.

(b) The Agency may hold a public hearing if it determines significant public interest exists. The Agency will determine the location, date, and time of the public hearing. If a public hearing is held, the public comment period will extend through the hearing date and thereafter for such period, if any, as the notice of public hearing may specify.

(c) Notice of public hearings. At least thirty (30) days prior to the public hearing, the Agency must provide notice of the hearing as follows:

1. Post a public hearing notice on the Agency's website as directed by Section 5.05 (D)(4) for the duration of the public comment period. Duration does not require uninterrupted website access.

2. Distribute by electronic means or postal service the notice of public hearing to any person who submitted written comments on the application or requested a public hearing, and in the case of a permit action, to the owner or operator.

3. The notice must include the date, time, and location of the public hearing.

4. The Agency may supplement Agency website notification by advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community.

(E) Public Involvement for Integrated Review with an Air Operating Permit. Any NOC application designated for integrated review with

an application to issue or modify an operating permit must be processed in accordance with the operating permit program procedures and deadlines (Chapter 173-401 WAC), as adopted by reference.

(F) Other Requirements of Law. Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this Section (e.g. SEPA).

(G) Information for Public Review. All information must be made available for public inspection at the Agency, including copies of NOC applications, Orders of Approval, regulatory orders, and modifications thereof. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW ((~~70.94.205~~)) 70A.15.2510 and Regulation I, Article II, Section 2.03.

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

SECTION 5.07 PROCESSING NOC APPLICATIONS FOR STATIONARY SOURCES

(A) For New or Modified Stationary Sources.

(1) Criteria for approval of a NOC application. An Order of Approval cannot be issued until the requirements of the identified regulations ((~~following criteria~~)) are met as applicable:

(a) ((~~The requirements of~~)) WAC 173-400-112 - Requirements for new sources in nonattainment areas—Review for compliance with regulations;

(b) ((~~The requirements of~~)) WAC 173-400-113 - New sources in attainment or unclassifiable areas—Review for compliance with regulations;

(c) ((~~The requirements of~~)) WAC 173-400-117 - Special protection requirements for federal Class I areas;

(d) ((~~The requirements of~~)) Article V, Section 5.05;

(e) ((~~The requirements of~~)) WAC 173-400-200 - Creditable stack height and dispersion techniques and WAC 173-400-205 - Adjustment for atmospheric conditions;

(f) ((~~The requirements of~~)) WAC 173-400-800 - Major stationary source and major modification in a nonattainment area through WAC 173-400-860 -Public involvement procedures;

(g) ((~~The requirements of~~)) Chapter 173-460 WAC - Controls for new sources of toxic air pollutants; and

(h) All fees required under SRCAA Regulation I, Article X, Sections 10.07 and 10.08 have been paid.

(2) Within sixty (60) days of receipt of a complete NOC application, the Agency must either issue a final determination on the application or, when required, initiate public notice and comment procedures under Article V, Section 5.05. The Agency must issue a final determination as promptly as possible after the close of the comment period.

(3) The final determination may include:

(a) An Order of Denial, if the proposal is not in accordance with Chapter ((~~70.94~~)) 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s); or

(b) An Order of Approval which may provide reasonable conditions necessary to assure compliance with Chapter ((~~70.94~~)) 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s).

(4) The final determination on a NOC application must be reviewed and signed by a professional engineer prior to issuance.

(5) The Agency must promptly mail a copy of each order, approving, denying, revoking, revising, or suspending an Order of Approval or Permit to Operate to the applicant and to any other party who submitted timely comments on the action. The approval, denial, revocation, revision, or suspension order must include a notice advising the parties of their rights of appeal to the Pollution Control Hearings Board.

(6) If the new source is a major stationary source, or the change is a major modification subject to the requirements of WAC 173-400-800 through 860, the Agency must:

(a) Submit any LAER control equipment determination included in a final Order of Approval to the RACT/BACT/LAER Clearinghouse maintained by the EPA; and

(b) Send a copy of the final Order of Approval, with the LAER control equipment determination, to EPA.

(7) The owner or operator of a stationary source must not begin actual construction((~~,~~)) until the Agency approves the NOC application and issues an Order of Approval.

(B) Replacement or Substantial Alteration of Control Equipment. An owner or operator proposing to replace or substantially alter the control equipment installed on an existing stationary source or emission unit must file a NOC application with the Agency. A project to replace or substantially alter control technology at an existing stationary source that results in an increase in emissions of any air contaminant is subject to new source review as provided in Section 5.07(A). For any other project to replace or substantially alter control equipment, the requirements of 5.07 (B)(1) through (5) apply. Replacement or substantial alteration of control equipment does not include routine maintenance, repair, or similar parts replacement.

(1) Within thirty (30) days of receipt of a complete NOC application, the Agency must issue a final determination. The final determination may include:

(a) An Order of Approval;

(b) An Order of Denial; or

(c) A proposed RACT determination for the project per WAC 173-400-114.

(2) The final determination may:

(a) Require that the owner or operator employ RACT for the affected emissions unit;

(b) Prescribe reasonable operation and maintenance conditions for the control equipment; and

(c) Prescribe other requirements as authorized by Chapter ((~~70.94~~)) 70A.15 RCW.

(3) The final determination on a NOC application must be reviewed and signed by a professional engineer prior to issuance.

(4) The Agency must promptly mail a copy of each order, approving, denying, revoking, revising, or suspending an Order of Approval or Permission to Operate to the owner or operator, and to any other party who submitted timely comments on the proposed action. The order must include a notice advising the parties of their rights of appeal to the PCHB.

(5) Construction shall not commence until the Agency approves the NOC application and issues an Order of Approval. However, any NOC application, filed under Section 5.07(B), shall be deemed to be approved

without conditions, if the Agency takes no action within thirty (30) days of receipt of a complete application.

AMENDATORY SECTION

SECTION 5.08 PORTABLE SOURCES

(A) PSP Required for New or Modified Portable Sources.

(1) A PSP application must be filed by the owner or operator and a((~~n~~)) Permission to Operate issued by the Agency prior to the establishment of any portable sources listed in Article IV, Section 4.04 Stationary sources and source categories subject to registration, which locate temporarily at locations in Spokane County. Exemptions are provided in Section 5.08(D).

(2) Each time that a portable source will relocate to operate at a new location in Spokane County, the owner or operator must submit a PSP application and obtain an approved Permission to Operate issued by the Agency.

(3) The PSP application must be filed at least fifteen (15) calendar days prior to operating at a new location.

(4) Information required in Article V, Section 5.04, must be supplied by the owner or operator to enable the Agency to determine that the operation is in accordance with Chapter ((~~70.94~~)) 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s).

(5) A PSP application cannot be approved and a Permission to Operate cannot be issued until the criteria given in Section 5.07(A), as applicable, has been met.

(6) Nonroad engines are reviewed under the following:

(a) Except as provided in Article V, Section 5.08(D), nonroad engines are required to submit a PSP application and obtain an approved Permission to Operate if:

1. The nonroad engine is rated at 500 or more bhp; and

2. The nonroad engine operates at the site for thirty (30) or more calendar days in any twelve (12) month period. Nonroad engines anticipated to operate more than thirty (30) days in any twelve (12) month period, but less than one (1) year are subject to the requirements of Article V, Section 5.08. When the nonroad engine operates at the site for more than three hundred sixty-four (364) consecutive days, a NOC application must be filed by the owner or operator and approved by the Agency.

(b) Nonroad engines required to obtain approval of a PSP application per Section 5.08 are reviewed under the following criteria:

1. Emission impacts must comply with NAAQS;

2. Must meet applicable federal standards for nonroad diesel engines (40 CFR Part 89, if applicable);

3. Must use ultra low sulfur fuel (equal to or less than 0.0015% sulfur by weight);

4. Must be properly operated and maintained; and

5. Opacity from each nonroad engine must not exceed 10%, as determined per EPA Method 9.

(B) Permission to Operate.

(1) Permission to Operate may be granted subject to conditions necessary to assure compliance with Chapter ((~~70.94~~)) 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s). If any conditions listed in Article V, Section 5.05(C) are applicable to the proposal, a public comment period must be held according to Section 5.05(D).

(2) Permission to Operate may be granted for a limited time, but in no case remains effective for more than three hundred sixty-four (364) consecutive days from the Permission to Operate approval date. If operation will exceed three hundred sixty-four (364) days, the owner or operator must submit an NOC application per Section 5.02, and receive an Order of Approval per Section 5.07.

(3) The owner or operator of a portable source must not install or operate the portable source until the Agency approves the PSP application and issues a Permission to Operate.

(4) Portable sources that meet the criteria in Article IV, Section 4.03 (A)(3) are exempt from registration.

(C) Permission to Operate Becomes Invalid if:

(1) Construction, installation, or operation does not begin within ninety (90) days of receipt of Permission to Operate, unless a longer time is approved by the Agency;

(2) The operation is removed from the site;

(3) The portable source is operated at a location after three hundred sixty-four (364) days from the Permission to Operate approval date; or

(4) The owner or operator of a portable source establishes a permanent stationary source at that site for which the Permission to Operate was approved.

(D) Portable Sources Exempt from Article V, Section 5.08.

(1) The following portable sources are exempt from the requirement to file a PSP application and obtain a Permission to Operate, prior to placing the portable source in operation.

(a) Portable sources listed in 1. through 4. Below, that emit pollutants below those presented in WAC 173-400-100:

1. Abrasive blasting.

2. Rock drilling operations.

3. Blasting operations.

4. Woodwaste chipping and grinding operations, except for operations that establish a permanent collection, storage, or processing facility at a site or sites for purpose of future processing, must obtain the Agency's approval of a NOC application, prior to establishment of the stationary source.

(b) Soil and groundwater remediation projects that emit pollutants below those presented Article IV, Sections 4.04 (A)(5)(a) through (d).

(c) All nonroad engines associated with portable rock crushing operations, portable asphalt production operations, and portable concrete production operations.

(2) Exemption documentation. The owner or operator of any portable source exempted under Section 5.08(D) must maintain documentation in order to verify the portable source remains entitled to the exemption status and must present said documentation to an authorized Agency representative upon request. If an owner or operator of any source that is exempt from new source review under Article V as a result of the exemptions in 5.08 (D)(1) exceeds the emission thresholds in those exemptions, the owner or operator must immediately notify the Agency of the exceedance and submit a PSP application and receive a Permission to Operate from the Agency.

(3) Compliance with SRCAA Regulation I. An exemption from new source review under Section 5.08(D) is not an exemption from Regulation I.((~~, however portable sources are exempt from registration [Section 4.03 (A)(3)].~~))

(E) Prevention of Significant Deterioration. Except for nonroad engines, a portable source that is considered a major stationary source or major modification within the meaning of WAC 173-400-113, must also comply with the requirements in WAC 173-400-700 through 750, as applicable. If a portable source is locating in a nonattainment area and if the portable source emits the pollutants or pollutant precursor for which the area is classified as nonattainment, the portable source must acquire a site-specific Order of Approval.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 5.10 CHANGES TO AN ORDER OF APPROVAL OR PERMISSION TO OPERATE

(A) Constructed or Operated Differently than Approved Order. The Agency may revoke, revise, or suspend an Order of Approval, coverage under a GOA, or a Permission to Operate, if the Agency determines the stationary or portable source is not constructed, installed, or operated as described in the application and information request forms.

(B) Transfer of Ownership/Name Change.

(1) If an existing stationary or portable source with a valid Order of Approval or Permission to Operate is transferred to new ownership or the business changes its name per Article IV, Section 4.02(E), and the source is unchanged by the transfer/name change, then the existing order is transferable to the new ownership/name change, as written.

(2) An existing Order of Approval is not transferable to a new stationary source that is installed or established at a site where a stationary source was previously located if the business nature of the new source is different from the previous stationary source.

(C) Change in Conditions.

(1) The owner or operator may request, at any time, a change in conditions of an Order of Approval or Permission to Operate, and the Agency may approve such a request provided the Agency finds the criteria given in Section 5.07(A), as applicable, has been met.

(2) Requests. Article V does not prescribe the exact form that change of condition requests must take. If the request is submitted in writing, the Agency must act upon the request consistent with the timelines in Article V, Sections 5.06 and 5.07 for an Order of Approval, or if <u>for</u> a Permission to Operate, consistent with Section 5.08.

(3) Fee payment. The owner or operator requesting changes to an Order of Approval or Permission to Operate per Section 5.10 must pay applicable fees, as established in SRCAA Regulation I, Article X, Section 10.07.

(D) Agency Initiated Changes in Conditions.

(1) Order of Approval and Permission to Operate revisions may be initiated by the Agency, without fees charged to the owner or operator, provided the owner or operator of the stationary source has complied with all applicable requirements of Chapter ((~~70.94~~)) <u>70A.15</u> RCW, the rules and regulations adopted thereunder, ((~~and~~)) the Agency's regulation(s), and the Agency determines the Order of Approval or Permission to Operate has:

(a) Typographical errors;

(b) Conditions listed therein that are technically infeasible;

(c) Additional or revised provisions that are needed to ensure compliance with Chapter ((~~70.94~~)) <u>70A.15</u> RCW, the rules and regulation adopted thereunder by the state or Agency, and federal regulations; or

(d) Inaccurate ownership information, including name, address, phone number, or other minor administrative inaccuracies.

(2) The Agency may not modify, delete, or add conditions to an existing Order of Approval or Permission to Operate under Article V, Section 5.10(D), unless the owner or operator is notified in writing at least thirty (30) days in advance of the effective date of the change. Modified, deleted or added conditions may be appealed in accordance with Chapter 43.21B RCW.

(E) Public Notice of Changes in Conditions. Changes to conditions in an Order of Approval or Permission to Operate are subject to the public involvement provisions of Article V, Section 5.05.

AMENDATORY SECTION

SECTION 5.13 ORDER OF APPROVAL CONSTRUCTION TIME LIMITS

(A) Time Limit. An Order of Approval, issued under SRCAA Regulation I, Article V, Section 5.07 becomes invalid if:

(1) Construction is not commenced within eighteen (18) months after the receipt of the approval;

(2) Construction is discontinued for a period of eighteen (18) months or more; or

(3) Construction is not completed within eighteen (18) months of commencement.

(B) Extension. The Agency may grant an extension beyond the eighteen (18) month period, as provided for in Article V, Section 5.13(A), upon a satisfactory showing that an extension is justified. The Agency may approve such a request provided that:

(1) No new requirements, such as NSPS (40 CFR Part 60), NESHAP (40 CFR Parts 61 and 63), or state and local regulations, have been adopted under Chapter ((~~70.94~~)) 70A.15 RCW or the FCCA (42 USC 7401 et seq.) which would change the Order of Approval, had it been issued at the time of the extension;

(2) No control equipment required per WAC 173-400-112, WAC 173-400-113, or WAC 173-400-114; or Article V, have been subsequently identified which would change the Order of Approval, had it been issued at the time of the extension;

(3) The information presented in the NOC application, associated documents, and the determinations by the Agency during review of the application continue to accurately represent the design, configuration, equipment, and emissions of the proposed stationary source; and

(4) The applicant certifies that the stationary source will comply with all applicable requirements of Chapter ((~~70.94~~)) 70A.15 RCW, the rules and regulations adopted thereunder, and the Agency's regulation(s).

(C) Phased Projects. Article V, Section 5.13(A) does not apply to the time period between construction of the approved phases of a phased construction project. Each construction phase must commence construction within eighteen (18) months of the projected and approved commencement date.

AMENDATORY SECTION

SECTION 6.01 OUTDOOR BURNING

(A) Purpose. [WAC 173-425-010 (1-3)]

SRCAA Regulation I, Article VI, Section 6.01 establishes controls for outdoor burning in Spokane County in order to:

(1) Minimize or prohibit outdoor burning to the greatest extent practicable.

(2) Minimize or eliminate the impact of emissions from outdoor burning by defining conditions under which outdoor burning may be conducted.

(3) Encourage the development and specify the use of reasonable alternatives to outdoor burning. Reasonable alternatives are methods for disposing of organic refuse (such as natural vegetation) that are available, reasonably economical, and less harmful to the environment than burning.

(4) Geographically limit outdoor burning in order to assure continued attainment of the NAAQS for carbon monoxide (CO) and fine particulate matter ($PM_{2.5}$) as specified in 40 CFR Part 50.

(B) Applicability. [WAC 173-425-020]

(1) Article VI, Section 6.01 applies to all outdoor burning in Spokane County except:

(a) Silvicultural burning. [RCW ((~~70.94.6534~~)) 70A.15.5120(1) & Chapter 332-24 WAC] Silvicultural burning is related to the following activities for the protection of life or property and/or the public health, safety, and welfare:

1. Abating a forest fire hazard;

2. Prevention of a forest fire hazard;

3. Instruction of public officials in methods of forest fire-fighting;

4. Any silvicultural operation to improve the forest lands of the state; and

5. Silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

(b) Agricultural Burning. [Article VI, Section 6.11]

Agricultural burning is burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, necessary to destroy weeds or crop residue along farm fence rows, irrigation ditches, or farm drainage ditches, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW ((~~70.94.6528~~)) 70A.15.5090 or other authoritative source on agricultural practices.

(c) Any outdoor burning on lands within the exterior boundaries of Indian reservations (unless provided for by intergovernmental agreement).

(2) Article VI, Section 6.01 specifically applies to:

(a) Firefighting Instruction Fires.

1. Aircraft Crash Rescue Fire Training, Section 6.01 (D)(1)(a)

2. Extinguisher Training, Section 6.01 (D)(1)(b)

3. Forest Fire Training, Section 6.01 (D)(1)(c)

4. Structural Fire Training, Section 6.01 (D)(1)(d)

5. Types of Other Firefighting Instruction Fires, Section 6.01 (D)(1)(e)

(b) Fire Hazard Abatement Fires, Section 6.01 (D)(2)

(c) Flag Retirement Ceremony Fires, Section 6.01 (D)(3)

(d) Indian Ceremonial Fires, Section 6.01 (D)(4)

(e) Land Clearing Fires, Section 6.01 (D)(5)

(f) Rare and Endangered Plant Regeneration Fires, Section 6.01 (D)(6)

(g) Recreational Fires, Section 6.01 (D)(7)

(h) Residential Fires, Section 6.01 (D)(8)

(i) Social Event Fires, Section 6.01 (D)(9)
(j) Storm or Flood Debris Fires, Section 6.01 (D)(10)
(k) Tumbleweed Fires, Section 6.01 (D)(11)
(l) Weed Abatement Fires, Section 6.01 (D)(12)
(m) Other Outdoor Fires, Section 6.01 (D)(13)

(3) The provisions of Chapter 173-425 WAC (Outdoor Burning) are herein incorporated by reference.

(4) The provisions of Article VI, Section 6.01 are severable. If any phrase, sentence, paragraph, or provision is held invalid, the application of such phrase, sentence, paragraph, or provision to other circumstances and the remainder of this Section shall not be affected.

(C) Definitions. [WAC 173-425-030]

Words and phrases used in Article VI, Section 6.01 shall have the meaning defined in Chapter 173-425 WAC, unless a different meaning is clearly required by context or is otherwise defined in this Section.

(1) *Natural Vegetation* means unprocessed plant material from herbs, shrubbery, and trees, including grass, weeds, leaves, clippings, prunings, brush, branches, roots, stumps, and trunk wood. It does not include dimensional lumber, mill((~~s~~)) ends, etc.

(2) *Outdoor Burning* means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. For the purpose of this rule, "outdoor burning" means all types of outdoor burning except agricultural burning and silvicultural burning. [RCW ((~~70.94.6511~~)) 70A.15.5000]

(3) *Permitting Agency* means the Spokane Regional Clean Air Agency (SRCAA or Agency) or Spokane County, any fire protection agency within Spokane County, Washington State Department of Natural Resources (DNR), or the Spokane County Conservation District; upon delegation by or signed agreement with SRCAA. [RCW ((~~70.94.6530~~)) 70A.15.5100]

(4) *Person* means any individual(s), firm, public corporation, private corporation, association, partnership, political subdivision, municipality, or government agency. It includes any person who has applied for and received a permit for outdoor burning; any person allowing, igniting, or attending a fire; or any person who owns or controls property on which outdoor burning occurs.

(5) *Responsible Person* means any person who has applied for and received a permit for outdoor burning, or any person allowing, igniting, or attending to a fire, or any person who owns or controls property on which outdoor burning occurs.

(D) Outdoor Burning Permitted.

(1) Firefighting Instruction Fires. [WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4)]

Firefighting instruction fires are fires for the purpose of firefighter training, including, but not limited to aircraft crash rescue fire training, extinguisher training, forest fire training, and structural fire training. Unless specified otherwise, Article VI, Section 6.01 (D)(1) serves as a general permit by the Agency.

(a) Aircraft Crash Rescue Fire Training. [RCW ((~~70.94.6546~~)) 70A.15.5180(1-2), WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4)]

1. Aircraft crash rescue training fires meeting all of the following criteria do not require a permit:

a. Firefighters participating in the training fires are limited to those who provide firefighting support to an airport that is either certified by the federal aviation administration or operated in support of military or governmental activities.

b. The fire training may not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW ((~~70.94.715~~)) 70A.15.6010 for the area where training is to be conducted.

c. The number of training fires allowed each year without a written permit shall be the minimum number necessary to meet federal aviation administration or other federal safety requirements.

d. The facility shall use current technology and be operated in a manner that will minimize, to the extent possible, the air contaminants generated during the training fire.

e. The organization conducting the training shall notify the local fire district or fire department prior to commencement of the training. The organization conducting the training shall also notify the Agency prior to commencement of the training.

2. Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply to all aircraft crash rescue fire training fires as listed below:

a. Aircraft crash rescue fire training fires are exempt from the following:

i. (F)(2) Hauled Materials
ii. (F)(6) Containers
iii. (F)(8) Distances
iv. (F)(10) Burn Hours
v. (F)(11) Number of Piles
vi. (F)(12) Fuel Area
vii. (F)(13) Written Permits
viii. (F)(15) Areas Prohibited

b. Aircraft crash rescue fire training fires must comply with the following:

i. (F)(1) Prohibited Materials (except petroleum products)
ii. (F)(3) Curtailments
iii. (F)(4) Nuisance
iv. (F)(5) Burning Detrimental to Others
v. (F)(7) Extinguishing a Fire
vi. (F)(9) Landowner Permission
vii. (F)(14) Property Access
viii. (F)(16) Other Requirements

3. Persons conducting aircraft crash rescue fire training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

(b) Extinguisher Training. [WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4)]

Extinguisher training fires of short((—))duration for instruction on the proper use of hand-held fire extinguishers may be conducted without a written permit provided all of the following requirements are met:

1. Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply to extinguisher training fires as listed below:

a. Extinguisher training fires are exempt from the following:

i. (F)(2) Hauled Materials
ii. (F)(6) Containers
iii. (F)(8) Distances
iv. (F)(10) Burn Hours
v. (F)(11) Number of Piles
vi. (F)(12) Fuel Area
vii. (F)(13) Written Permits

viii. (F)(15) Areas Prohibited

b. Extinguisher training fires must comply with the following:

i. (F)(1) Prohibited Materials (except as provided for in Section 6.01 (D)(1)(b)2.)

ii. (F)(3) Curtailments

iii. (F)(4) Nuisance

iv. (F)(5) Burning Detrimental to Others

v. (F)(7) Extinguishing a Fire

vi. (F)(9) Landowner Permission

vii. (F)(14) Property Access

viii. (F)(16) Other Requirements

2. Flammable or combustible materials used during the fire extinguisher training shall be limited to:

a. Less than two (2) gallons of clean kerosene or diesel fuel oil per training exercise, provided that gasoline or gasoline mixed with diesel or kerosene may be used only by local fire departments, fire protection agencies, fire marshals, or fire districts;

b. As much gaseous fuel (propane or natural gas) as required for the training exercise; or

c. Less than one-half (0.5) cubic yards of clean, solid combustible materials per training exercise. Examples of solid combustible materials are seasoned wood, untreated scrap lumber, and unused paper.

3. All training must be conducted by fire training officials or an instructor qualified to perform fire training. A copy of the written training plan, and when applicable, instructor qualifications, must be provided to the Agency upon request.

4. Prior to the training, the responsible person(s) conducting the exercise must notify the local fire department, fire marshal, or fire district and meet all applicable local ordinances and permitting requirements.

5. Persons conducting extinguisher training fires are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

(c) Forest Fire Training. [RCW ((~~70.94.6546~~)) 70A.15.5180(4), WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4)]

A fire protection agency may conduct forest fire training fires consisting of only natural vegetation without a written permit.

1. Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply to forest fire training fires as listed below:

a. Forest fire training fires are exempt from the following:

i. (F)(2) Hauled Materials

ii. (F)(6) Containers

iii. (F)(8) Distances

iv. (F)(10) Burn Hours

v. (F)(11) Number of Piles

vi. (F)(12) Fuel Area

vii. (F)(13) Written Permits

viii. (F)(15) Areas Prohibited

b. Forest fire training fires must comply with the following:

i. (F)(1) Prohibited Materials

ii. (F)(3) Curtailments

iii. (F)(4) Nuisance

iv. (F)(5) Burning Detrimental to Others

v. (F)(7) Extinguishing a Fire

vi. (F)(9) Landowner Permission

vii. (F)(14) Property Access
viii. (F)(16) Other Requirements

2. Grassland or wildland fires used for the purpose of forest fire training fires qualify as forest firefighting instruction fires. Grassland or wildland fires not used for the purpose of forest fire instruction fires shall be performed pursuant to Section 6.01 (D)(1)(e), Types of Firefighting Instruction Fires Not Listed Above.

3. Persons conducting forest fire training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

(d) Structural Fire Training. [RCW 52.12.150(4), RCW ((~~70.94.6546~~)) 70A.15.5180(3), WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4]

A fire protection agency may conduct structural fire training without a written permit provided all of the following requirements are met:

1. Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply to structural fire training fires as listed below:

a. Structural fire training fires are exempt from the following:
i. (F)(1) Prohibited Materials (except as provided for in Section 6.01 (D)(1)(d)4.)
ii. (F)(2) Hauled Materials
iii. (F)(6) Containers
iv. (F)(8) Distances
v. (F)(10) Burn Hours
vi. (F)(11) Number of Piles
vii. (F)(12) Fuel Area
viii. (F)(13) Written Permits
ix. (F)(15) Areas Prohibited

b. Structural fire training fires must comply with the following:
i. (F)(3) Curtailments
ii. (F)(4) Nuisance
iii. (F)(5) Burning Detrimental to Others
iv. (F)(7) Extinguishing a Fire
v. (F)(9) Landowner Permission
vi. (F)(14) Property Access
vii. (F)(16) Other Requirements

2. The owner and fire protection agency(ies) must meet the requirements in SRCAA Regulation I, Article IX - Asbestos Control Standards and Article X, Section 10.09 - Asbestos Project And Demolition Notification Waiting Period And Fees, prior to conducting the training. This includes clearly identifying structures on the Notice of Intent that will be used for structural fire training.

3. The fire protection agency(ies) conducting the fire training must have a fire training plan available to the Agency upon request, and the purpose of the structural fire must be to train firefighters.

4. Composition roofing, asphalt roofing shingles, asphalt siding materials, miscellaneous debris from inside the structure, carpet, linoleum, and floor tile shall not be burned unless such materials are an essential part of the fire training exercise and are described as such in the fire training plan. Materials removed from the structure(s) must be disposed of in a lawful manner prior to the training exercise.

5. Structural fire training shall not be conducted if, in consideration of prevailing air patterns, emissions from the fire are likely to cause a nuisance.

6. The fire protection agency(ies) conducting the training must provide notice to the owners of property adjoining the property on which the fire training will occur, to other persons who potentially will be impacted by the fire, and to additional persons if specifically directed by the Agency.

7. Structural fire training shall be performed in accordance with RCW 52.12.150.

8. Persons conducting structural fire training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

(e) Types of Firefighting Instruction Fires Not Listed Above. [WAC 173-425-020 (2)(f), WAC 173-425-030(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(f) & (3-4)]

A fire protection agency may conduct firefighting instruction fires not provided for in Article VI, Section 6.01 (D)(1)(a-d) (e.g., car rescue training fires, simulated fires at permanent fire training facilities, simulated fires via mobile fire training units, etc.) if all of the following are met:

1. Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply to other firefighting instruction fires as listed below:

a. Other firefighting training fires are exempt from the following:

i. (F)(2) Hauled Materials
ii. (F)(6) Containers
iii. (F)(8) Distances
iv. (F)(10) Burn Hours
v. (F)(11) Number of Piles
vi. (F)(12) Fuel Area
vii. (F)(13) Written Permits
viii. (F)(15) Areas Prohibited

b. Other firefighting training fires must comply with the following:

i. (F)(1) Prohibited Materials (except as provided for in Section 6.01 (D)(1)(e)3.)
ii. (F)(3) Curtailments
iii. (F)(4) Nuisance
iv. (F)(5) Burning Detrimental to Others
v. (F)(7) Extinguishing a Fire
vi. (F)(9) Landowner Permission
vii. (F)(14) Property Access
viii. (F)(16) Other Requirements

2. The fire protection agency(ies) conducting the fire training must have a fire training plan available to the Agency upon request, and the purpose of the structural fire must be to train firefighters.

3. The prohibited materials described in Article VI, Section 6.01 (F)(2) may not be burned in any fire unless such materials are an essential part of the fire training exercise and are described as such in the fire training plan.

4. Persons conducting other firefighting training are responsible for responding to citizen inquiries and resolving citizen complaints caused by the training activity.

(2) Fire Hazard Abatement Fires.

(a) A permit from a permitting agency other than SRCAA is required pursuant to Article VI, Section 6.01(E) for fire hazard abatement fires. All fire hazard abatement fires require a written permit unless an alternate permitting method is specified in a written agree-

ment (e.g., Memorandum of Understanding) between SRCAA and the permitting agency.

(b) Unless specifically authorized in writing by the permitting agency and pursuant to a written agreement between SRCAA and the permitting agency, the prohibitions/requirements in Section 6.01(F) apply as listed below:

1. Fire hazard abatement fires may be exempt from the following at the permitting agency's discretion:

i. (F)(8) Distances
ii. (F)(11) Number of Piles
iii. (F)(12) Fuel Area

2. Fire hazard abatement fires must comply with the following:

i. (F)(1) Prohibited Materials
ii. (F)(2) Hauled Materials
iii. (F)(3) Curtailments
iv. (F)(4) Nuisance
v. (F)(5) Burning Detrimental to Others
vi. (F)(6) Containers
vii. (F)(7) Extinguishing a Fire
viii. (F)(9) Landowner Permission
ix. (F)(10) Burn Hours
x. (F)(13) Written Permits
xi. (F)(14) Property Access
xii. (F)(15) Areas Prohibited
xiii. (F)(16) Other Requirements

(3) Flag Retirement Ceremony Fires. [RCW ((~~70.94.6522~~)) 70A.15.5060, WAC 173-425-020 (2)(j), WAC 173-425-030(15), WAC 173-425-040(5), WAC 173-425-060 (1)(b), and WAC 173-425-060 (1), (2)(j) & (3-4)]

A flag retirement ceremony fire is a ceremonial fire for the purpose of disposing of cotton or wool flags of the United States of America, by fire, pursuant to 36 USC ((~~United States Code~~)) 176(k). A flag retirement ceremony fire is a type of other outdoor fire as provided for in WAC 173-425-030(15). The ceremony generally involves placing the flags one at a time in a small fire during the ceremony until the last flag is burned.

(a) Article VI, Section 6.01 (D)(3) serves as a general permit by the Agency.

(b) The prohibitions/requirements in Section 6.01(F) apply to flag retirement ceremony fires as listed below:

1. Unless specifically authorized in writing by the Agency, flag retirement ceremony fires are exempt from the following:

i. (F)(2) Hauled Materials
ii. (F)(6) Containers
iii. (F)(8) Distances
iv. (F)(10) Burn Hours
v. (F)(11) Number of Piles
vi. (F)(12) Fuel Area
vii. (F)(13) Written Permits
viii. (F)(15) Areas Prohibited

2. Flag retirement ceremony fires must comply with the following:

i. (F)(1) Prohibited Materials (except for cotton or wool flags and minimal accelerant necessary to burn the flags)
ii. (F)(3) Curtailments
iii. (F)(4) Nuisance
iv. (F)(5) Burning Detrimental to Others
v. (F)(7) Extinguishing a Fire

vi. (F)(9) Landowner Permission
vii. (F)(14) Property Access
viii. (F)(16) Other Requirements

(c) A ceremony for disposal of unserviceable cotton or wool flags using methods other than burning (e.g., burying or recycling) or burning a small number of representative cotton or wool flags for the flag retirement ceremony is recommended, but not required.

(d) Burning flags made of synthetic materials (e.g., nylon) is prohibited.

(4) Indian Ceremonial Fires. [RCW ((~~70.94.6550~~)) 70A.15.5200, WAC 173-425-020 (2)(h), WAC 173-425-030(8)), WAC 173-425-050, WAC 173-425-060 (1), (2)(h) & (3-4)]

Indian ceremonial fires are fires using charcoal or clean, dry, bare, untreated wood (for the purpose of this definition, it includes commercially manufactured fire logs) necessary for Native American Ceremonies (i.e., conducted by and for Native Americans) if part of a religious ritual.

(a) Article VI, Section 6.01 (D)(4) serves as a general permit by the Agency.

(b) Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply to Indian ceremonial fires as listed below:

1. Indian ceremonial fires are exempt from the following:
i. (F)(2) Hauled Materials
ii (F)(6)(b) Containers
iii. (F)(10) Burn Hours
iv. (F)(13) Written Permits
v. (F)(15) Areas Prohibited

2. Indian ceremonial fires must comply with the following:
i. (F)(1) Prohibited Materials
ii. (F)(3) Curtailments
iii. (F)(4) Nuisance
iv. (F)(5) Burning Detrimental to Others
v. (F)(6)(a) Containers (burn barrels)
vi. (F)(7) Extinguishing a Fire
vii. (F)(8) Distances
viii. (F)(9) Landowner Permission
ix. (F)(11) Number of Piles
x. (F)(12) Fuel Area
xi. (F)(14) Property Access
xii. (F)(16) Other Requirements

(5) Land Clearing Fires. [WAC 173-425-020 (2)(b), WAC 173-425-030(9), WAC 173-425-040 (1-5), WAC 173-425-050, WAC 173-425-060 (1)(b) and WAC 173-425-060 (1), (2)(b) & (3-4)]

(a) All land clearing burning, except for silvicultural-to-agricultural and residential land clearing burning, is prohibited effective January 13, 2002.

(b) Silvicultural-to-agricultural burning is prohibited after April 30, 2009.

(c) Residential land clearing burning is prohibited after December 31, 2010. Residential land clearing fires are limited to fires consisting of trees, shrubbery, or other natural vegetation from land clearing projects (i.e., projects that clear the land surface so it can be developed, used for a different purpose, or left unused) where the natural vegetation is cleared from less than one acre of forested land on a five (5) acre or larger parcel of land in non-commercial ownership. [RCW ((~~70.94.6526~~)) 70A.15.5080(2)]. Residential land

clearing fires may also have the effect of abating or prevention of a forest fire hazard and thereby fit the definition of silvicultural burning. In those situations where residential land clearing burning consists of materials cleared from less than one (1) acre of forested land on a five (5) acre or larger parcel of land in non-commercial ownership is determined by DNR to meet the criteria to be defined as silvicultural burning, SRCAA may defer the decision to DNR to approve the fire and issue a permit pursuant to a Memorandum of Understanding between SRCAA and DNR. In so doing, DNR acknowledges that the fire is silvicultural burning and subject to Chapter 332-24 WAC.

(6) Rare and Endangered Plant Regeneration Fires. [RCW ((~~70.94.6524~~)) 70A.15.5070, RCW ((~~70.94.6534~~)) 70A.15.5120(2), WAC 173-425-020 (2)(g), WAC 173-425-030(19), WAC 173-425-050, WAC 173-425-060 (1), (2)(g), (3-4) & (6]

Rare and endangered plant regeneration fires are fires necessary to promote the regeneration of rare and endangered plants found within natural area preserves as identified in Chapter 79.70 RCW.

(a) Pursuant to RCW ((~~70.94.6534~~)) 70A.15.5120(2), the appropriate fire protection agency permits and regulates rare and endangered plant regeneration fires on lands where the department of natural resources does not have fire protection responsibility.

(b) Unless otherwise allowed or required by the fire protection agency, the prohibitions/requirements in Article VI, Section 6.01(F) apply to rare and endangered plant regeneration fires as listed below:

1. Rare and endangered plant regeneration fires are exempt from the following:

i. (F)(8) Distances
ii. (F)(10) Burn Hours
iii. (F)(11) Number of Piles
iv. (F)(12) Fuel Area
v. (F)(13) Written Permits
vi. (F)(15) Areas Prohibited

2. Rare and endangered plant regeneration fires must comply with the following:

i. (F)(1) Prohibited Materials
ii (F)(2) Hauled Materials
iii. (F)(3) Curtailments
iv. (F)(4) Nuisance
v. (F)(5) Burning Detrimental to Others
vi. (F)(6) Containers
vii. (F)(7) Extinguishing a Fire
viii. (F)(9) Landowner Permission
ix. (F)(14) Property Access
x. (F)(16) Other Requirements

(c) Pursuant to WAC 173-425-060(6), any agency that issues permits, or adopts a general permit for rare and endangered plant regeneration fires is responsible for field response to outdoor burning complaints and enforcement of all permit conditions and requirements of Chapter 173-425 WAC unless another agency has agreed under WAC 173-425-060 (1)(a) to be responsible for certain field response or enforcement activities. Except for enforcing fire danger burn bans as referenced in WAC 173-425-050 (3)(a)(iii), the Agency may also perform complaint response and enforcement activities.

(7) Recreational Fires. [WAC 173-425-020 (2)(i), WAC 173-425-030(21), WAC 173-425-050, WAC 173-425-060 (1), (2)(i) & (3-4)]

A recreational fire is a small fire with a fuel area no larger than three (3) feet in diameter and two (2) feet in height and is

limited to cooking fires, campfires, and fires for pleasure using charcoal or firewood in designated areas on public lands (e.g., campgrounds) or on private property. Firewood refers to clean, dry (e.g., tree trunk wood that is split and seasoned and has less than 20% moisture content), bare, wood from trees. Commercially manufactured fire logs are acceptable fuels unless determined otherwise by the Agency. Fires fueled by liquid or gaseous fuels (e.g., propane or natural gas barbecues) are not considered recreational fires. Fires used for debris disposal are not considered recreational fires.

(a) This Article VI, Section 6.01 (D)(7) serves as a general permit by the Agency.

(b) The prohibitions/requirements in Section 6.01(F) apply to recreational fires as listed below:

1. Recreational fires are exempt from the following:

i. (F)(2) Hauled Materials

ii. (F)(6)(b) Containers

iii. (F)(10) Burn Hours

iv. (F)(13) Written Permits

v. (F)(15) Areas Prohibited

2. Recreational fires must comply with the following:

i. (F)(1) Prohibited Materials

ii. (F)(3) Curtailments

iii. (F)(4) Nuisance

iv. (F)(5) Burning Detrimental to Others

v. (F)(6)(a) Containers (burn barrels)

vi. (F)(7) Extinguishing a Fire

vii. (F)(8) Distances

viii. (F)(9) Landowner Permission

ix. (F)(11) Number of Piles

x. (F)(12) Fuel Area

xi. (F)(14) Property Access

xii. (F)(16) Other Requirements

(8) Residential Fires (also referred to as Residential Burning or Residential Yard and Garden Debris Burning). [WAC 173-425-020 (2)(a), WAC 173-425-030(22), WAC 173-425-040 (1-3) & (5), WAC 173-425-050, WAC 173-425-060 (1), (2)(a) & (3-6)]

A residential fire is an outdoor fire consisting of natural yard and garden debris (i.e., dry garden trimmings, dry tree clippings, dry leaves, etc.) originating on the maintained/improved area of residential property (i.e., lands immediately adjacent and in close proximity to a human dwelling), and burned on such lands by the property owner and/or any other responsible person.

(a) A permit from a permitting agency other than SRCAA is required pursuant to Article VI, Section 6.01(E). All residential fires require a written permit unless an alternate permitting method (e.g., general permit adopted by rule) is specified in a written agreement (e.g., Memorandum of Understanding) between SRCAA and the permitting agency.

(b) The prohibitions/requirements in Section 6.01(F) apply to residential fires as listed below:

1. No exemptions apply to residential fires.

2. Residential fires must comply with the following:

i. (F)(1) Prohibited Materials

ii. (F)(2) Hauled Materials

iii. (F)(3) Curtailments

iv. (F)(4) Nuisance

v. (F)(5) Burning Detrimental to Others

vi. (F)(6) Containers
vii. (F)(7) Extinguishing a Fire
viii. (F)(8) Distances
ix. (F)(9) Landowner Permission
x. (F)(10) Burn Hours
xi. (F)(11) Number of Piles
xii. (F)(12) Fuel Area (except as provided in Section 6.01 (D)(8)(c))
xiii. (F)(13) Written Permits
xiv. (F)(14) Property Access
xv. (F)(15) Areas Prohibited
xvi (F)(16) Other Requirements

(c) The fuel area is limited to four (4) feet in diameter and three (3) feet in height unless the written permit issued by the permitting agency specifically states otherwise. Under no circumstances shall the fuel area be greater than ten (10) feet in diameter and six (6) feet in height.

(d) No vegetation shall exceed four (4) inches in diameter unless the permitting agency provides a site-specific exemption in a written permit. If larger diameter vegetation is allowed, the fire shall be constructed using heavy equipment such as a track hoe or excavator with an operator on site at all times. Fans must be employed to improve combustion.

(e) Residential fires must be at least five hundred (500) feet away from forest slash.

(f) Residential fires must be at least fifty (50) feet away from any adjacent land under different ownership unless the permitting agency provides a site-specific exception in the written permit and the respective neighboring landowner or landowner's designated representative gives the person responsible for burning approval to burn within fifty (50) feet of his/her land.

(g) In addition to the prohibitions in Section 6.01(F)(15), residential burning is prohibited within any area where a permitting agency does not administer a residential burning program.

(9) Social Event Fires. [WAC 173-425-020 (2)(i), WAC 173-425-030(21), WAC 173-425-050, WAC 173-425-060 (1), (2)(i) & (4)]

A social event fire is a fire that may be greater than three (3) feet in diameter and two (2) feet in height and unless otherwise approved by the Agency, is limited to events or celebrations open to the general public. A social event fire is limited to using charcoal or firewood which occurs in designated areas on public lands or on private property. Firewood refers to clean, dry (e.g., tree trunk wood that is split and seasoned with less than 20% moisture content), bare, wood from trees. Commercially manufactured fire logs are acceptable fuels. Fires used for debris disposal are not considered social event fires.

(a) A written permit from the Agency is required pursuant to Article VI, Section 6.01(E) and, unless otherwise approved by the Agency, must be submitted at least ten (10) working days prior to the first proposed burn date.

(b) Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply as listed below:

1. Social event fires may be exempt from the following at the Agency's discretion:
i. (F)(2) Hauled Materials
ii. (F)(6)(b) Containers
iii. (F)(8) Distances

iv. (F)(10) Burn Hours
v. (F)(11) Number of Piles
vi. (F)(12) Fuel Area
vii. (F)(15) Areas Prohibited
2. Social event fires must comply with the following:
i. (F)(1) Prohibited Materials
ii. (F)(3) Curtailments
iii. (F)(4) Nuisance
iv. (F)(5) Burning Detrimental to Others
v. (F)(6)(a) Containers (burn barrels)
vi. (F)(7) Extinguishing a Fire
vii. (F)(9) Landowner Permission
viii. (F)(13) Written Permits
ix. (F)(14) Property Access
x. (F)(16) Other Requirements

(10) Storm or Flood Debris Fires. [RCW ((~~70.94.6514~~)) 70A.15.5020(2), WAC 173-425-020 (2)(c), WAC 173-425-030(24), WAC 173-425-040(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(c) & (3-4)]

Storm and flood debris fires are fires consisting of natural vegetation deposited on lands by storms or floods that occurred within the previous twenty-four (24) months, and resulted in an emergency being declared or proclaimed in the area by city, county, or state government, and burned by the property owner or other responsible person on lands where the natural vegetation was deposited by the storm or flood.

(a) A written permit from the Agency is required pursuant to Article VI, Section 6.01(E) and, unless otherwise approved by the Agency, an application for a storm or flood debris fire must be submitted at least ten (10) working days prior to the first proposed burn date.

(b) Unless specifically authorized in writing by the Agency, the prohibitions/requirements in Section 6.01(F) apply as listed below:

1. Storm or flood debris fires may be exempt from the following at the Agency's discretion:
i. (F)(12) Fuel Area
2. Storm or flood debris fires must comply with the following:
i. (F)(1) Prohibited Materials
ii. (F)(2) Hauled Materials
iii. (F)(3) Curtailments
iv. (F)(4) Nuisance
v. (F)(5) Burning Detrimental to Others
vi. (F)(6) Containers
vii. (F)(7) Extinguishing a Fire
viii. (F)(8) Distances
ix. (F)(9) Landowner Permission
x. (F)(10) Burn Hours
xi. (F)(11) Number of Piles
xii. (F)(13) Written Permits
xiii. (F)(14) Property Access
xiv. (F)(15) Areas Prohibited
xv. (F)(16) Other Requirements

(11) Tumbleweed Fires. [RCW ((~~70.94.6554~~)) 70A.15.5220]

Tumbleweed fires are fires to dispose of dry plants (e.g., Russian Thistle and Tumbleweed Mustard Plants) that have been broken off, and rolled about, by the wind. Outdoor burning of tumbleweeds is prohibited. However, agricultural operations may burn tumbleweeds pursuant to Article VI, Section 6.11 and Chapter 173-430 WAC.

(12) Weed Abatement Fires. [RCW ((~~70.94.6552~~)) 70A.15.5210, Chapter 16-750 WAC, WAC 173-425-020 (2)(e), WAC 173-425-030(27), WAC 173-425-040(5), WAC 173-425-050, WAC 173-425-060 (1), (2)(e) & (3-4)]

A weed abatement fire is any outdoor fire undertaken for the sole purpose of disposing of noxious weeds identified in the state noxious weed list.

(a) A written permit from a permitting agency other than SRCAA is required pursuant to Article VI, Section 6.01(E).

(b) The prohibitions/requirements in Section 6.01(F) apply to weed abatement fires as listed below:

1. Weed abatement fires may be exempt from the following at the permitting agency's discretion:

i. (F)(11) Number of Piles (refer to Section 6.01(D)(11)(c), below)

ii (F)(12) Fuel Area (refer to Section 6.01 (D)(11)(c), below)

2. Weed abatement fires must comply with the following:

i. (F)(1) Prohibited Materials

ii. (F)(2) Hauled Materials

iii. (F)(3) Curtailments

iv. (F)(4) Nuisance

v. (F)(5) Burning Detrimental to Others

vi. (F)(6) Containers

vii. (F)(7) Extinguishing a Fire

viii. (F)(8) Distances

ix. (F)(9) Landowner Permission

x. (F)(10) Burn Hours

xi. (F)(13) Written Permits

xii. (F)(14) Property Access

xiii. (F)(15) Areas Prohibited

xiv. (F)(16) Other Requirements

(c) If burn piles are required by the permitting agency, the fuel area for each burn pile is limited to ten (10) feet in diameter and six (6) feet in height unless the written permit issued by the permitting agency specifically states otherwise.

(d) Burning shall be limited to Monday through Friday and shall not be conducted on federally observed holidays.

(13) Other Outdoor Fires. [RCW ((~~70.94.6522~~)) 70A.15.5060, WAC 173-425-020 (2)(j), WAC 173-425-030(15), WAC 173-425-040(5), WAC 173-425-060 (1)(b), and WAC 173-425-060 (1), (2)(j) & (3-4)]

Other outdoor fires are any type of outdoor fires not specified in WAC 173-425-020 (2)(a-i).

(a) Other outdoor burning will generally be limited by the Agency to outdoor fires necessary to protect public health and safety.

(b) Other outdoor burning will generally not be allowed unless the Agency determines that extenuating circumstances exist that necessitate burning be allowed.

(c) A permit application must be submitted at least ten (10) working days prior to the first proposed burn date unless the Agency waives the advance application period. A written permit from the Agency is required pursuant to Article VI, Section 6.01(E) unless the Agency approves a verbal or electronic permit in lieu of a written permit. The applicant is responsible for payment of a permit application fee in the amount specified in Article X, Section 10.13.

(E) Application For and Permitting of Written Outdoor Burning Permits. Outdoor burning requiring a written permit pursuant to Article VI, Section 6.01(D) is subject to all of the following requirements:

(1) Permit Application.

(a) It shall be unlawful for any person to cause or allow outdoor burning unless an application for a written permit, including the required fee specified by the permitting agency (SRCAA's outdoor burning permit fees are specified in SRCAA's ((~~the~~)) Consolidated Fee Schedule pursuant to Article X, Section 10.13) and any additional information requested by the permitting agency, has been submitted to the permitting agency on approved forms, in accordance with the advance application period as specified by the permitting agency.

(b) Incomplete or inaccurate applications may be returned to the applicant ((~~as incomplete~~)). The advance application period begins when a complete and accurate application, including the required fee, has been received by the permitting authority.

(c) Unless otherwise approved by the permitting agency or unless specified otherwise in Section 6.01, applications will be accepted no more than ninety (90) days prior to the first proposed burn date.

(d) A separate application must be completed and submitted to the appropriate permitting agency for each outdoor burn permit requested.

(e) A permit for outdoor burning shall not be granted on the basis of a previous permit history.

(2) Denial or Revocation of a Permit.

(a) The permitting agency may deny a permit if it is determined by the permitting agency that the application is incomplete or inaccurate. The advance application period in Article X, Section 10.13 does not begin until a complete and accurate application, including any additional information requested by the permitting agency, is received by the permitting agency.

(b) The permitting agency may deny a permit or revoke a previously issued permit if it is determined by the permitting agency that the application contained inaccurate information, or failed to contain pertinent information, and the information is deemed by the permitting agency to be significant enough to have a bearing on the permitting agency's decision to grant a permit.

(c) An application for a permit shall be denied if the permitting agency determines that the proposed burning will cause or is likely to cause a nuisance (refer to Article VI, Section 6.01 (F)(4)). In making this determination, the permitting agency may consider if the permit can be conditioned in such a way that burning is not likely to cause a nuisance (e.g., limit burning to specific wind directions, restrict burn hours, restrict pile size, etc.).

(d) The permitting agency may deny a permit for other reasons and shall provide the reason(s) in the applicant's permit denial.

(3) Permit Conditions. Permits may include requirements and restrictions beyond those specified in SRCAA Regulation I.

(4) Permit Expiration. Written permits shall be valid for no more than thirty (30) consecutive calendar days unless specified otherwise in Section 6.01(D) or in the permit. In no circumstance will a permit be valid for more than one calendar year.

(F) Prohibitions/Requirements. [WAC 173-425-050 & WAC 173-425-060(4)]

All of the following apply to all outdoor burning unless specified otherwise in Article VI, Section 6.01 or pursuant to a written permit:

(1) Prohibited Materials. [WAC 173-425-050(1)]

It is unlawful to burn prohibited materials. Prohibited materials include all of the following: garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what

is necessary to start a fire), cardboard, treated or processed wood (other than commercially manufactured fire logs), construction and demolition debris (any material resulting from the construction, renovation, or demolition of buildings, roads, or other ((~~man made~~)) man-made structures), metal, or any substance (other than natural vegetation or firewood) that releases dense smoke or obnoxious odors when burned, or normally releases toxic emissions when burned. (RCW ((~~70.94.6512~~)) 70A.15.5010(1) and Attorney General Opinion 1993 #17).

(2) Hauled Materials. [WAC 173-425-050(2)]

It is unlawful for a fire to contain material that has been hauled from an area where outdoor burning of that material is prohibited.

(3) Curtailments. [RCW ((~~70.94.6512~~)) 70A.15.5010, RCW ((~~70.94.6516~~)) 70A.15.5030, WAC 173-425-030(2), WAC 173-425-030(7), WAC 173-425-050(3), WAC 173-425-060(4) & WAC 173-433-140)]

(a) The person responsible for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions for each day prior to igniting a fire.

(b) Outdoor burning is prohibited in specified geographical areas when one or more of the following occur:

1. The Washington State Department of Ecology (Ecology) has declared an air pollution episode.

2. Ecology or SRCAA has declared impaired air quality.

3. A fire protection authority with jurisdiction has declared a fire danger burn ban, unless that authority grants an exception.

(c) The person responsible for outdoor burning must extinguish the fire when an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning is declared. In this regard:

1. Smoke visible from all types of outdoor burning, except residential land clearing burning, after a time period of three (3) hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared, will constitute prima facie evidence of unlawful outdoor burning.

2. Smoke visible from residential land clearing burning after a time period of eight (8) hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared, will constitute prima facie evidence of unlawful outdoor burning.

(4) Nuisance. [RCW ((~~70.94.030~~)) 70A.15.1030(2) & WAC 173-425-050(4)]

A nuisance refers to an emission of smoke or any other air contaminant that unreasonably interferes with the enjoyment of life and property. In addition to applicable odor nuisance regulations in Article VI, Section 6.04, it shall be unlawful for any person to conduct outdoor burning which causes a smoke or particulate nuisance. With respect to smoke or particulate from outdoor burning, the Agency may take enforcement action under Section 6.01 if the Control Officer or authorized representative has documented all of the following:

(a) Visible smoke observed with natural or artificial light (e.g.~~,~~ flashlight) crossing the property line of the person making a complaint or particulate deposition on the property of the person making a complaint;

(b) An affidavit from a person making a complaint which demonstrates that they have experienced air contaminant emissions in sufficient quantities, and of such characteristics and duration, so as to unreasonably interfere with their enjoyment of life and property; and

(c) The source of the smoke or particulate.

(5) Burning Detrimental to Others. [RCW ((~~70.94.040~~)) 70A.15.1070, RCW ((~~70.94.6528~~)) 70A.15.5090(1), RCW ((~~70.94.6516~~)) 70A.15.5030, and WAC 173-425-050(4)]

It is unlawful for any person to cause or allow outdoor burning that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, or that causes damage to property or business.

(6) Containers. [WAC 173-425-050(5)]

(a) Burn barrels are prohibited.

(b) Containers must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings no larger than one-half (0.5) inch.

(7) Extinguishing a Fire. [WAC 173-425-050 (6)(a) & WAC 173-425-060(4)]

(a) A person(s) capable of completely extinguishing the fire must attend it at all times.

(b) Fire extinguishing equipment must be at the fire and ready to use (e.g., charged garden hose, dirt, sand, water bucket, shovel, fire extinguisher, etc.).

(c) All fires must be completely extinguished when the fire will be left unattended or when the activity for which the fire was intended is done, whichever occurs first.

(d) Any person(s) responsible for unlawful outdoor burning must immediately and completely extinguish the fire. If the person(s) responsible for unlawful outdoor burning are unable or unwilling to extinguish an unlawful fire, they may be charged for fire suppression costs incurred by a fire protection agency.

(8) Distances. [WAC 173-425-050 (6)(b) & WAC 173-425-060(4)]

(a) All fires subject to Article VI, Section 6.01 must be at least fifty (50) feet away from any structure.

(b) When material is burned on the ground, it must be placed on bare soil, green grass, or other similar area free of flammable materials for a distance adequate to prevent escape of the fire.

(9) Landowner Permission. [WAC 173-425-050 (6)(c)]

Permission from a landowner, or owner's designated representative, must be obtained before outdoor burning on landowner's property.

(10) Burn Hours. [WAC 173-425-060(4)]

All burning must take place during daylight hours only. Burning shall not commence prior to sunrise, and all debris burning must be completely extinguished at least one hour prior to sunset. Smoke visible from burning within one hour after ((~~of~~)) sunset will constitute prima facie evidence of unlawful outdoor burning.

(11) Number of Piles. [WAC 173-425-060 (5)(c)(x)]

Only one (1) pile at a time may be burned on contiguous parcels of property under same ownership. The pile must be extinguished before lighting another.

(12) Fuel Area. [WAC 173-425-060(4)]

The fuel area shall be no larger than three (3) feet in diameter by two (2) feet in height.

(13) Written Permits.

(a) A copy of the written permit must be kept at the permitted burn site during the permitted burn, and must be made available for review upon request of the permitting agency.

(b) All conditions of a written permit issued by the permitting agency must be complied with.

(14) Property Access. [RCW ((~~70.94.200~~)) 70A.15.2500 & SRCAA Regulation I, Article II]

The Control Officer, or authorized representative, shall be allowed to access property at reasonable times to inspect fires specific to the control, recovery, or release of contaminants into the atmosphere in accordance with Article II and RCW ((~~70.94.200~~)) 70A.15.2500. For the purposes of outdoor burning, reasonable times include, but are not limited to, any of the following: when outdoor burning appears to be occurring, when the Control Officer or authorized representative is investigating air quality complaints filed with the Agency, and/or there is reason to believe that air quality violations have occurred or may be occurring. No person shall obstruct, hamper, or interfere with any such inspection.

(15) Areas Prohibited. [WAC 173-425-040]

Outdoor burning is prohibited in all of the following areas:

(a) Within the Restricted Burn Area (also referred to as the No Burn Area), as defined by Resolution of the Board of Directors of SRCAA.

(b) Within any Urban Growth Area (land, generally including and associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.030), and with the exception of Fairchild Air Force Base, any area completely surrounded by any Urban Growth Area (e.g., "islands" of land within an Urban Growth Area).

(c) Within any nonattainment area or former nonattainment area.

(d) In any area where a reasonable alternative to burning exists for the area where burning is requested. For burning organic refuse, a reasonable alternative is considered one where there is a method for disposing of the organic refuse at a cost that is less than or equivalent to the median of all county tipping fees in the state for disposal of municipal solid waste. SRCAA shall determine the median of all county tipping fees in the state for disposal of municipal solid waste by obtaining the most recent solid waste tipping fees data available from Ecology (e.g., state profile map of Washington solid waste tipping fees available at *https://fortress.wa.gov/ecy/swicpublic)* or other relevant sources. Reasonable alternatives may include, but are not limited to, solid waste curbside pick-up, on-site residential composting or commercial composting operations, public or private chipping/grinding operations, public or private chipper rental service, public or private hauling services, energy recovery or incineration facility, public or private solid waste drop box, transfer station, or landfill.

(16) Other Requirements. All outdoor burning must comply with all other applicable local, state, and federal requirements.

(G) Unlawful Outdoor Burning.

(1) Failure of any person to comply with Chapter ((~~70.94~~)) 70A.15 RCW, Chapter 173-425 WAC, this Section, or permit conditions, shall be unlawful and may result in criminal or civil enforcement action taken, including penalties.

(2) Unlawful burning may result in any outdoor burning permit being permanently rescinded. This applies to written permits, general permits (permits by rule), and electronic and verbal permits. Once a permit is rescinded, new permit approval from the Agency must be obtained to burn again. Applicable fees for a new permit must be paid pursuant to Article X, Section 10.13.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 6.04 EMISSION OF AIR CONTAMINANT: DETRIMENT TO PERSON OR PROPERTY

(A) Definitions. All definitions in SRCAA Regulation I, Article I, Section 1.04 apply to Article VI, Section 6.04, unless otherwise defined herein.

(B) Applicability. The Agency adopts by reference WAC 173-400-040 in Spokane County, except WAC 173-400-040(6), which is replaced by 6.04(C) and WAC 173-400-040(8), which is replaced by Section 6.07. In addition to WAC 173-400-040, the provisions of Section 6.04 apply. The provisions of RCW ((~~70.94.640~~)) 70A.15.4530 are herein incorporated by reference.

(C) Emissions Detrimental to Persons or Property. It shall be unlawful for any person to cause or allow the emission of any air contaminant in sufficient quantities and of such characteristics and duration as is, or is likely to be:

(1) Injurious to the health or safety of human, animal, or plant life;

(2) Injurious or cause damage to property; or

(3) Which unreasonably interferes with enjoyment of life and property.

(D) Odors. With respect to odor, the Agency may take enforcement action, pursuant to Chapter ((~~70.94~~)) 70A.15 RCW, under this section if the Control Officer or authorized representative has documented all of the following:

(1) The detection by the Control Officer or authorized representative of an odor at a Level 2 or greater, according to the following odor scale:

(a) Level 0 - no odor detected,

(b) Level 1 - odor barely detected,

(c) Level 2 - odor is distinct and definite, any unpleasant characteristics recognizable,

(d) Level 3 - odor is objectionable enough or strong enough to cause attempts at avoidance, and

(e) Level 4 - odor is so strong that a person does not want to remain present.

(2) An affidavit from a person making a complaint that demonstrates that they have experienced air contaminant emissions in sufficient quantities and of such characteristics and duration so as to unreasonably interfere with their enjoyment of life and property (the affidavit should describe or identify, to the extent possible, the frequency, intensity, duration, offensiveness, and location of the odor experienced by the complainant); and

(3) The source of the odor.

(E) Odor Violation. With respect to odor, the Agency will determine whether or not a violation of Article VI, Section 6.04(C) has occurred based on its review of the information documented under Section 6.04(D), as well as any other relevant information obtained during the investigation.

(F) Enforcement Action. When determining whether to take formal enforcement action authorized in Section 6.04 (D) and (E) above, the Agency may consider written evidence provided by the person causing the odors which demonstrates to the satisfaction of the Agency that all controls and operating practices to prevent or minimize odors to the greatest degree practicable are being employed. If the Agency determines that all such efforts are being employed by the person causing the odors and that no additional control measures or alternate op-

erating practices are appropriate, the Agency may decline to pursue formal enforcement action.

(G) Documentation. The Agency will document all the criteria used in making its determination in Section 6.04(F) above as to whether or not the person causing the odors is employing controls and operating practices to prevent or minimize odors to the greatest degree practicable. Said documentation, except information that meets the criteria of confidential in accordance with RCW ((~~70.94.205~~)) 70A.15.2510, will be made available to any person making a public records request to the Agency for said documentation, including, but not limited to complaining parties.

(H) Cause of Action or Legal Remedy. Nothing in Section 6.04 shall be construed to impair any cause of action or legal remedy of any person, or the public, for injury or damages arising from the emission of any air contaminant in such place, manner or concentration as to constitute air pollution or a common law nuisance.

AMENDATORY SECTION

SECTION 6.11 AGRICULTURAL BURNING

(A) Adoption by Reference. In addition to SRCAA Regulation I, Article VI, Section 6.11, the Agency adopts by reference Chapter 173-430 WAC. The more stringent requirement in Chapter 173-430 or Section 6.11 supersedes the lesser.

(B) Purpose. The primary purpose of Section 6.11 is to establish specific requirements for agricultural burning in Spokane County, consistent with Chapter 173-430 WAC.

(C) Applicability. Section 6.11 applies to agricultural burning in all areas of Spokane County unless specifically exempted. Section 6.11 does not apply to Silvicultural Burning (see Chapter 332-24 WAC) or to Outdoor Burning (see Chapter 173-425 WAC).

(D) Statement of Authority. The Spokane Regional Clean Air Agency is empowered, pursuant to Chapter ((~~70.94~~)) 70A.15 RCW, to administer the agricultural burning program in Spokane County. Included is the authority to:

(1) Issue and deny burning permits;

(2) Establish conditions on burning permits to ensure that the public interest in air, water, and land pollution, and safety to life and property is fully considered;

(3) Determine if a request to burn is consistent with best management practices, pursuant to WAC 173-430-050; or qualifies for a waiver, pursuant to WAC 173-430-045;

(4) Delegate local administration of permit and enforcement programs to certain political subdivisions;

(5) Declare burn days and no-burn days, based on meteorological, geographical, population, air quality, and other pertinent criteria; and

(6) Restrict the hours of burning, as necessary to protect air quality.

(E) Definitions. Unless a different meaning is clearly required by context, words and phrases used in Section 6.11 shall have the following meaning:

(1) *Agricultural Burning* means burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation and/or crop rotation, necessary to destroy weeds or crop residue along farm fence rows, irrigation ditches, or farm drainage ditches, or where identified as a best management prac-

tice by the agricultural burning practices and research task force established in RCW ((~~70.94.6528~~)) 70A.15.5090 or other authoritative source on agricultural practices.

(2) *Authority* means the Spokane Regional Clean Air Agency (SRCAA or Agency).

(3) *Episode* means a period when a forecast, alert, warning, or emergency air pollution stage is declared, as provided in Chapter 173-435 WAC.

(4) *Extreme Conditions* means conditions, usually associated with a natural disaster, that prevent the delivery and placement of mechanical residue management equipment on the field and applies only to the growing of field and turf grasses for seed, for which a waiver is requested.

(5) *Impaired Air Quality*, for purposes of agricultural burning, means a condition declared by the Agency when meteorological conditions are conducive to an accumulation of air contaminants, concurrent with at least one of the following criteria:

(a) Particulates that are ten (10) microns or smaller in diameter (PM_{10}) are measured at any location inside Spokane County at or above an ambient level of sixty (60) micrograms per cubic meter of air, measured on a 24-hour average, by a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, 40 CFR Part 50 Appendix J, or equivalent.

(b) Carbon monoxide is measured at any location inside Spokane County at or above an ambient level of eight (8) parts of contaminant per million parts of air by volume (ppm), measured on an eight (8) hour average by a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, 40 CFR Part 50 Appendix C, or equivalent.

(c) Particulates that are two and one-half (2.5) microns or smaller in diameter ($PM_{2.5}$) are measured at any location inside Spokane County at or above an ambient level of fifteen (15) micrograms per cubic meter of air, measured on a twenty-four (24) hour average, by a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, 40 CFR Part 50 Appendix L, or equivalent.

(d) Air contaminant levels reach or exceed other limits, established by Ecology pursuant to RCW ((~~70.94.331~~)) 70A.15.3000.

(6) *Nuisance* means an emission of smoke or other emissions from agricultural burning that unreasonably interferes with the use and enjoyment of property or public areas.

(7) *Permitting Authority* means the Spokane Regional Clean Air Agency (Agency), or one or more of the following entities, whenever the Agency has delegated administration of the permitting program, pursuant to RCW ((~~70.94.6530~~)) 70A.15.5100, to one or more of the referenced entities, provided such delegation of authority has not been withdrawn: Spokane County, the Spokane County Conservation District, or any fire protection agency within Spokane County.

(8) *Pest* means weeds, disease, or insects infesting agricultural lands, crops, or residue.

(9) *Prohibited Materials* means garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction debris, demolition debris, metal or any substance (other than natural vegetation) that releases toxic emissions, dense smoke or obnoxious odors, when burned.

(10) *Responsible Person* means any person who has applied for and received a permit for agricultural burning, or any person allowing, igniting or attending to agricultural burning, or any person who owns or controls property on which agricultural burning occurs.

(F) Requirements. No person shall practice or permit the practice of Agricultural Burning, other than incidental agricultural burning pursuant to RCW ((~~70.94.6524~~)) 70A.15.5070(7), unless the applicant demonstrates to the satisfaction of the Agency or permitting authority that burning, as requested:

(1) Is reasonably necessary to successfully carry out the enterprise in which the applicant is engaged; or

(2) Constitutes a best management practice and no practical alternative is reasonably available.

(G) Prohibitions. No person shall practice or permit the practice of agricultural burning in any of the following circumstances:

(1) Where there is a practice, program, technique, or device, that Ecology has certified as a practical alternative to burning.

(2) When the materials to be burned include any prohibited materials.

(3) During an episode, as declared by Ecology, or during Impaired Air Quality, as declared by Ecology or the Agency for a defined geographical area.

(4) Where burning causes a nuisance or when the Agency or permitting authority determines that the creation of a nuisance would likely result from burning.

(5) Without a written permit, issued by the permitting authority, except for incidental agricultural burning, as provided in RCW ((~~70.94.6524~~)) 70A.15.5070(7).

(6) When the materials to be burned include any material other than natural vegetation generated on the property, which is the burning site, or was transported to the burning site by wind or water.

(7) In the case of growing of field or turf grasses for seed, unless the request to burn qualifies for a waiver for slope or extreme conditions pursuant to WAC 173-430-045(4).

(8) When a no-burn day is declared by the Agency or the permitting authority.

(H) General Conditions. Considering population density and local conditions affecting air quality, the Agency or permitting authority shall establish conditions for all permits to minimize air pollution as much as practical. Such conditions may be general (applying to all permits) or specific (applying to individual permits). Conditions may address permissible hours of burning, maximum daily burn acreage or volume of material to be burned, requirements for good combustion practice, burning under specified weather conditions, pre and post-burn reporting, and other criteria, determined by the permitting authority, as necessary to minimize air pollution. Any person who practices or permits the practice of agricultural burning shall, in addition to any specific permit conditions imposed, comply with the general agricultural burning permit conditions and criteria in WAC 173-430-070 and all of the following conditions:

(1) Whenever an episode or Impaired Air Quality is declared, or other meteorological condition occurs that the permitting authority determines is likely to contribute to a nuisance, all fires shall be extinguished by withholding new fuel or ceasing further ignition, as appropriate, to allow the fire to burn down in the most expeditious manner. In no case shall a fire be allowed to burn longer than three

(3) hours after declaration of an episode or Impaired Air Quality, or determination of the specific meteorological condition.

(2) Until extinguished, the fire shall be attended by a person who is responsible for the same, capable of extinguishing the fire, and has the permit or a copy of the permit in his or her immediate possession.

(3) Burning shall occur only during daylight hours, or a more restrictive period as determined by the Agency or the permitting authority.

(4) Permission from the landowner, or the landowner's designated representative, must be obtained before starting the fire.

(5) The fire district having jurisdiction shall be notified by the responsible person, prior to igniting a fire.

(6) If it becomes apparent at any time to the Agency or permitting authority that limitations need to be imposed to reduce smoke, prevent air pollution and/or protect property and the health, safety and comfort of persons from the effects of burning, the Agency or permitting authority shall notify the permittee or responsible person and any limitation so imposed shall become a condition under which the permit is issued.

(7) Follow the smoke management guidelines of the permitting authority.

(I) Administrative Requirements.

(1) All applicants for agricultural burning permits must submit their requests to burn, on forms or in a format provided by the permitting authority.

(2) The permitting authority may require additional information from the applicant, as necessary to determine if agricultural burning is reasonably necessary to carry out the enterprise, to determine how best to minimize air pollution, and as necessary to compile information for the annual program summary [Section 6.11 (K)(10)].

(3) The permitting authority may deny an application or revoke a previously issued permit if it is determined by the permitting authority that the application contained inaccurate information, or failed to contain pertinent information, which information is deemed by the permitting authority to be significant enough to have a bearing on the permitting authority's decision to grant a permit.

(4) All applicants for agricultural burning permits shall pay a fee at the time of application, according to the Consolidated Fee Schedule, established by resolution of the permitting authority. When the permitting authority is ((~~the~~)) SRCAA ((~~Spokane Regional Clean Air Agency~~)), the fee shall be according to the schedule in Regulation I, Article X.

(5) No permit for agricultural burning shall be granted on the basis of a previous permit history.

(6) The permitting authority may waive or reduce the sixty (60) and thirty (30) day advance requirements for submitting and completing a waiver request, made pursuant to WAC 173-430-045(5), if the permitting authority determines that an alternate advance period will suffice for evaluating the request.

(J) Responsibilities of Farmers. In order to make the required showing, referenced in Section 6.11(F), a farmer, as defined in WAC 173-430-030(7), is responsible for providing the following to the permitting authority, if applicable:

(1) Advance notice of the potential need to burn, including documentation of pest problems, which if possible, shall be given prior to crop maturity.

(2) For pest management burning requests, a plan establishing how a recurring pest problem will be addressed through non-burning management practices by the following year, if possible, but by no later than three (3) years.

(3) An evaluation of alternatives to burning, including those successfully and customarily used by other farmers in similar circumstances, with particular attention to alternatives customarily used in Spokane County, which evaluation shall include an explanation as to why the alternatives are unreasonable and burning is necessary.

(4) A showing as to how burning will meet the applicable crop-specific or general Best Management Practices, established pursuant to RCW ((~~70.94.6528~~)) 70A.15.5090.

(5) For residue management burn requests, a showing that the residue level meets the permitting authority's criteria for consideration of a residue management burn.

(6) For residue management burn requests, a showing that non-burning alternatives would limit attaining the desired level of water infiltration/retention, soil erodibility, seed/soil contact, seeding establishment or other desirable agronomic qualities.

(7) Field access to representatives of the permitting authority.

(K) Responsibilities of Permitting Authorities. Permitting authorities are responsible for performing the following activities:

(1) Evaluation of individual permit applications to determine whether the applicant has made the required showing, referenced in Section 6.11(F).

(2) Consultation with a trained agronomist on individual permit applications, as necessary, to evaluate the need to burn and non-burning alternatives.

(3) Field inspection, as necessary to verify the following:

(a) Accuracy of information in permit and waiver applications,

(b) Compliance with permit conditions and applicable laws and regulations, and

(c) Acreage and materials burned.

(4) Taking final action on permit applications within seven (7) days of the date the application is deemed complete.

(5) Incorporation of appropriate permit conditions, both general and specific, as referenced in Section 6.11(H) in order to achieve the following:

(a) Minimizing air pollution and emissions of air pollutants, and

(b) Ensuring that the public interest in air, water, and land pollution, and safety to life and property has been fully considered, in accordance with RCW ((~~70.94.6528~~)) 70A.15.5090.

(6) Enforcement and compliance efforts, with the goal of assuring compliance with all applicable laws, regulations, and permit conditions, and ensuring that timely and appropriate enforcement actions are commenced, when violations are discovered.

(7) Complaint logging and appropriate level of response.

(8) Collection of fees.

(9) Declaration of burn days and no-burn days, taking into consideration, at a minimum, the following criteria:

(a) Local air quality and meteorological conditions;

(b) Time of year when agricultural burning is expected to occur;

(c) Acreage/volume of material expected to be burned per day and by geographical location;

(d) Proximity of burn locations to roads, homes, population centers, and public areas;

(e) Public interest and safety; and

(f) Risk of escape of fire onto adjacent lands, during periods of high fire danger.

(10) Development of smoke management guidelines, that include procedures to minimize the occurrence of nuisance, and to facilitate making burn/no burn decisions.

(11) Dissemination of burn decisions, as necessary to inform responsible persons and the public.

(12) Compilation of an annual program summary, which at a minimum, includes the following:

(a) Permits and acres approved for burning;

(b) Permit/waiver requests and acres denied;

(c) Number and dates of complaints received; and

(d) Number of documented violations.

(L) Compliance. The responsible person is expected to comply with all applicable laws and regulations. Compliance with Section 6.11 does not ensure that agricultural burning complies with other applicable laws and regulations implemented by any other authority or entity.

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

SECTION 8.01 PURPOSE

((~~This article~~)) Article VIII establishes emission standards, certification standards and procedures, curtailment rules, and fuel restrictions for solid fuel burning devices in order to attain the National Ambient Air Quality Standards for fine particulate matter ($PM_{2.5}$) and to further the policy of the Agency as stated in SRCAA Regulation I, Article I, Section 1.01 ((~~of this Regulation~~)).

AMENDATORY SECTION

SECTION 8.02 APPLICABILITY

The provisions of ((~~this article~~)) Article VIII apply to solid fuel burning devices in all areas of Spokane County.

AMENDATORY SECTION

SECTION 8.03 DEFINITIONS

(A) Unless a different meaning is clearly required by context, words and phrases used in ((~~this article~~)) Article VIII shall have the following meaning:

((~~A.~~)) (1) *Agency* means the Spokane Regional Clean Air Agency.

((~~B.~~)) (2) *Coal stove* means an enclosed, coal burning appliance capable of and intended for residential space heating, domestic water heating or indoor cooking, which has all the following characteristics:

((~~1.~~)) (a) An opening for loading coal which is located near the top or side of the appliance; and

((~~2.~~)) (b) An opening for emptying ash which is located near the bottom or the side of the appliance; and

((~~3.~~)) (c) A system which admits air primarily up and through the fuel bed; and

((~~4.~~)) (d) A grate or other similar device for shaking or disturbing the fuel bed; and

((~~5.~~)) (e) Listing by a nationally recognized safety testing laboratory for use of coal only, except for coal ignition purposes; and

((~~6.~~)) (f) Not configured or capable of burning cordwood.

((~~C.~~)) (3) *Commercial establishment* is defined to include an establishment possessing a valid business license issued by a governmental entity.

((~~D.~~)) (4) *Cook stove* means an appliance designed with the primary function of cooking food and containing an integrally built in oven with a volume of one (1) cubic foot or greater where the cooking surface measured in square inches or square feet is one and one-half times greater than the firebox measured in cubic inches or cubic feet (e.g. a firebox of two (2) cubic feet would require a cooking surface of at least three(3) square feet). It must have an internal temperature indicator and oven rack, around which the fire is vented, as well as a shaker grate ash pan and an ash cleanout below the firebox. Any device with a fan or heat channels used to dissipate heat into the room shall not be considered a cook stove. A portion of at least four sides of the oven must be exposed to the flame path during the oven heating cycle, while a flue gas bypass will be permitted for temperature control. Devices designed or advertised as room heaters that also bake or cook do not qualify as cook stoves.

((~~E.~~)) (5) *Ecology* means the Washington State Department of Ecology.

(6) Emergency Power Outage means any natural or human-caused event beyond the control of a person that leaves the person's residence or commercial establishment temporarily without an adequate source of heat other than the solid fuel burning device; or a natural or human-caused event for which the governor declares an emergency in an area under RCW 43.06.010(12). Emergency power outage ends once power is restored by the utility provider.

((~~F.~~)) (7) *EPA* means the United States Environmental Protection Agency or the Administrator of the United States Environmental Protection Agency or his/her designated representative.

((~~G.~~)) (8) *EPA Certified* means a woodstove certified and labeled by EPA under ((~~"~~))40 CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters((~~"~~))

((~~H.~~)) (9) *Fireplace* means a permanently installed masonry fireplace; or a factory-built solid fuel burning device designed to be used with an air-to-fuel ratio greater than or equal to thirty-five to one and without features to control the inlet air-to-fuel ratio other than doors or windows such as may be incorporated into the fireplace design for reasons of safety, building code requirements, or aesthetics.

((~~I.~~)) (10) *National Ambient Air Quality Standards* (NAAQS; 40 CFR Part 50 - National Primary and Secondary Ambient Air Quality Standards) means outdoor air quality standards established by the United States Environmental Protection Agency under authority of the federal Clean Air Act. EPA set standards for six principal air pollutants, called "criteria" pollutants, under the NAAQS. The criteria pollutants are carbon monoxide, sulfur dioxide, nitrogen dioxide, lead, ozone and particulate matter ($PM_{2.5}$ and PM_{10}).

((~~J.~~)) (11) *Non-affected pellet stove* means that a pellet stove has an air-to-fuel ratio equal to or greater than 35:1 when tested by an accredited laboratory in accordance with methods and procedures specified by the EPA in ((~~"~~))40 ((~~C.F.R.~~)) CFR Part 60, Appendix A, Method 28A Measurement of Air to Fuel Ratio and Minimum Achievable Burn Rates for Wood-Fired Appliances ((~~REFERENCE METHOD 28A - MEASUREMENT OF AIR TO FUEL RATIO AND MINIMUM ACHIEVABLE BURN RATES FOR WOOD-FIRED APPLIANCES"~~)) as amended through July 1, 1990.

((~~K.~~)) (12) *Nonattainment Area* means a clearly delineated geographic area which has been designated by the Environmental Protection Agency because it does not meet, or it affects ambient air quality in a nearby area that does not meet, a national ambient air quality standard or standards for one or more of the criteria pollutants defined in 40 CFR Part 50, National Primary and Secondary Ambient Air Quality Standards.

((~~L.~~)) (13) *Oregon Certified* means a woodstove manufactured prior to 1989 which meets the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with ((~~"~~))Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification((~~"~~)) dated November 1984.

((~~M.~~)) (14) $PM_{2.5}$ or Fine Particulate Matter means particulate matter with a nominal aerodynamic diameter of two and one half (2.5) micrometers and smaller measured as an ambient mass concentration in units of micrograms per cubic meter of air. ((~~Also called fine particulate matter.~~))

((~~N.~~)) (15) PM_{10} means particulate matter with a nominal aerodynamic diameter of ten (10) micrometers and smaller measured as an ambient mass concentration in units of micrograms per cubic meter of air.

((~~O.~~)) (16) *Seasoned Wood* means wood of any species that has been sufficiently dried so as to contain twenty percent or less moisture by weight.

((~~P.~~)) (17) *Solid Fuel Burning Device* means a device that is designed to burn wood, coal, or any other nongaseous or nonliquid fuels, and includes woodstoves, coal stoves, cook stoves, pellet stoves, and fireplaces, or any similar device burning any solid fuel. It includes devices used for aesthetic or space-heating purposes in a private residence or commercial establishment, which have a heat input less than one million British thermal units per hour.

((~~Q.~~)) (18) *Smoke Control Zone* means the Spokane/Spokane Valley Metropolitan area and surrounding geographic areas affected by combustion smoke from solid fuel burning devices, after consideration of the contribution of devices that are not Washington certified devices, population density and urbanization, and effect on the public health (RCW ((~~70.94.477~~)) 70A.15.3600 (2)(a), (b) and (c)), is defined as follows:

Sections 1 through 6, Township 24 N, Range 42 E; Townships 25 and 26 N, Range 42 E; Sections 1 through 24, Township 24 N, Range 43 N; Townships 25, 26 and 27 N, Range 43 E; Sections 19 through 36, Township 28 N, Range 43 E; Sections 1 through 24, Township 24 N, Range 44 E; Township 25 N, Range 44 E; Sections 19 through 36, Township 26 N, Range 44 E; Township 25 N, Range 45 E; Sections 1 through 4, 9 through 16 and 19 through 36, Township 26 N, Range 45 E; Sections 33 through 36, Township 27 N, Range 45 E; Sections 6, 7, 18, 19, 30, and 31, Township 25 N, Range 46 E; Sections 6, 7, 18, 19, 30 and 31, Township 26 N, Range 46 E; Section 31, Township 27 N, Range 46 E. See graphic below:

((~~R.~~)) (19) *Treated Wood* means wood of any species that has been chemically impregnated, painted, or similarly modified to improve resistance to insects, fungus or weathering.

((~~S.~~)) (20) *Washington Certified Device* means a solid fuel burning device, other than a fireplace, which has been determined by Ecology to meet emission performance standards, pursuant to RCW ((~~70.94.457~~)) 70A.15.3530 and WAC 173-433-100(3).

((~~T.~~)) (21) *Woodstove* means an enclosed solid fuel burning device capable of and intended for residential space heating and domestic water heating that meets the following criteria contained in ((~~"~~))40 ((~~C.F.R.~~)) CFR Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters((~~"~~)) as amended through July 1, 1990:

((~~1.~~)) (a) An air-to-fuel ratio in the combustion chamber averaging less than 35:1 as determined by EPA ((~~Reference~~)) Method 28A Measurement of Air to Fuel Ratio and Minimum Achievable Burn Rates for Wood-Fired Appliances; and

((~~2.~~)) (b) A useable firebox volume of less than twenty (20) cubic feet; and

((~~3.~~)) (c) A minimum burn rate less than 5 kg/hr as determined by EPA ((~~Reference~~)) Method 28 Certification and Auditing of Wood Heaters; and

((~~4.~~)) (d) A maximum weight of 800 kg, excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components not integral to the appliance.

Any combination of parts, typically consisting of but not limited to: doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

AMENDATORY SECTION

SECTION 8.04 EMISSION PERFORMANCE STANDARDS

The Agency adopts Chapter 173-433 WAC Solid Fuel Burning Devices by reference and ((~~Title~~)) 40 CFR((~~,~~)) Part 60, Subpart AAA ((~~of the Code of Federal Regulations~~))((~~"~~))Standards of Performance for New Residential Wood Heaters((~~"~~)) by reference.

AMENDATORY SECTION

SECTION 8.05 OPACITY STANDARDS

((~~A.~~)) (A) Opacity Limit. A person shall not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of ((~~twenty percent~~)) 20% opacity for six (6) consecutive minutes in any one (1)((~~-~~))hour period.

((~~B.~~)) (B) Test Method and Procedures. EPA ((~~reference~~)) Reference ((~~method~~)) Method 9 - Visual Determination of the Opacity of Emissions from Stationary Sources - shall be used to determine compliance with Section 8.05((~~.A~~))(A).

((~~C.~~)) (C) Enforcement. Smoke visible from a chimney, flue or exhaust duct in excess of the opacity limit shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by an applicable solid fuel burning device. The provisions of this requirement shall not apply during the starting of a new fire for a period not to exceed twenty (20) minutes in any four (4) ((~~-~~))hour period.

AMENDATORY SECTION

SECTION 8.06 PROHIBITED FUEL TYPES

(A) Prohibited Materials. A person shall not cause or allow any of the following materials to be burned in a solid fuel burning device:

((~~A.~~)) (1) Garbage;

((~~B.~~)) (2) Treated wood (defined in Section 8.03);

((~~C.~~)) (3) Plastic products;

((~~D.~~)) (4) Rubber products;

((~~E.~~)) (5) Animals;

((~~F.~~)) (6) Asphaltic products;

((~~G.~~)) (7) Waste petroleum products;

((~~H.~~)) (8) Paints;

((~~I.~~)) (9) Any substance, other than properly seasoned fuel wood, or coal with sulfur content less than 1.0% by weight burned in a coal stove, which normally emits dense smoke or obnoxious odors; or

((~~J.~~)) (10) Paper, other than an amount of non-colored paper necessary to start a fire.

AMENDATORY SECTION

SECTION 8.07 CURTAILMENT (BURN BAN)

((~~A.~~)) (A) Curtailment. Except as provided in Section 8.08, no person shall operate a solid fuel burning device within a defined geographical area under any of the following conditions:

((~~1.~~)) (1) Air Pollution Episode. Whenever Ecology has declared curtailment under an alert, warning, or emergency air pollution episode for the geographical area pursuant to Chapter 173-435 WAC and RCW ((~~70.94.715~~)) 70A.15.6010.

((~~2.~~)) (2) Stage 1 Burn Ban. Whenever the Agency has declared curtailment under a first stage of impaired air quality for the Smoke Control Zone or other geographical area unless the solid fuel burning device is one of the following: a ((~~.A~~)) nonaffected pellet stove; or ((~~b. A~~)) a Washington Certified Device; or ((~~c. An~~)) an EPA Certified Woodstove; or ((~~d. An~~)) an Oregon Certified Woodstove.

(a) In Spokane County as allowed by RCW ((~~70.94.473~~)) 70A.15.3580 (1)(b)(i) a first stage of impaired air quality is reached and curtailment may be declared when the Agency determines that particulate matter with a nominal aerodynamic diameter of two and one half (2.5)

micrometers and smaller ($PM_{2.5}$), measured as an ambient mass concentration at any location within Spokane County using a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, CFR Title 40 Part 50 Appendix L, and updated hourly as a twenty-four (24) hour running average, is likely to exceed thirty-five (35) micrograms per cubic meter of air within forty-eight (48) hours based on forecasted meteorological conditions.

((~~3.~~)) (3) Stage 2 Burn Ban. Whenever the Agency has declared curtailment under a second stage of impaired air quality for the Smoke Control Zone or other geographical area. In Spokane County as allowed by RCW ((~~70.94.473~~)) 70A.15.3580 (1)(c)(ii) a second stage of impaired air quality is reached and curtailment may be declared whenever all of the following criteria are met:

((~~a.~~)) (a) Issuing a Stage 2 Burn Ban Following a Stage 1 Burn Ban.

((~~1)~~)) 1. A first stage of impaired air quality has been in force for a period of twenty-four (24) hours or longer and, in the Agency's judgment, has not reduced the $PM_{2.5}$ ambient mass concentration, measured as a twenty-four (24) hour running average, sufficiently to prevent it from exceeding thirty-five (35) micrograms per cubic meter of air at any location inside Spokane County within twenty-four (24) hours; and

((~~2)~~)) 2. A twenty-four (24) hour running average $PM_{2.5}$ ambient mass concentration equal to or greater than twenty-five (25) micrograms per cubic meter of air is measured at any location inside Spokane County using a method which has been determined by Ecology or the Agency to have a reliable correlation to the federal reference method, 40 CFR ((~~Title~~)) 40 Part 50 Appendix L, or equivalent; and

((~~3)~~)) 3. The Agency does not expect meteorological conditions to allow ambient mass concentrations of $PM_{2.5}$ measured as a twenty-four (24) hour running average to decline below twenty-five (25) micrograms per cubic meter of air for a period of twenty-four (24) hours or more from the time that it is measured at that concentration.

((~~b.~~)) (b) Issuing a Stage 2 Burn Ban Without First Declaring a Stage 1 Burn Ban.

1. A second stage burn ban may be issued without an existing first stage burn ban as allowed by RCW ((~~70.94.473~~)) 70A.15.3580 (1)(c)(ii) whenever all of the following criteria are met:

((~~1)~~)) a. The ambient mass concentration of $PM_{2.5}$ at any location inside Spokane County has reached or exceeded twenty-five (25) micrograms per cubic meter, measured as a running twenty-four (24) hour average using a method which has been determined, by Ecology or the Agency, to have a reliable correlation to the federal reference method, ((~~CFR Title~~)) 40 CFR Part 50 Appendix L, or equivalent; and

((~~2)~~)) b. Meteorological conditions have caused $PM_{2.5}$ ambient mass concentrations to rise rapidly; and

((~~3)~~)) c. The Agency predicts that meteorological conditions will cause $PM_{2.5}$ ambient mass concentrations measured as a twenty-four (24) hour running average to exceed thirty-five (35) micrograms per cubic meter of air within twenty-four (24) hours; and

((~~4)~~)) d. Meteorological conditions are highly likely to prevent smoke from dispersing sufficiently to allow $PM_{2.5}$ ambient mass concentrations to decline below twenty-five (25) micrograms per cubic meter of air within twenty-four (24) hours.

2. Issuance of a second stage burn ban without an existing first stage burn ban shall require the Agency to comply with RCW ((~~70.94.473~~)) 70A.15.3580(3).

((~~4.~~)) (4) The following matrix graphically illustrates the applicability of SRCAA Regulation I, Article VIII, Sections 8.07((~~.A.1-3 of this Regulation~~)) (A)(1) - (3).

Burn Condition	Impaired Air Quality		
Type of Device	First Stage Burn Ban	Second Stage Burn Ban	Air Pollution Episode
EPA Certified Woodstove	Allowed	Prohibited	Prohibited
Oregon Certified Woodstove	Allowed	Prohibited	Prohibited
Pellet Stove (nonaffected)	Allowed	Prohibited	Prohibited
Washington Certified Device	Allowed	Prohibited	Prohibited
All Other Devices	Prohibited	Prohibited	Prohibited

((~~5.~~)) (5) After July 1, 1995, if the limitation in RCW ((~~70.94.477~~)) 70A.15.3600(2) is exercised, following the procedure in Section 8.09 (Procedure to Geographically Limit Solid Fuel Burning Devices), and the solid fuel burning device is not one of the following:

((~~a.~~)) (a) A nonaffected pellet stove; or

((~~b.~~)) (b) Washington Certified Device; or

((~~c.~~)) (c) EPA Certified Woodstove; or

((~~d.~~)) (d) Oregon Certified Woodstove.

((~~B.~~)) (B) Consideration. ((~~In consideration of declaring~~)) When determining whether to declare a curtailment under a stage of impaired air quality, the Agency shall consider the anticipated beneficial effect on ambient concentrations of $PM_{2.5}$, taking into account meteorological factors, the contribution of emission sources other than solid fuel burning devices, and any other factors deemed to affect the $PM_{2.5}$ mass concentration.

((~~C.~~)) (C) Extinguish Device. Any person responsible for a solid fuel burning device which is subject to curtailment and is already in operation at the time curtailment is declared under an episode or a stage of impaired air quality shall extinguish that device by withholding new solid fuel for the duration of the episode or impaired air quality. Smoke visible from a chimney, flue or exhaust duct after a time period of three (3) hours has elapsed from the time of declaration of curtailment under an episode or a stage of impaired air quality shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that smoke was not caused by an applicable solid fuel burning device.

((~~D.~~)) (D) Enforcement. The Agency, Ecology, Spokane Regional ((~~County~~)) Health District, fire departments, fire districts, Spokane County Sheriff's Department, or local police having jurisdiction in the area may enforce compliance with solid fuel burning device curtailment after a time period of three (3) hours has elapsed from the time of declaration of curtailment under an episode or a stage of impaired air quality.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 8.08 EXEMPTIONS

((~~A.~~)) (A) Categories. The provisions of Section 8.07 shall not apply to any person who possesses a valid written exemption for his/her residence, issued by the Agency. The Agency may issue written exemptions for residences if any one of the following is demonstrated to the satisfaction of the Agency:

((~~1.~~)) (1) Low Income. An economic need to burn solid fuel for residential space heating purposes by qualifying through Spokane Neighborhood Action Partners (SNAP) for energy assistance according to economic guidelines established by the U.S. Office of Management and Budget under the low income energy assistance program (L.I.E.A.P.).

((~~2.~~)) (2) No Adequate Source of Heat. An exemption may be issued if all of the following apply:

((~~a.~~)) (a) The residence was constructed prior to July 1, 1992; and

((~~b.~~)) (b) The residence was originally constructed with a solid fuel burning device as a source of heat; and

((~~c.~~)) (c) A person in a residence does not have an adequate source of heat without using a solid fuel burning device (RCW ((~~70.94.477~~)) 70A.15.3600 (6)(a)).

((~~1~~)) 1. Adequate source of heat means the ability to maintain ((~~seventy degrees Fahrenheit~~)) 70°F at a point three (3) feet above the floor in all normally inhabited areas of a dwelling (WAC 173-433-030(1)); and

((~~2~~)) 2. If any part of the heating system has been disconnected/removed, damaged, or is otherwise nonfunctional, the Agency shall base the assessment of the adequacy of design for providing an adequate source of heat in Section 8.08 ((~~A.2.c.1~~)) (A)(2)(c)1., above, on the system's capability prior to the disconnection/removal, damage, improper maintenance, malfunction, or occurrence that rendered the system nonfunctional.

(d) A person's income level is not a determining factor in the approval or denial of an exemption under this provision. Exemptions based on income level are addressed in Section 8.08 ((~~A.1~~)) (A)(1).

((~~3.~~)) (3) Primary Heating Source Temporarily Inoperable. That his/her heating system, other than a solid fuel burning device, is temporarily inoperable for reasons other than his/her own actions. When applying for this exemption, the applicant must submit a compliance schedule for bringing his/her heating system, other than a solid fuel burning device, back into operation to be used as his/her primary heating source. Unless otherwise approved by ((~~SRCAA~~)) the Agency, exemptions will be limited to thirty (30) calendar days. A person's income level is not a determining factor in the approval or denial of an exemption under this provision.

((~~4. State of Emergency If a state of emergency is declared by an authorized local, state, or federal government official due to a storm, flooding, or other disaster, which is in effect during a burn ban declared pursuant to Section 8.07 of this Regulation, the Control Officer may temporarily issue a State of Emergency exemption. The State of Emergency exemption shall serve as a general exemption from burn ban provisions in Section 8.07. The temporary approval shall reference the applicable state of emergency, effective date, expiration date, and limitations, if any (e.g. specific geographic areas affected).~~))

(4) Emergency Power Outage. To prevent loss of life, health, or business, Section 8.07 does not prevent burning wood in a solid fuel burning device for heat during an emergency power outage that leaves a person's residence or commercial establishment temporarily without an

adequate source of heat [RCW 70A.15.3580 (5)(a)]. A written exemption is not required. A person must comply with Section 8.07 after a time period of three (3) hours after power is restored by utility provider. A person must comply with Section 8.05 and 8.06 at all times.

((~~B.~~)) (B) Exemption Duration and Renewals. Written exemptions shall be valid for a period determined by the Agency, which shall not exceed one (1) year from the date of issuance. Exemptions in Section 8.08 ((~~.A.1 & 2~~)) (A)(1) and (2) may be renewed by the Agency, provided the applicant meets the applicable requirements at the time of exemption renewal. For renewals under Section 8.08 ((~~.A.1~~)) (A)(1), the applicant must demonstrate the low income status is met each time application is made. Exemption requests may be denied by the Agency, regardless of the applicant's exemption history.

((~~C.~~)) (C) Fees. Exemption requests must be accompanied by fees specified in Article X, Section 10.10 and ((~~SRCAA~~)) the ((~~'s fee schedule~~)) Consolidated Fee Schedule. For exemptions which are requested and qualify under the low income exemption in Section 8.08 ((~~.A.1~~)) (A)(1), the fee is waived.

((~~D.~~)) (D) One-Time, 10-Day Temporary Exemption.

(1) ((~~SRCAA~~)) The Agency may issue one-time, 10-day temporary solid fuel burning device exemptions if persons making such requests qualify and provide all of the information below. Unless required otherwise by ((~~SRCAA~~)) the Agency, such exemptions requests may be taken via telephone.

((~~1.~~)) (a) Full name; and

((~~2.~~)) (b) Mailing address; and

((~~3.~~)) (c) Telephone number; and

((~~4.~~)) (d) Acknowledgement that he/she believes he/she qualifies for an exemption pursuant to Section 8.08 ((~~.A.1, 2, or 3~~)) (A)(1), (2), or (3); and

((~~5.~~)) (e) Physical address where the exemption applies; and

((~~6.~~)) (f) Description of the habitable space for which the exemption is being requested; and

((~~7.~~)) (g) Acknowledge that s/he has not previously requested such an exemption for the same physical address, except as provided below, and that all of the information provided is accurate.

(2) One-time, 10-day temporary solid fuel burning device exemptions are not valid for any physical address for which a one-time, 10-day temporary solid fuel burning device exemption has previously been issued unless a past exemption was issued for a residence under different ownership or there is a temporary breakdown that qualifies under Section 8.08 ((~~.A.3~~)) (A)(3).

((~~E.~~)) (E) Residential and Commercial Exemption Limitations. Except for commercial establishments qualifying under Section 8.08((~~.A.3~~)) (A)(3), (A)(4) or 8.08((~~.D~~))(D), exemptions are limited to residences. Exemptions are limited to normally inhabited areas of a residence, which includes areas used for living, sleeping, cooking and eating. Exemptions will not be issued for attached and detached garages, shops, and outbuildings. For commercial establishments, exemptions will be limited to areas identified in exemption approvals issued by ((~~SRCAA~~)) the Agency pursuant to Section 8.08 ((~~.A.3~~)) (A)(3)or 8.08((~~.D~~))(D).

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

SECTION 8.09 PROCEDURE TO GEOGRAPHICALLY LIMIT SOLID FUELBURNING DEVICES

((~~A.~~)) (A) Solid Fuel Burning Devices Contribute to Air Quality Violation. If the EPA finds that the Spokane PM_{10} Maintenance Area has violated a National Ambient Air Quality Standard for PM_{10} and emissions from solid fuel burning devices are determined by the EPA, in consultation with Ecology and the Agency, to be a contributing factor to such failure or violation, then one (1) year after such determination, the use of solid fuel burning devices not meeting the standards set forth in RCW ((~~70.94.457~~)) 70A.15.3530 and WAC 173-433-100, is restricted to areas outside the Smoke Control Zone.

((~~B.~~)) (B) Notice of Determination. Within thirty (30) days of the determination pursuant to Section 8.09((~~A.~~))(A), the Agency shall publish a public notice in a newspaper of general circulation, informing the public of such determination and of the date by which such restriction on the use of solid fuel burning devices becomes effective.

((~~C.~~)) (C) Exemptions. Nothing in Section 8.09 shall apply to persons who have obtained an exemption pursuant to Section 8.08.

AMENDATORY SECTION

SECTION 8.10 RESTRICTIONS ON INSTALLATION AND SALES OF SOLID FUEL BURNING DEVICES

((~~A.~~)) (A) Installation of Solid Fuel Burning Devices. No person shall install a new or used solid fuel burning device that is not a Washington certified device in any new or existing building or structure unless the device is a cook stove or a device which has been rendered permanently inoperable.

((~~B.~~)) (B) Sale or Transfer of Solid Fuel Burning Devices. No person shall sell, offer for sale, advertise for sale, or otherwise transfer a new or used solid fuel burning device that is not a Washington certified device to another person unless the device is a cook stove or a device which has been rendered permanently inoperable (RCW ((~~70.94.457~~)) 70A.15.3530 (1)(a)).

((~~C.~~)) (C) Sale or Transfer of Fireplaces. No person shall sell, offer for sale, advertise for sale, or otherwise transfer a new or used fireplace to another person, except masonry fireplaces, unless such fireplace meets the 1990 United States environmental protection agency standards for woodstoves or equivalent standard that may be established by the state building code council by rule (RCW ((~~70.94.457~~)) 70A.15.3530 (1)(b)).

((~~D.~~)) (D) Sale or Transfer of Masonry Fireplaces. No person shall build, sell, offer for sale, advertise for sale, or otherwise transfer a new or used masonry fireplace, unless such fireplace meets Washington State building code design standards as established by the state building code council by rule (RCW ((~~70.94.457~~)) 70A.15.3530 (1)(c)).

AMENDATORY SECTION

SECTION 8.11 REGULATORY ACTIONS AND PENALTIES

A person ((~~in violation of~~)) violating this ((~~a~~)) Article may be subject to the provisions of Article II, Section 2.11 - Penalties, Civil Penalties, and Additional Means for Enforcement.

AMENDATORY SECTION
SECTION 10.01 DEFINITIONS

(A) Unless a different meaning is clearly required by context, words and phrases used in Regulation I, Article X, shall have the following meaning:

(1) *Emission Fee* means the component of a registration fee or operating permit fee, which is based on total actual annual emissions of criteria and toxic air pollutants, except as provided in Section 10.06 (B)(2). In the case of a new or modified source or a source being registered initially, the emission fee is based on projected emissions as presented in an approved Notice of Construction (NOC) or registration form.

(2) *Registration Period* means the calendar year for which an annual fee has been assessed per Section 10.06 (B)(1).

AMENDATORY SECTION
SECTION 10.02 FEES AND CHARGES REQUIRED

(A) ((~~Additional Fee for Failure to Pay~~)) Late Fees. Failure to pay a ((~~A~~))ny fee assessed under Article X after ((~~shall be paid within~~)) forty-five (45) days of the original payment due date ((~~assessment. Failure to pay an assessed fee in full within ninety (90) days assessment will~~)) may result in ((~~the imposition of~~)) an additional late fee of ((~~equal to~~)) 25% of the original fee.

(B) Penalty. Persons required to pay emission or permit fees who are more than ninety (90) days late with such payments may be subject to a penalty equal to three (3) times the amount of the original fee assessed per RCW 70A.15.3160.

(C) ((~~(B)~~)) Revenues Collected per RCW ((~~70.94.161~~)) 70A.15.2260. Revenues collected per RCW ((~~70.94.161~~)) 70A.15.2260 shall be deposited in the operating permit program dedicated account and shall be used exclusively for that ((~~e~~)) program.

(D) ((~~(C)~~)) Method of Calculating Fees in Article X. Invoice totals will be rounded-up to the nearest one (1) dollar, except for public records fees per Section 10.05(A) and Annual AOP Fees per Section 10.06(C).

(E) ((~~(D)~~)) Periodic Fee Review. The Board shall periodically review all agency fees in the Consolidated Fee Schedule and determine if the total projected fee revenue to be collected is sufficient to fully recover direct and indirect program costs. If the Board determines that the total projected fee revenue significantly exceeds or is insufficient for the program costs, then the Board shall amend the Consolidated Fee Schedule to more accurately recover program costs. Any proposed fee revisions shall include opportunity for public review and comment.

AMENDATORY SECTION
SECTION 10.06 ANNUAL REGISTRATION AND ANNUAL AIR OPERATING PERMIT (AOP) FEES

(A) Annual Fee. Each source required by SRCAA Regulation I, Article IV, Section 4.01 to be registered, each AOP source, and each source required by Article V, Section 5.02 to ((~~obtain an approved and~~)) submit an NOC ((~~and Application~~)) application and obtain an ((~~for~~)) Order of Approval, is required to pay an annual fee for each calendar year, or portion of each calendar year, during which it oper-

ates. The owner, operator, or both, shall be responsible for payment of the fee per the requirements in Article X, Section 10.06. Fees received as part of the registration program or the operating permit program shall not exceed the actual costs of program administration.

(B) Annual Registration Fee. The annual fee for each source required by Article IV, Section 4.01 to be registered and that is not subject to Article X, Section 10.06(C) shall be determined by adding all of the applicable fees below:

(1)

Registration Fee Categories	Fee	Fee Applicability
Facility Fee [A]	Per the Fee Schedule	Per Source
Emissions Fee [B]	Per the Fee Schedule	Per Ton
Emission Point Fee [C]	Per the Fee Schedule	Per Stack/Point
Synthetic Minor Fee [D]	Per the Fee Schedule	Per Source

[A] Each source is subject to the fee listed in the Consolidated Fee Schedule.

[B] The additional fee applies to each ton (rounded to the nearest one-tenth of a ton) of each criteria pollutant, volatile organic compound (VOC), and non-VOC toxic air pollutant emitted.

[C] The additional fee applies to each stack and other emission points, including sources of fugitive emissions (e.g., fugitive dust emissions from crushing operations; storage piles; mixing and clean-up associated with surface coating). For gasoline stations, each gasoline tank vent is an emission point.

[D] The additional fee applies to each Synthetic Minor.

(2) Calculating Annual Registration Fee without Required Registration Information. When registration information required in Article IV, Section 4.02 is not provided by the form due date, the annual registration fee will be based on the source's maximum potential production rate.

(C) Annual AOP Fee. The annual fee for each AOP source shall be determined as follows:

(1) AOP Annual Fee. For sources that are subject to the AOP program during any portion of the calendar year, the annual fee shall be determined by adding all of the applicable fees described below:

(a) Annual base fee per the Consolidated Fee Schedule.

(b) Emission fee per the Consolidated Fee Schedule.

(c) Agency time fee, as determined per the Consolidated Fee Schedule.

(d) AOP Program Cost Correction, as determined per the Consolidated Fee Schedule.

(e) A share of the assessment by Ecology per RCW ((~~70.94.162~~)) 70A.15.2270(3), as determined per the Consolidated Fee Schedule.

(2) Acid Deposition Fee. For affected units under Section 404 (Acid Deposition Standards) of the Federal Clean Air Act (42 USC 7401 et seq.), the air operating permit fee shall be determined by adding all of the applicable fees described below:

(a) The AOP Acid Deposition Fee shall be calculated as follows:

1. Hourly Fee. The hourly fee is calculated by multiplying the total staff time spent in reviewing and processing the request (rounded-up to the nearest half-hour) by the hourly rate as listed in the Consolidated Fee Schedule, for time expended in carrying out the fee eligible activities specified in Chapter ((~~70.94~~)) 70A.15 RCW; and

2. Ecology Assessment. A share of the assessment by Ecology per RCW ((~~70.94.162~~)) 70A.15.2270(3), as determined per the Consolidated Fee Schedule.

(b) Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total AOP Program Costs}}{\text{Total AOP Program Hours}}$$

(c) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

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

SECTION 10.07 NOTICE OF CONSTRUCTION (NOC) AND PORTABLE SOURCE PERMIT (PSP) APPLICATION FEES

(A) NOC and PSP Fees.

(1) NOC/PSP Class, Base Fee, Fee for Additional NOC/PSP Review Hours, SEPA Fee, and Fee Determination. For each project required by SRCAA Regulation I, Article V, to file a NOC or a PSP application, the owner or operator must pay the following applicable fees in (b) through (d) below:

(a) NOC/PSP Class. Each NOC/PSP application will be assigned a Class, as follows:

1. Class I - PSP to install and operate portable sources include the following:

Article IV Source/Source Category Description
Asphalt plant
Concrete production operation/ready mix plant
Rock crusher

2. Class II - Simple NOCs include the following:

Article IV Source/Source Category Description
Coffee roasters with capacities greater than 5kg (11 lbs) per batch
Degreaser/solvent cleaner (not subject to 40 CFR Part 63, Subpart T) subject to Article IV
Dry cleaner (nonhalogenated solvent)
Evaporator subject to Article IV
Gasoline dispensing facility with maximum annual gasoline throughput less than or equal to 1.9 ((~~1.5~~)) million gallons
Graphic art system, including lithographic and screen printing operation, subject to Article IV
Material handling equipment (e.g. baghouse, cyclone) ((~~Material handling operation~~)) that exhaust((s)) greater than 1,000 and less than 10,000 acfm to the ambient air
Organic vapor collection system within commercial or industrial facility that is subject to Article IV
Rock, asphalt, or concrete crushers
Spray booth/surface coating operations that exhaust((s)) less than or equal to 10,000 acfm to the ambient air
Sterilizer subject to Article IV
Wood furniture stripping operation subject to Article IV

3. Class III - Standard NOCs include the following:

Article IV Source/Source Category Description
Soil and groundwater remediation operation subject to Article IV
Bakery subject to Article IV

Article IV Source/Source Category Description
Bed lining or undercoating operation subject to Article IV
Boiler and other fuel-burning equipment with maximum per unit heat input less than 100 MMBtu/hr
Brick and clay products manufacturing operations
Burn out, kiln, and curing oven
Chrome plating operation
Concrete production operation
Dry cleaners (((~~halogenated solvent~~))) utilizing Perchloroethylene (Perc)
Gasoline dispensing facility with maximum annual gasoline throughput greater than ((~~1.5~~)) 1.9 million gallons
Grain handling; seed, pea and lentil processing facility
Incinerator/crematory
Internal combustion engine used for standby, emergency, or back-up operations rated greater than or equal to 500 bhp
Internal combustion engine, not used for standby, emergency, or back-up operations ((~~other than engines used for standby or backup operation~~)) rated greater than or equal to 100 bhp
Material handling equipment (e.g. baghouse, cyclone) ((~~Material handling operation~~)) that exhaust((s)) greater than or equal to 10,000 acfm to the ambient air
Metal casting facility/foundry
Metal plating or anodizing operation
Metallurgical processing operation
Mill; lumber, plywood, shake, shingle, woodchip, veneer operation, dry kiln, wood products, grain, seed, feed, or flour
Plastic and fiberglass operations using greater than 55 gallons per year of all VOC and toxic air pollutant containing materials
Spray booth/surface coating operations that exhaust((~~s~~)) greater than 10,000 acfm to the ambient air
Storage tanks for organic liquid with capacity greater than 20,000 gallons
Stump/wood waste grinder
Tire recapping operation

4. Class IV - Complex NOCs include the following:

Article IV Source/Source Category Description
Asphalt plant
Boiler and other fuel-burning equipment with maximum per unit heat input greater than or equal to 100 MMBtu/hr
Bulk gasoline and aviation gas terminal, plant, or terminal
Cattle feedlot subject to Article IV
Chemical manufacturing operation
Composting operation
Natural gas transmission and distribution facility
Paper manufacturing operation, except Kraft and sulfite paper mills
Petroleum refinery
Pharmaceutical production operation
Refuse systems
Rendering operation
Semiconductor manufacturing operation
Sewerage systems
Wholesale meat/fish/poultry slaughter and packing plant

5. For sources/source categories not listed in Section 10.07 (A)(1)(a), each NOC/PSP application will be assigned to Class I, II, III or IV by the Control Officer on a case-by-case basis.

(b) Base fee. A base fee must be paid to the Agency with the submission of each completed NOC/PSP application. The base fee applicable for each NOC/PSP Class is listed in the Consolidated Fee Schedule.

1. For each NOC/PSP application, the base fee covers staff time spent in reviewing and processing the application up to the listed number of base-fee hours provided in the Fee Schedule for each class of NOC/PSP.

2. For sources with one or more emission points under one NOC application, a separate base fee applies to each emissions unit, or each group of like-kind emissions units, being installed or modified. A group of emissions units will be considered as like-kind if the same set of emission calculations can be used to characterize emissions from each of the emissions units.

(c) Fee for Additional NOC/PSP Review Hours. When the staff time hours spent reviewing and processing a NOC/PSP application exceeds the listed number of base-fee hours provided in the Consolidated Fee Schedule for the applicable class of NOC/PSP, an additional fee will be charged. The additional fee is calculated by multiplying the total staff time spent in reviewing and processing the NOC/PSP application that exceeds the listed number of review hours (rounded up to the nearest half-hour) by the hourly rate as listed in the Consolidated Fee Schedule.

(d) SEPA Review Fee. Where submittal of an Environmental Checklist, per the State Environmental Policy Act (SEPA) Chapter 197-11 WAC is required in association with a NOC or a PSP, and SRCAA is the lead agency, the applicant must pay a SEPA review fee as listed in the Consolidated Fee Schedule. The SEPA review fee must be paid with the submission of the Environmental Checklist to the Agency.

(e) Fee Determinations.

1. The base fee is calculated by multiplying the number of base-fee hours for the NOC/PSP class by the hourly rate listed in the Fee Schedule.

2. Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

3. Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(2) Fees for Replacement or Substantial Alteration of Control Technology and for Changes to an Order of Approval or Permission to Operate.

(a) The following NOC applications or requested changes to an Order of Approval or Permission to Operate must pay a fee as listed in the Fee Schedule. The fee will be assessed each time a request is submitted and will be invoiced to the owner or operator with the final determination.

1. NOC applications for replacement or substantial alteration of control technology under WAC 173-400-114.

2. An owner or operator requesting a modification, revision, and/or change in conditions of an approved Order of Approval or Permission to Operate, under Article V, Section 5.10(C).

(b) The fee is calculated by adding all the applicable fees described below:

1. Minimum Fee. The minimum fee, as listed in the Consolidated Fee Schedule, will be assessed for all NOCs reviewed under WAC

173-400-114 and revision request reviews. The minimum fee includes the first three (3) hours of staff time spent in reviewing and processing the request; and

2. Hourly Fee. The hourly fee is calculated by multiplying the total staff time spent in reviewing and processing the request beyond the first three (3) hours covered in 10.07 (A)(2)(b)1. (rounded-up to the nearest half-hour), by the hourly rate as listed in the Consolidated Fee Schedule.

(c) Fee Determinations.

1. Flat Fee. The revision flat fee is calculated by multiplying three (3) hours by the hourly rate listed in the Consolidated_Fee Schedule.

2. Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

3. Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(B) Payment of Fees.

(1) Upon Submission of Application. The base fee and SEPA fee (if applicable) must be paid at the time the NOC/PSP application is submitted to the Agency. Review of the NOC/PSP application will not commence until the applicable base fee is received.

(2) After Application.

(a) Complete Applications. The Agency will invoice the owner, operator, or both, for Fees for Additional NOC/PSP Review Hours, if applicable. The fees shall be paid whether the application is approved or denied.

(b) Incomplete Applications.

1. If an owner, operator, or both, notifies the Agency in writing that an application will not be completed or cancels the application; or the application remains incomplete for more than three (3) months; the Agency will invoice the owner, operator, or both, for payment of applicable fees.

2. Applications not accompanied by the base fee will be considered incomplete. If information requested by the Agency is not provided, the application will be considered incomplete and review of the application will be suspended. Review of the application will commence or recommence, when all required fees and information requested by the Agency is received. An application will be cancelled if it remains incomplete for more than eighteen (18) months from initial receipt. For review of the cancelled application to resume, the applicant must pay all outstanding invoice fees, if applicable, and resubmit the applicable base fee.

(C) Compliance Investigation Fee. When a compliance investigation is conducted per Article V, Section 5.12, the compliance investigation fee shall be assessed per the Consolidated Fee Schedule. The fee shall be assessed for each emissions unit, or group of like-kind emissions units, being installed or modified. A group of emissions units shall be considered as like-kind if the same set of calculations can be used to characterize emissions from each of the emissions units.

AMENDATORY SECTION

SECTION 10.08 MISCELLANEOUS FEES

(A) Miscellaneous Fees.

(1) Emission Reduction Credit Fee.

(a) Review of emission reduction credits per WAC 173-400-131 shall require the applicant to pay an emission reduction credit fee per the Consolidated Fee Schedule.

(b) The fee is calculated by multiplying the total staff time spent reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, per the Consolidated Fee Schedule.

(c) Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

(d) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(2) Variance Request Fee.

(a) Processing a variance request per RCW ((~~70.94.181~~)) 70A.15.2310 or SRCAA Regulation I, Article III, shall require the applicant to pay a variance request fee per the Consolidated Fee Schedule. The fee will be assessed each time a request is submitted. ((~~and~~)) The applicant must pay the initial filing fee upon submittal of the variance application to SRCAA. The balance of the variance fee 10.08 (A)(2)(b)2. - 4. will be invoiced to the applicant and must be paid by the applicant prior to receiving ((~~with~~)) the final determination.

(b) The variance request fee is calculated by adding all of the applicable fees described below:

1. Initial ((~~F~~))filing fee per the Consolidated Fee Schedule, must be paid upon submittal of the variance application.

2. Agency legal fees related to the variance request.

3. Public notice fees.

4. Hourly fee. The hourly fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Consolidated Fee Schedule.

(c) Fee Determination.

1. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total Program Costs}}{\text{Total Program Hours}}$$

2. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(3) Alternate Opacity Fee.

(a) Review of an alternate opacity limit per RCW ((~~70.94.331~~)) 70A.15.3000 (2)(c) shall require the applicant to pay an alternate opacity fee per the Consolidated Fee Schedule.

(b) The fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Consolidated Fee Schedule.

(c) Hourly Rate. The hourly rate is determined by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

(d) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(4) Other Services Fee.

(a) Applicants of other services including:

1. Requests under the following sections of Regulation I, Article VI, Sections 6.13 (E)(3)(j); 6.13 (F)(3); 6.13 (F)(4); 6.13 (F)(6) and 6.13 (F)(9).

2. Registration exemption requests.

3. Other.

(b) Applicants shall pay a fee per the Consolidated Fee Schedule.

(c) The fee is calculated by multiplying the total staff time spent in reviewing and processing the request, rounded-up to the nearest half-hour, by the hourly rate, as listed in the Consolidated Fee Schedule.

(d) Hourly Rate. The hourly rate is calculated by:

$$\text{Hourly Rate} = \frac{\text{Total NOC and PSP Program Costs}}{\text{Total NOC and PSP Program Hours}}$$

(e) Hourly Rate Revision. Revisions to the hourly rate are based on a three (3) year average of the three (3) most representative fiscal years out of the four (4) preceding fiscal years, rounded-up to the nearest one (1) dollar.

(B) Payment of Fees. The Agency will invoice the owner, operator, or both, for all applicable fees. The fees shall be paid without regard to whether the request(s) associated with Article X, Section 10.08 (A)(1), (2), (3) and (4) are approved or denied; except Section 10.08 (A)(2) as provided in Article III, Section ((~~3.02.B.~~)) 3.02(B).

Reviser's note: The brackets and enclosed material in the text above occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 23-14-002
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed June 21, 2023, 2:30 p.m., effective July 22, 2023]

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

Purpose: The purpose of the proposed rule updates is to correct contact phone numbers referenced in the rules and to make other typographical changes without changing any effect of the rules.

Citation of Rules Affected by this Order: Amending WAC 458-20-10003, 458-20-10004, 458-20-10201, 458-20-10202, 458-20-102A, 458-20-126, 458-20-13601, 458-20-174, 458-20-178, 458-20-180, 458-20-190, 458-20-209, 458-20-210, 458-20-228, 458-20-229, 458-20-235, 458-20-239, 458-20-24001, 458-20-24001A, 458-20-24003, 458-20-240A, 458-20-267A, 458-20-268, and 458-20-278.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Adopted under notice filed as WSR 23-09-048 on April 17, 2023.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 24, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 24, Repealed 0.

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

Date Adopted: June 21, 2023.

Atif Aziz
Rules Coordinator

OTS-4513.2

AMENDATORY SECTION (Amending WSR 16-13-029, filed 6/6/16, effective 7/7/16)

WAC 458-20-10003 Brief adjudicative proceedings for matters related to suspension, nonrenewal, and nonissuance of licenses to sell spirits. (1) **Introduction.** The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). The department adopts in this rule, the procedures as provided in RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings to review the department notice explained in subsection (2) of this rule. The department must provide the notice before it may proceed in requesting that the Washington liquor control board (board) suspend, not renew, or not issue a taxpayer's spirits license(s) as defined in RCW 66.24.010 (3)(c), referred to in this rule as "agency action."

This rule explains the procedure pertaining to the adopted brief adjudicative proceedings.

(2) **Department notice.** If a taxpayer is more than ((~~thirty~~)) 30 days delinquent in reporting or remitting spirits taxes on a tax return or assessed by the department, including applicable penalties and interest, the department may request that the board suspend the taxpayer's spirits license or licenses and refuse to renew any existing spirits license held by the taxpayer or issue any new spirits license to the taxpayer. Before the department may take agency action, the department must provide the taxpayer with at least seven calendar days prior written notice of the delinquency and inform the taxpayer that the department intends to make the request to the board. The department notice must include:

(a) A listing of any unfiled tax returns;

(b) The amount of unpaid spirits taxes as applicable, including any applicable penalties and interest;

(c) Who to contact to inquire about payment arrangements; and

(d) Information that the taxpayer may seek administrative review of the department notice, including the deadline for seeking such review.

A taxpayer may seek an administrative review of the department notice as explained under subsection (3) of this rule. Brief adjudicative proceedings under this rule do not include the right to challenge the amount of any spirits taxes assessed by the department.

(3) **Conduct of brief adjudicative proceedings.** To initiate an appeal of a department notice, the taxpayer has seven calendar days from the date on the department notice to request a review of that notice. The taxpayer must file a written notice of appeal explaining why the taxpayer disagrees with the notice of delinquency.

A form notice of appeal is available at dor.wa.gov or by calling ((~~1-800-647-7706~~)) 360-705-6705. The completed form should be mailed or faxed to the department at:

Washington State Department of Revenue
Compliance Administration
Spirits License Suspension Petition
P.O. Box 47473
Olympia, WA 98504-7473
Fax: 360-586-8816

(a) A presiding officer, who will be either the assistant director of the compliance division or such other person as designated by the director of the department (director), will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in the specific matter. The presiding officer's review is limited to the written record.

(b) As part of the notice of appeal, the taxpayer or the taxpayer's representative may include written documentation explaining the taxpayer's view of the matter. The presiding officer may also request additional documentation from the taxpayer or the department and will designate the date by which the documents must be submitted.

(c) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(d) Within ((~~ten~~)) 10 days of receipt of the taxpayer's notice of appeal, the presiding officer will enter an initial order including a brief explanation of the decision under RCW 34.05.485. All orders in these brief adjudicative proceedings will be in writing. The initial order will become the department's final order unless a petition for

review is made to the department's administrative review and hearings division under subsection (4) of this rule. If the presiding officer's order invalidates the department notice, the department may in its discretion start new proceedings by sending a new department notice.

(4) **Review of initial order from brief adjudicative proceeding.** A taxpayer that has received an initial order upholding a department notice under subsection (3) of this rule may request a review by the department by filing a written petition for review or by making an oral request for review with the department's administrative review and hearings division within ((~~twenty-one~~)) 21 days after the service of the initial order on the taxpayer as described in subsection (8) of this rule.

A form petition of review is available at dor.wa.gov. A request for review should state the reasons for the review.

The address, telephone number, and fax number of the administrative review and hearings division are:

Administrative Review and Hearings Division
Spirits License Petition for Review/Spirits Taxes
Washington State Department of Revenue
P.O. Box 47460
Olympia, WA 98504-7460
Telephone Number: 360-534-1335
Fax: 360-534-1340

(a) A reviewing officer, who will be either the assistant director of the administrative review and hearings division or such other person as designated by the director, will conduct a brief adjudicative proceeding and determine whether the initial order was correctly decided. The reviewing officer's review is limited to the written record.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(c) The order of the reviewing officer will be in writing and include a brief statement of the reasons for the decision, and it must be entered within ((~~twenty~~)) 20 days of the petition for review. The order will include a notice that judicial review may be available. The order of the reviewing officer represents a final order of the department. If a final order invalidates the department notice, the department may in its discretion start new proceedings by sending a new department notice.

(d) A request for review is deemed denied if the department does not issue an order on review within ((~~twenty~~)) 20 days after the petition for review is filed.

(5) **Record in brief adjudicative proceedings.** The record with respect to the brief adjudicative proceedings under RCW 34.05.482 through 34.05.494 related to department notice will consist of:

(a) *The record before the presiding officer*: The record before the presiding officer consists of the department notice; the taxpayer's appeal of the department notice; all records relied upon by the department or submitted by the taxpayer related to the department notice; and all correspondence between the taxpayer and the department regarding the department notice.

(b) *The record before the reviewing officer*: The record before the reviewing officer consists of all documents included in the record before the presiding officer; the taxpayer's petition for review; and

all correspondence between the taxpayer and the department regarding the taxpayer's petition for review.

(6) **Court appeal.** Court appeal from the final order of the department is available pursuant to Part V, chapter 34.05 RCW. However, court appeal may be available only if a review of the initial decision has been requested under subsection (4) of this rule and all other administrative remedies have been exhausted. See RCW 34.05.534.

(7) **Computation of time.** In computing any period of time prescribed by this rule or by the presiding officer or reviewing officer, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. This subsection does not apply with respect to computation of the seven calendar days required for the department notice.

(8) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the taxpayer, their representatives/agents of record, and the department.

(a) Service is made by one of the following methods:

(i) In person;

(ii) By first-class, registered or certified mail;

(iii) By fax and same-day mailing of copies;

(iv) By commercial parcel delivery company; or

(v) By electronic delivery pursuant to RCW 82.32.135.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a taxpayer, their representative/agent of record, the department, and presiding officer must be to the address shown on the notice described in subsection (3)(a) of this rule.

(g) Service to the reviewing officer must be to the administrative review and hearings division at the address shown in subsection (4) of this rule.

(h) Where proof of service is required, the proofs of service must include:

(i) An acknowledgment of service;

(ii) A certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names); and that the service was accomplished by a method of service as provided in this subsection.

(9) **Continuance.** The presiding officer or reviewing officer may grant, in their sole discretion, a request for a continuance by motion of the taxpayer, the department, or on its own motion.

(10) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding officer or reviewing officer, in their sole discretion, may convert a brief adjudicative proceeding to a formal

proceeding at any time on motion of the taxpayer, the department, or the presiding/reviewing officer's own motion.

(a) The presiding/reviewing officer will convert the proceeding when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, and when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director may become the presiding officer or may designate a replacement presiding officer to conduct the formal proceedings upon notice to the taxpayer and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 will apply to the proceedings.

(11) **Taking agency action.** The department may initiate agency action as follows:

(a) If the taxpayer does not file a timely appeal under subsection (3) of this rule, the department may proceed with agency action the day following the end of the period for requesting such appeal;

(b) If the taxpayer does not make a petition for review consistent with subsection (4) of this rule, the department may proceed with agency action the day following the end of the period for making such petition of review;

(c) If the department makes a final order adverse to the taxpayer under subsection (4) of this rule, the department may proceed with agency action the day following the date the department issues its final order.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-13-029, § 458-20-10003, filed 6/6/16, effective 7/7/16; WSR 12-24-008, § 458-20-10003, filed 11/27/12, effective 12/28/12.]

AMENDATORY SECTION (Amending WSR 16-13-029, filed 6/6/16, effective 7/7/16)

WAC 458-20-10004 Brief adjudicative proceedings for matters related to assessments and warrants for unpaid fees issued under chapter 59.30 RCW for manufactured and mobile home communities. (1) Introduction. The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). The department adopts in this rule, the procedures as provided in RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings to review the department's actions described in subsection (2) of this rule.

This rule explains the procedure pertaining to the adopted brief adjudicative proceedings.

(2) Department's action. The following actions taken by the department are subject to the brief adjudicative proceeding process described in this rule:

(a) Assessment of the one-time business license application fee or annual renewal application fee in RCW 59.30.050 (3)(a);

(b) Assessment of the annual registration assessment fee in RCW 59.30.050 (3)(b); and

(c) Assessment of the delinquency fee in RCW 59.30.050(4).

The assessment of more than one type of fee against a manufactured/mobile home community owner or landlord in RCW 59.30.050 does not result in the creation of more than one adjudicative proceeding if those fees are issued in the same document, on the same date.

As explained in RCW 59.30.020(4), the terms "landlord" and "community owner" both refer to the owner of the mobile home park or manufactured home community or their agents. For purposes of this rule, the department refers to such persons as "community owners."

(3) Conduct of brief adjudicative proceedings. To initiate an appeal of the department's action, the community owner has ((~~twenty-one~~)) 21 calendar days from the date on the department's action to request a review of that action. The community owner must file a written notice of appeal explaining why the community owner disagrees with the action.

A ((~~form~~)) notice of appeal form is available at dor.wa.gov or by calling ((~~1-800-647-7706~~)) 360-705-6705. The completed form should be mailed or faxed to the department at:

Washington State Department of Revenue
Special Programs
Review of Annual Registration for Manufactured/Mobile Home Communities
P.O. Box 47472
Olympia, WA 98504-7472
Fax: 360-534-1320

(a) A presiding officer, who will be a person designated by the director of the department (director) or the assistant director of special programs division, will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in the specific matter. The presiding officer's review is limited to the written record.

(b) As part of the notice of appeal, the community owner or the community owner's representative may include written documentation explaining the community owner's view of the matter. The presiding officer may also request additional documentation from the community owner or the department and will designate the date by which the documents must be submitted.

(c) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(d) Within ((~~twenty-one~~)) 21 calendar days of receipt of the community owner's notice of appeal, the presiding officer will enter an initial order including a brief explanation of the decision under RCW 34.05.485. All orders in these brief adjudicative proceedings will be in writing. The initial order will become the department's final order unless a petition for review is made to the department's administrative review and hearings division under subsection (4) of this rule. If the presiding officer's order invalidates the department action, the department may in its discretion initiate another action that corrects the defects in the prior action.

(4) Review of initial order from brief adjudicative proceeding. A community owner that has received an initial order upholding a department action under subsection (3) of this rule may request a review by the department by filing a written petition for review or by making an oral request for review with the department's administrative review and hearings division within ((~~twenty-one~~)) 21 calendar days after the

service of the initial order on the community owner as described in subsection (8) of this rule.

A form petition of review is available at dor.wa.gov. A request for review should state the reasons for the review.

The address, telephone number, and fax number of the administrative review and hearings division are:

Administrative Review and Hearings Division
Manufactured/Mobile Home Community Appeals
Washington State Department of Revenue
P.O. Box 47460
Olympia, WA 98504-7460
Telephone Number: 360-534-1335
Fax: 360-534-1340

(a) A reviewing officer, who will be either the assistant director of the administrative review and hearings division or such other person as designated by the director, will conduct a brief adjudicative proceeding and determine whether the initial order was correctly decided. The reviewing officer's review is limited to the written record.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(c) The order of the reviewing officer will be in writing and include a brief statement of the reasons for the decision, and it must be entered within ((~~thirty~~)) 30 calendar days of the petition for review. The order will include a notice that judicial review may be available. The order of the reviewing officer represents a final order of the department. If a final order invalidates the department's action, the department may in its discretion initiate another action that corrects the defects in the prior action.

(5) Record in brief adjudicative proceedings. The record with respect to the brief adjudicative proceedings under RCW 34.05.482 through 34.05.494 will consist of:

(a) The record before the presiding officer: The record before the presiding officer consists of the notice of the department action; the community owner's appeal of the department action; all records relied upon by the department or submitted by the community owner related to the department's action; and all correspondence between the community owner and the department regarding the department's action.

(b) The record before the reviewing officer: The record before the reviewing officer consists of all documents included in the record before the presiding officer; the community owner's petition for review; and all correspondence between the community owner and the department regarding the community owner's petition for review.

(6) Court appeal. Court appeal from the final order of the department is available pursuant to Part V, chapter 34.05 RCW. However, court appeal may be available only if a review of the initial decision has been requested under subsection (4) of this rule and all other administrative remedies have been exhausted. See RCW 34.05.534.

(7) Computation of time. In computing any period of time prescribed by this rule or by the presiding officer or reviewing officer, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or legal holiday.

(8) Service. All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the community owner, their representatives/agents of record, and the department.

(a) Service is made by one of the following methods:

(i) In person;

(ii) By first-class, registered or certified mail;

(iii) By fax and same-day mailing of copies;

(iv) By commercial parcel delivery company; or

(v) By electronic delivery pursuant to RCW 82.32.135.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a community owner, their representative/agent of record, the department, and presiding officer must be to the address shown on the form notice of appeal described in subsection (3) of this rule.

(g) Service to the reviewing officer must be to the administrative review and hearings division at the address shown in subsection (4) of this rule.

(h) Where proof of service is required, the proofs of service must include:

(i) An acknowledgment of service;

(ii) A certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names); and that the service was accomplished by a method of service as provided in this subsection.

(9) Continuance. The presiding officer or reviewing officer may grant, in their sole discretion, a request for a continuance by motion of the community owner, the department, or on its own motion.

(10) Conversion of a brief adjudicative proceeding to a formal proceeding. The presiding officer or reviewing officer, in their sole discretion, may convert a brief adjudicative proceeding to a formal proceeding at any time on motion of the community owner, the department, or the presiding/reviewing officer's own motion.

(a) The presiding/reviewing officer will convert the proceeding when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, and when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director may become the presiding officer or may designate a replacement presiding officer to conduct the formal proceedings upon notice to the community owner and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 will apply to the proceedings.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-13-029, § 458-20-10004, filed 6/6/16, effective 7/7/16. Statutory Authority: RCW 84.33.096, 82.32.300, and 82.01.060(2) and RCW 34.05.482 through 34.05.494. WSR 14-13-098, § 458-20-10004, filed 6/17/14, effective 7/18/14.]

AMENDATORY SECTION (Amending WSR 16-13-029, filed 6/6/16, effective 7/7/16)

WAC 458-20-10201 Application process and eligibility requirements for reseller permits. (1) **Introduction.** Reseller permits, issued by the department of revenue (department), replaced resale certificates as the documentation necessary to substantiate the wholesale nature of a sales transaction effective January 1, 2010. This rule explains the criteria under which the department will automatically issue a reseller permit, the application process for both contractors and taxpayers engaging in other business activities when the department does not automatically issue or renew a reseller permit, and the criteria that may result in the denial of an application for a reseller permit. Unique requirements and provisions apply to contractors. (See Part III of this rule.)

The information in this rule is organized into the following three parts:

(a) Part I: General Information.

(b) Part II: Businesses Other than Contractors.

(c) Part III: Contractors.

(2) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including those in the following list:

(a) WAC 458-20-102 (Reseller permits) which explains taxpayers' responsibilities regarding the use of reseller permits, sellers' responsibilities for retaining copies of reseller permits, and the implications for taxpayers not properly using reseller permits and sellers not obtaining copies of reseller permits from taxpayers;

(b) WAC 458-20-10202 (Brief adjudicative proceedings for matters related to reseller permits) which explains the process a taxpayer must use to appeal the department's denial of an application for a reseller permit; and

(c) WAC 458-20-192 (Indian-Indian country) which explains the extent of the state's authority to regulate and impose tax in Indian country.

(3) **Examples.** This rule contains examples that 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 the facts and circumstances.

Part I – General Information

(101) Definitions. For the purpose of this rule, the following terms will apply:

(a) **Consumer.** "Consumer" has the same meaning as under RCW 82.04.190.

(b) **Contractor.** A "contractor" is a person whose primary business activity is as a contractor as defined under RCW 18.27.010 or an electrical contractor as defined under RCW 19.28.006.

(c) **Gross income.** "Gross income" means gross proceeds of sales as defined in RCW 82.04.070 and value of products manufactured as determined under RCW 82.04.450.

(d) **Labor.** "Labor" is defined as the work of subcontractors (including personnel provided by temporary staffing companies) hired by a contractor to perform a portion of the construction services in respect to real property owned by a third party. In the case of speculative builders, labor includes the work of any contractor hired by the speculative builder. Labor does not include the work of taxpayer's employees. Nor does the term include architects, consultants, engineers, construction managers, or other independent contractors hired to oversee a project but who are not responsible for the construction of the project. However, for purposes of the percentage discussed in subsection (303)(a)(iii) of this rule, purchases of labor may include the wages of taxpayer's employees and amounts paid to consultants, engineers, construction managers or other independent contractors hired to oversee a project if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(e) **Materials.** "Materials" is defined as tangible personal property that becomes incorporated into the real property being constructed, repaired, decorated, or improved. Materials are the type of tangible personal property that contractors on retail construction projects purchase at wholesale, such as lumber, concrete, paint, wiring, pipe, roofing materials, insulation, nails, screws, drywall, and flooring material. Materials do not include consumable supplies, tools, or equipment, whether purchased or rented, such as bulldozers. However, for purposes of the percentage discussed in subsection (303)(a)(iii) of this rule, purchases of consumable supplies, tools, and equipment rentals may be included with material purchases if all such purchases are commingled in the applicant's records and it would be impractical to exclude such purchases.

(f) **Material misstatement.** "Material misstatement" is a false statement knowingly or purposefully made by the applicant with the intent to deceive or mislead the department.

(g) **Outstanding tax liability.** For the purpose of this rule, "outstanding tax liability" is any issued tax invoice that has not been paid in full on or before its stated due date. The definition excludes an invoice placed on hold by the department or where the department has executed a payment agreement with the taxpayer and the taxpayer is still in compliance with that agreement.

(h) **Reseller permit.** A "reseller permit" is the document issued to a taxpayer by the department, a copy of which the taxpayer provides to a seller to substantiate a wholesale purchase. A wholesale purchase is not subject to retail sales tax. RCW 82.04.060; 82.08.020.

(i) **Retail construction activity.** "Retail construction activity" means the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, on, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and it also includes the sale of services or charges made for the clearing of land and the moving of earth except the mere leveling of land used in commercial farming or agriculture. Retail construction activity generally involves residential and commercial construction performed for others, including road construction for the state of Washington. It generally includes construction activities that are not specifically designated as speculative building, govern-

ment contracting, public road construction, logging road construction, radioactive waste cleanup on federal lands, or designated hazardous site clean up jobs.

(j) **Wholesale construction activity.** "Wholesale construction activity" means labor and services rendered for persons who are not consumers in respect to real property, if such labor and services are expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers.

(102) Can any business obtain a reseller permit? No. The legislature passed the act authorizing reseller permits to address the significant retail sales tax noncompliance problem resulting from both the intentional and unintentional misuse of resale certificates. The department will not issue a reseller permit unless the business substantiates that it is entitled to make wholesale purchases. Some businesses may not receive a reseller permit, and if they make wholesale purchases, they will need to pay retail sales tax to the seller and then claim a "taxable amount for tax paid at source" deduction on their excise tax return or request a refund from the department as discussed in subsection (205) of this rule.

Example 1. BC Interior Design (BC) arranges for its customers to order and pay for furniture, window treatments and other decorative items directly from vendors. As the customers purchase directly from the vendors, and BC does not purchase the items for resale to their customers, BC may not qualify for a reseller permit. BC must meet the criteria as discussed in subsection (203) of this rule, which includes reporting income from retailing, wholesaling, or manufacturing activities.

Part II - Businesses Other than Contractors

(201) How does a business obtain a reseller permit? The department may automatically issue a reseller permit to a business if it appears to the department's satisfaction, based on the nature of the business's activities and any other information available to the department, that the business is entitled to make purchases at wholesale.

Those businesses that do not receive an automatically issued reseller permit may apply to the department to obtain a reseller permit. Applications can be filed using the businesses' "My Account." If a paper application is needed, businesses can obtain one by calling ((~~1-800-647-7706~~)) 360-705-6705 (taxpayer services) or 360-902-7137 (taxpayer account administration). Completed paper applications should be mailed or faxed to the department at:

Taxpayer Account Administration
Washington State Department of Revenue
P.O. Box 47476
Olympia, WA 98504-7476
Fax: 360-705-6733

(202) When does a business apply for a reseller permit? A business may apply for a reseller permit at any time.

(203) What criteria will the department consider when deciding whether a business will receive a reseller permit?

(a) Except as provided in (b) of this subsection, a business other than a contractor will receive a reseller permit if it satisfies the following criteria (contractors should refer to subsection (303) of this rule for an explanation of the requirements unique to them):

(i) The business has an active tax reporting account with the department;

(ii) The business has reported gross income on its excise tax returns covering a monthly or quarterly period during the immediately preceding six months or, if the business reports on an annual basis, on the immediately preceding annual excise tax return; and

(iii) Five percent or more of the business's gross income reported during the applicable six- or ((~~twelve~~)) 12-month period described in (a)(ii) of this subsection was reported under a retailing, wholesaling, or manufacturing business and occupation (B&O) tax classification.

(b) Notwithstanding (a) of this subsection, the department may deny an application for a reseller permit if:

(i) The department determines that an applicant is not entitled to make purchases at wholesale or is otherwise prohibited from using a reseller permit based on the nature of the applicant's business;

(ii) The applicant has been assessed the penalty for the misuse of a resale certificate or a reseller permit;

(iii) The application contains any material misstatement;

(iv) The application is incomplete;

(v) The applicant has an outstanding tax liability due to the department; or

(vi) The department determines that denial of the application is in the best interest of collecting the taxes due under Title 82 RCW.

(c) The department's decision to approve or deny an application may be based on excise tax returns previously filed with the department by the applicant, a current or previous examination of the applicant's books and records by the department, information provided by the applicant in the master application and the reseller permit application, and other information available to the department.

(d) In the event that a business has reorganized, the new business resulting from the reorganization may be denied a reseller permit if the former business would not have qualified for a reseller permit under (a) or (b) of this subsection. For purposes of this subsection, "reorganize" means:

(i) The transfer, however effected, of a majority of the assets of one business to another business where any of the persons having an interest in the ownership or management in the former business maintain an ownership or management interest in the new business, either directly or indirectly;

(ii) A mere change in identity or form of ownership, however effected; or

(iii) The new business is a mere continuation of the former business based on significant shared features such as owners, personnel, assets, or general business activity.

(204) What if I am a new business and don't have a past reporting history? New businesses will generally be issued permits if they indicate they will engage in activity taxable under a retailing, wholesaling, or manufacturing B&O tax classification.

(205) What if I don't get a reseller permit and some of my purchases qualify as wholesale purchases? Some taxpayers that do not qualify for a reseller permit make occasional wholesale purchases. In these circumstances, the taxpayer must pay retail sales tax on these purchases and then claim a "taxable amount for tax paid at source" deduction on its excise tax return. However, such a deduction in respect to the purchase of services is not permitted if the services are not

of a type that can be sold at wholesale under the definition of wholesale sale in RCW 82.04.060.

Alternatively, the taxpayer may request a refund from the department of retail sales tax it paid on purchases that are later resold without being used (intervening use) by the taxpayer or for purchases that would otherwise have met the definition of wholesale sale if the taxpayer had provided the seller with a reseller permit or uniform exemption certificate as authorized in RCW 82.04.470. For instructions on requesting a refund see WAC 458-20-229.

Part III - Contractors

(301) How does a contractor obtain a reseller permit? The department may automatically issue a reseller permit to a contractor if the department is satisfied that the contractor is entitled to make purchases at wholesale and that issuing the reseller permit is unlikely to jeopardize collection of sales taxes due based on the criteria discussed in subsection (303) of this rule.

Contractors that do not receive an automatically issued reseller permit may apply to the department to obtain a reseller permit in the same manner as provided in subsection (201) of this rule. However, the application identifies information specific to contractors that must be provided.

(302) When does a contractor apply for a reseller permit? The same guidelines for business applicants as provided in subsection (202) of this rule also apply to contractor applicants.

(303) What are the criteria specific to contractors to receive a reseller permit?

(a) The department may issue a permit to a contractor that:

(i) Provides a completed application with no material misstatement as that term is defined in this rule;

(ii) Demonstrates it is entitled to make purchases at wholesale; and

(iii) Reported on its application at least ((~~twenty-five~~)) 25 percent of its total dollar amount of material and labor purchases in the preceding ((~~twenty-four~~)) 24 months were for retail and wholesale construction activities performed by the contractor.

The department may approve an application not meeting these criteria if the department is satisfied that approval is unlikely to jeopardize collection of the taxes due under Title 82 RCW.

(b) If the criteria in (a) of this subsection are satisfied, the department will then consider the following factors to determine whether to issue a reseller permit to a contractor:

(i) Whether the contractor has an active tax reporting account with the department;

(ii) Whether the contractor has reported gross income on its excise tax returns covering a monthly or quarterly period during the immediately preceding six months or, if the contractor reports on an annual basis, on the immediately preceding annual excise tax return;

(iii) Whether the contractor has the appropriate certification and licensing with the Washington state department of labor and industries;

(iv) Whether the contractor has been assessed the penalty for the misuse of a resale certificate or a reseller permit;

(v) Whether the contractor has an outstanding tax liability due to the department; and

(vi) Any other factor resulting in a determination by the department that denial of the contractor's application is in the best interest of collecting the taxes due under Title 82 RCW.

(c) The department's decision to approve or deny an application may be based on the same materials and information as discussed in subsection (203)(c) of this rule.

(d) The provisions of subsection (203)(d) of this rule apply equally to contractors.

Example 2. DC Contracting is a speculative homebuilder and also purchases houses to renovate and sell, sometimes referred to as flipping. A speculative builder is the consumer of all materials incorporated into the real estate including houses purchased for flipping. Retail sales tax is owed on all supplies and services DC Contracting purchases, unless there is an applicable exemption. DC Contracting would not qualify for a reseller permit under these facts.

(304) What if a contractor does not obtain a reseller permit and some of its purchases do qualify as wholesale purchases? The provisions of subsection (205) of this rule apply equally to contractors.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-13-029, § 458-20-10201, filed 6/6/16, effective 7/7/16; WSR 16-01-155, § 458-20-10201, filed 12/21/15, effective 1/21/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.780, and 82.32.783. WSR 10-14-080, § 458-20-10201, filed 7/1/10, effective 8/1/10.]

AMENDATORY SECTION (Amending WSR 16-13-029, filed 6/6/16, effective 7/7/16)

WAC 458-20-10202 Brief adjudicative proceedings for matters related to reseller permits. (1) **Introduction.** The department of revenue (department) conducts adjudicative proceedings pursuant to chapter 34.05 RCW, the Administrative Procedure Act (APA). The department adopts in this rule the brief adjudicative procedures as provided in RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings for the following matters related to reseller permits:

(a) A determination of whether an applicant for a reseller permit meets the criteria for a reseller permit per WAC 458-20-10201;

(b) On the administrative appeal of an initial order denying the taxpayer's application for a reseller permit, a determination as to whether the department's order denying the application was correctly based on the criteria for approving reseller permits as set forth in WAC 458-20-10201;

(c) A determination of whether a reseller permit should be revoked using the criteria per RCW 82.32.780 and WAC 458-20-102; and

(d) On the administrative appeal of an initial order revoking the taxpayer's reseller permit, a determination as to whether the department's order revoking the permit was correctly based on the criteria as set forth in RCW 82.32.780 and WAC 458-20-102.

This rule explains the procedure and process pertaining to the adopted brief adjudicative proceedings.

(2) **Record in brief adjudicative proceedings.**

(a) The record with respect to a taxpayer's appeal per RCW 34.05.482 through 34.05.485 of the department's denial of an application for a reseller permit will consist of:

(i) The taxpayer's application for the reseller permit, the taxpayer's notice of appeal, the taxpayer's written response, if any, to the reasons set forth in the department's notice of denial of a reseller permit, all records relied upon by the department or submitted by the taxpayer; and

(ii) All correspondence between the taxpayer requesting the reseller permit and the department regarding the application for the reseller permit.

(b) The record with respect to a taxpayer's appeal per RCW 34.05.482 through 34.05.485 of the department's initial order revoking a reseller permit will consist of the department's notice of intent to revoke the reseller permit, the taxpayer's written response to the department's notice of intent to revoke, the taxpayer's notice of appeal, and all records relied upon by the department, or submitted by the taxpayer.

(3) **Conduct of brief adjudicative proceedings.**

(a) If the department denies an application for a reseller permit, it will notify the taxpayer of the denial in writing, stating the reasons for the denial. To initiate an appeal of the denial of the reseller permit application, the taxpayer must file a written appeal no later than ((~~twenty-one~~)) 21 days after service of the department's written notice that the taxpayer's application has been denied.

(b) If the department proposes to revoke a reseller permit, it will notify the taxpayer of the proposed revocation in writing, stating the reasons for the proposed revocation. To contest the proposed revocation of the reseller permit, the taxpayer must file a written response no later than ((~~twenty-one~~)) 21 days after service of the department's written notice of the proposed revocation of the reseller permit.

(c) A Reseller Permit Appeal Petition form, or form for a response to the proposed revocation of a reseller permit is available at the department's website dor.wa.gov ((~~or by calling 1-800-647-7706~~)). The completed form ((~~should be mailed or faxed to the department at:~~

~~Washington State Department of Revenue~~
~~Taxpayer Account Administration~~
~~P.O. Box 47476~~
~~Olympia, WA 98504-7476~~
~~Fax: 360-705-6733~~)) may be sent by mail to the address provided in the form. Alternatively, an appeal for a denial of reseller permit can also be requested online using My DOR. For instructions to appeal online, visit Reseller Permit section on the department's website. For assistance, call 360-705-6217.

(d) A presiding officer, who will be either the assistant director of the taxpayer account administration division or such other person as designated by the director of the department (director), will conduct brief adjudicative proceedings. The presiding officer for brief adjudicative proceedings will have agency expertise in the subject matter but will not otherwise have participated in responding to the taxpayer's application for a reseller permit or in the decision to propose revocation of the taxpayer's reseller permit.

(e) As part of the appeal, the taxpayer or the taxpayer's representative may present written documentation and explain the taxpayer's view of the matter. The presiding officer may request additional documentation from the taxpayer or the department and will designate the date by which the documents must be submitted.

(f) No witnesses may appear to testify.

(g) In addition to the record, the presiding officer for brief adjudicative proceedings may employ agency expertise as a basis for decision.

(h) Within ((~~twenty-one~~)) 21 days of receipt of the taxpayer's appeal of the denial of a reseller permit or proposed revocation of the reseller permit, the presiding officer will enter an initial order, including a brief explanation of the decision per RCW 34.05.485. All orders in these brief adjudicative proceedings will be in writing. The initial order will become the department's final order unless an appeal is filed with the department's administrative review and hearings division in subsection (4) of this rule.

(4) **Review of initial orders from brief adjudicative proceeding.** A taxpayer may request a review by the department of an initial order issued per subsection (3) of this rule by filing a petition for review or by making an oral request for review with the department's administrative review and hearings division within ((~~twenty-one~~)) 21 days after the service of the initial order on the taxpayer. A form for an appeal of an initial order per subsection (3) of this rule is available at dor.wa.gov. A request for review should state the reasons the review is sought. A taxpayer making an oral request for review may at the same time mail a written statement to the address below stating the reasons for the appeal and its view of the matter. The address, telephone number, and fax number of the administrative review and hearings division are:

Administrative Review and Hearings Division, Reseller Permit Appeals
Washington State Department of Revenue
P.O. Box 47460
Olympia, WA 98504-7460
Telephone Number: 360-534-1335
Fax: 360-534-1340

(a) A reviewing officer, who will be either the assistant director of the administrative review and hearings division or such other person as designated by the director, will conduct brief adjudicative proceedings and determine whether the department's initial order issued per subsection (3) of this rule was correctly based on the criteria set forth in RCW 82.32.780, WAC 458-20-102, and 458-20-10201. The reviewing officer will review the record and, if needed, convert the proceeding to a formal adjudicative proceeding.

(b) The agency record need not constitute the exclusive basis for the reviewing officer's decision. The reviewing officer will have the authority of a presiding officer.

(c) The order of the reviewing officer will be in writing and include a brief statement of the reasons for the decision, and it must be entered within ((~~twenty~~)) 20 days of the petition for review. The order will include a notice that judicial review may be available. The order of the reviewing officer represents the final decision of the department.

(d) A request for administrative review is deemed denied if the department does not issue an order on review within ((~~twenty~~)) 20 days after the petition for review is filed or orally requested.

(5) **Conversion of a brief adjudicative proceeding to a formal proceeding.** The presiding officer or reviewing officer may convert the brief adjudicative proceeding to a formal proceeding at any time on motion of the taxpayer, the department, or the presiding/reviewing officer's own motion.

(a) The presiding/reviewing officer will convert the proceeding when it is found that the use of the brief adjudicative proceeding violates any provision of law, when the protection of the public interest requires the agency to give notice to and an opportunity to participate to persons other than the parties, and when the issues and interests involved warrant the use of the procedures of RCW 34.05.413 through 34.05.479.

(b) When a proceeding is converted from a brief adjudication to a formal proceeding, the director may become the presiding officer or may designate a replacement presiding officer to conduct the formal proceedings upon notice to the taxpayer and the department.

(c) In the conduct of the formal proceedings, WAC 458-20-10002 will apply to the proceedings.

(6) **Court appeal.** Court appeal from the final order of the department is available pursuant to Part V, chapter 34.05 RCW. However, court appeal may be available only if a review of the initial decision has been requested under subsection (4) of this rule and all other administrative remedies have been exhausted. See RCW 34.05.534.

(7) **Computation of time.** In computing any period of time prescribed by this rule or by the presiding officer, the day of the act or event after which the designated period is to run is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays and holidays are excluded in the computation. Service as discussed in subsection (8) of this rule is deemed complete upon mailing.

(8) **Service.** All notices and other pleadings or papers filed with the presiding or reviewing officer must be served on the taxpayer, their representatives/agents of record, and the department.

(a) Service is made by one of the following methods:

(i) In person;

(ii) By first-class, registered or certified mail;

(iii) By fax and same-day mailing of copies;

(iv) By commercial parcel delivery company; or

(v) By electronic delivery pursuant to RCW 82.32.135.

(b) Service by mail is regarded as completed upon deposit in the United States mail properly stamped and addressed.

(c) Service by electronic fax is regarded as completed upon the production by the fax machine of confirmation of transmission.

(d) Service by commercial parcel delivery is regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(e) Service by electronic delivery is regarded as completed on the date that the department electronically sends the information to the parties or electronically notifies the parties that the information is available to be accessed by them.

(f) Service to a taxpayer, their representative/agent of record, the department, and presiding officer must be to the address shown on the notice described in subsection (3)(a) of this rule.

(g) Service to the reviewing officer must be to the administrative review and hearings division at the address shown in subsection (4) of this rule.

(h) Where proof of service is required, the proofs of service must include:

(i) An acknowledgment of service;

(ii) A certificate, signed by the person who served the document(s), stating the date of service; that the person did serve the document(s) upon all or one or more of the parties of record in the proceeding by delivering a copy in person to (names); and that the service was accomplished by a method of service as provided in this subsection.

(9) **Continuance.** The presiding officer or reviewing officer may grant a request for a continuance by motion of the taxpayer, the department, or on its own motion.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-13-029, § 458-20-10202, filed 6/6/16, effective 7/7/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.780 and 82.32.783. WSR 12-11-007, § 458-20-10202, filed 5/3/12, effective 6/3/12; WSR 10-14-080, § 458-20-10202, filed 7/1/10, effective 8/1/10.]

AMENDATORY SECTION (Amending WSR 11-12-021, filed 5/24/11, effective 6/24/11)

WAC 458-20-102A Resale certificates. (1) **Introduction.** This section provides information regarding the use of resale certificates, which were the documents used to substantiate the wholesale nature of a sales transaction occurring prior to January 1, 2010. Resale certificates cannot be used to substantiate wholesale sales made after December 31, 2009.

This section provides information that applies to periods prior to January 1, 2010. It explains the conditions under which a buyer may furnish a resale certificate to a seller, and explains the information and language required on the resale certificate. This section also provides tax reporting information to persons who purchase articles or services for dual purposes (i.e., for both resale and consumption).

(a) **Legislation passed in 2009.** Effective January 1, 2010, reseller permits issued by the department of revenue (department) replace resale certificates as the documentation necessary to substantiate the wholesale nature of a sales transaction (chapter 563, Laws of 2009).

Businesses should consult:

• WAC 458-20-102 (Reseller permits) for more information about the use of reseller permits to substantiate wholesale sales beginning January 1, 2010;

• WAC 458-20-10201 (Application process and eligibility requirements for reseller permits) for more information about the application process and eligibility requirements for obtaining a reseller permit; and

• WAC 458-20-10202 (Brief adjudicative proceedings for matters related to reseller permits) for more information about the procedures for appealing the denial of an application for a reseller permit.

(b) **Legislation passed in 2003.** In 2003, the legislature enacted legislation conforming state law to portions of the national Streamlined Sales and Use Tax Agreement (chapter 168, Laws of 2003), which eliminates the good faith requirement when the seller takes from the buyer a resale certificate and also eliminates signature requirements for certificates provided in a format other than paper. These changes apply to resale certificates taken on and after July 1, 2004.

(c) **Legislation passed in 2007.** Additional Streamlined Sales and Use Tax Agreement legislation was enacted in 2007 (chapter 6, Laws of 2007). It eliminates the provision that resale certificates are only valid for four years from the date they are issued to the seller, as long as there is a recurring business relationship between the buyer and seller. This change is effective on July 1, 2008.

(2) **What is a resale certificate?** The resale certificate is a document or combination of documents that substantiates the wholesale nature of a sale. The resale certificate cannot be used for purchases that are not purchases at wholesale, or where a more specific certificate, affidavit, or other documentary evidence is required by statute or other section of chapter 458-20 WAC. While the resale certificate may come in different forms, all resale certificates must satisfy the language and information requirements of RCW 82.04.470.

(a) **What is the scope of a resale certificate?** Depending on the statements made on the resale certificate, the resale certificate may authorize the buyer to purchase at wholesale all products or services being purchased from a particular seller, or may authorize only selected products or services to be purchased at wholesale. The provisions of the resale certificate may be limited to a single sales transaction, or may apply to all sales transactions as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of ((~~twelve~~)) 12 consecutive months. Whatever its form and/or purpose, the resale certificate must be completed in its entirety and signed by a person who is authorized to make such a representation on behalf of the buyer.

(b) **Who may issue and sign certificates?** The buyer may authorize any person in its employ to issue and sign resale certificates on the buyer's behalf. The buyer is, however, responsible for the information contained on the resale certificate. A resale certificate is not required to be completed by every person ordering or making the actual purchase of articles or services on behalf of the buyer. For example, a construction company that authorizes only its bookkeeper to issue resale certificates on its behalf may authorize both the bookkeeper and a job foreman to purchase items under the provisions of the resale certificate. The construction company is not required to provide, nor is the seller required to obtain, a resale certificate signed by each person making purchases on behalf of the construction company.

The buyer is responsible for educating all persons authorized to issue and/or use the resale certificate on the proper use of the buyer's resale certificate privileges.

(3) **Resale certificate renewal.** Prior to July 1, 2008, resale certificates must be renewed at least every four years. As of July 1, 2008, the requirement to renew resale certificates at least every four years has been eliminated. The buyer must renew its resale certificate whenever a change in the ownership of the buyer's business requires a new tax registration. (See WAC 458-20-101 Tax registration and tax reporting.) The buyer may not make purchases under the authority of a resale certificate bearing a tax registration number that has been canceled or revoked by the department of revenue (department).

(4) **Sales at wholesale.** All sales are treated as retail sales unless the seller takes from the buyer a properly executed resale certificate. Resale certificates may only be used for sales at wholesale and may not be used as proof of entitlement to retail sales tax exemptions otherwise provided by law.

(a) **When may a buyer issue a resale certificate?** The buyer may issue a resale certificate only when the property or services purchased are:

(i) For resale in the regular course of the buyer's business without intervening use by the buyer;

(ii) To be used as an ingredient or component part of a new article of tangible personal property to be produced for sale;

(iii) A chemical to be used in processing an article to be produced for sale (see WAC 458-20-113 on chemicals used in processing);

(iv) To be used in processing ferrosilicon that is subsequently used in producing magnesium for sale;

(v) Provided to consumers as a part of competitive telephone service, as defined in RCW 82.04.065;

(vi) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or

(vii) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use by a farmer for producing for sale any agricultural product. (See WAC 458-20-210 on sales to and by farmers.)

(b) **Required information.** All resale certificates, whether paper or nonpaper format, must contain the following information:

(i) The name and address of the buyer;

(ii) The uniform business identifier or tax registration number of the buyer, if the buyer is required to be registered with the department;

(iii) The type of business;

(iv) The categories of items or services to be purchased at wholesale, unless the buyer is in a business classification that may present a blanket resale certificate as provided by the department by rule;

(v) The date on which the certificate was provided;

(vi) A statement that the items or services purchased either are purchased for resale in the regular course of business or are otherwise purchased at wholesale; and

(vii) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale certificate subjects the buyer to a penalty of ((~~fifty~~)) 50 percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law.

(c) **Additional requirements for paper certificates.** In addition to the requirements stated in (b) of this subsection, paper certificates must contain the following:

(i) The name of the individual authorized to sign the certificate, printed in a legible fashion;

(ii) The signature of the authorized individual; and

(iii) The name of the seller. RCW 82.04.470.

(5) **Seller's responsibilities.** When a seller receives and accepts from the buyer a resale certificate at the time of the sale, or has a resale certificate on file at the time of the sale, or obtains a resale certificate from the buyer within ((~~one hundred twenty~~)) 120 days after the sale, the seller is relieved of liability for retail sales tax with respect to the sale covered by the resale certificate. The seller may accept a legible fax, a duplicate copy of an original resale certificate, or a certificate in a format other than paper.

(a) If the seller has not obtained an appropriate resale certificate or other acceptable documentary evidence (see subsection (8) of this section), the seller is personally liable for the tax due unless it can sustain the burden of proving through facts and circumstances that the property was sold for one of the purposes set forth in subsection (4)(a) of this section. The department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which resale certificates are not obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:

(i) The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture;

(ii) The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer; and

(iii) Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.

(b) If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. (See WAC 458-20-229 Refunds.) However, refer to (f) of this subsection in event of an audit situation.

(c) **Timing requirements for single orders with multiple billings.** If a single order or contract will result in multiple billings to the buyer, and the appropriate resale certificate was not obtained or on file at the time the order was placed or the contract entered, the resale certificate must be received by the seller within ((~~one hundred twenty~~)) 120 days after the first billing. For example, a subcontractor entering into a construction contract for which it has not received a resale certificate must obtain the certificate within ((~~one hundred twenty~~)) 120 days of the initial construction draw request, even though the construction project may not be completed at that time and additional draw requests will follow.

(d) **Requirements for resale certificates obtained after ((~~one hundred twenty~~)) 120 days have passed.** If the resale certificate is obtained more than ((~~one hundred twenty~~)) 120 days after the sale or sales in question, the resale certificate must be specific to the sale or sales. The certificate must specifically identify the sales in question on its face, or be accompanied by other documentation signed by the buyer specifically identifying the sales in question and stating that the provisions of the accompanying resale certificate apply. A nonspecific resale certificate that is not obtained within ((~~one hundred twenty~~)) 120 days is generally not, in and of itself, acceptable proof of the wholesale nature of the sales in question. The resale certificate and/or required documentation must be obtained within the statutory time limitations provided by RCW 82.32.050.

(e) **Examples.** The following examples explain the seller's documentary requirements in typical situations when obtaining a resale certificate more than ((~~one hundred twenty~~)) 120 days after the sale. 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.

(i) Beginning in January of year 1, MN Company regularly makes sales to ABC Inc. In June of the same year, MN discovers ABC has not provided a resale certificate. MN requests a resale certificate from ABC and, as the resale certificate will not be received within ((~~one hundred twenty~~)) 120 days of many of the past sales transactions, requests that the resale certificate specifically identify those past sales subject to the provisions of the certificate. MN receives a legible fax copy of an original resale certificate from ABC on July 1st of that year. Accompanying the resale certificate is a memo providing a list of the invoice numbers for all past sales transactions through May 15th of that year. This memo also states that the provisions of the resale certificate apply to all past and future sales, including those listed. MN Company has satisfied the requirement that it obtain a resale certificate specific to the sales in question.

(ii) XYZ Company makes three sales to MP Inc. in October of year 1 and does not charge retail sales tax. In the review of its resale certificate file in April of the following year, XYZ discovers it has not received a resale certificate from MP Inc. and immediately requests a certificate. As the resale certificate will not be received within ((~~one hundred twenty~~)) 120 days of the sales in question, XYZ requests that MP provide a resale certificate identifying the sales in question. MP provides XYZ with a resale certificate that does not identify the sales in question, but simply states "applies to all past purchases." XYZ Company has not satisfied its responsibility to obtain an appropriate resale certificate. As XYZ failed to secure a resale certificate within a reasonable period of time, XYZ must obtain a certificate specifically identifying the sales in question or prove through other facts and circumstances that these sales are wholesale sales. (Refer to (a) of this subsection for information on how a seller can prove through other facts and circumstances that a sale is a wholesale sale.) It remains the seller's burden to prove the wholesale nature of the sales made to a buyer if the seller has not obtained a valid resale certificate within ((~~one hundred twenty~~)) 120 days of the sale.

(f) **Additional time to secure documentation in audit situation.** If in event of an audit the department discovers that the seller has not secured, as described in this subsection (5), the necessary resale certificates and/or documentation, the seller will generally be allowed ((~~one hundred twenty~~)) 120 days in which to obtain and present appropriate resale certificates and/or documentation, or prove by facts and circumstances the sales in question are wholesale sales. The time allotted to the seller shall commence from the date the auditor initially provides the seller with the results of the auditor's wholesale sales review. The processing of the audit report will not be delayed as a result of the seller's failure within the allotted time to secure and present appropriate documentation, or its inability to prove by facts and circumstances that the sales in question were wholesale sales.

(6) **Penalty for improper use.** Any buyer who uses a resale certificate to purchase items or services without payment of sales tax and who is not entitled to use the certificate for the purchase will be

assessed a penalty of ((~~fifty~~)) 50 percent of the tax due on the improperly purchased item or service. This penalty is in addition to all other taxes, penalties, and interest due, and can be imposed even if there was no intent to evade the payment of retail sales tax. The penalty will be assessed by the department and applies only to the buyer. However, see subsection (12) of this section for situations in which the department may waive the penalty.

Persons who purchase articles or services for dual purposes (i.e., some for their own consumption and some for resale) should refer to subsection (11) of this section to determine whether they may give a resale certificate to the seller.

(7) **Resale certificate - suggested form.** While there may be different forms of the resale certificate, all resale certificates must satisfy the language and information requirements provided by RCW 82.04.470. The resale certificate is available on the department's internet site at http://dor.wa.gov, or can be obtained by calling the department's telephone information center at ((~~1-800-647-7706~~)) 360-705-6705 or by writing:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

A resale certificate may be in any other form that contains substantially the same information and language, except that certificates provided in a format other than paper are not required to include the printed name of the person authorized to sign the certificate, the signature of the authorized individual, or the name of the seller.

Effective July 1, 2008, buyers also have the option of using a Streamlined Sales and Use Tax Agreement Certificate of Exemption, which has been modified for Washington state laws. It can also be found on the department's internet site at http://dor.wa.gov.

(a) **Buyer's responsibility to specify products or services purchased at wholesale.** RCW 82.04.470 requires the buyer making purchases at wholesale to specify the kinds of products or services subject to the provisions of the resale certificate. A buyer who will purchase some of the items at wholesale, and consume and pay tax on some other items being purchased from the same seller, must use terms specific enough to clearly indicate to the seller what kinds of products or services the buyer is authorized to purchase at wholesale.

(i) The buyer may list the particular products or services to be purchased at wholesale, or provide general category descriptions of these products or services. The terms used to describe these categories must be descriptive enough to restrict the application of the resale certificate provisions to those products or services that the buyer is authorized to purchase at wholesale. The following are examples of terms used to describe categories of products purchased at wholesale, and businesses that may be eligible to use such terms on their resale certificates:

(A) "Hardware" for use by a general merchandise or building material supply store, "computer hardware" for use by a computer retailer;

(B) "Paint" or "painting supplies" for use by a general merchandise or paint retailer, "automotive paint" for use by an automotive repair shop; and

(C) "Building materials" or "subcontract work" for use by prime contractors performing residential home construction, "wiring" or "lighting fixtures" for use by an electrical contractor.

(ii) The buyer must remit retail sales tax on any taxable product or service not listed on the resale certificate provided to the seller. If the buyer gave a resale certificate to the seller and later used an item listed on the certificate, or if the seller failed to collect the sales tax on items not listed on the certificate, the buyer must remit the deferred sales or use tax due directly to the department.

(iii) RCW 82.08.050 provides that each seller shall collect from the buyer the full amount of retail sales tax due on each retail sale. If the department finds that the seller has engaged in a consistent pattern of failing to properly charge sales tax on items not purchased at wholesale (i.e., not listed on the resale certificate), it may hold the seller liable for the uncollected sales tax.

(iv) Persons having specific questions regarding the use of terms to describe products or services purchased at wholesale may submit their questions to the department for ruling. The department may be contacted on the internet at http://dor.wa.gov/ or by writing:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

(b) **Blanket resale certificates.** A buyer who will purchase at wholesale all of the products or services being purchased from a particular seller will not be required to specifically describe the items or item categories on the resale certificate. If the certificate form provides for a description of the products or services being purchased at wholesale the buyer may specify "all products and/or services" (or make a similar designation). A resale certificate completed in this manner is often described as a blanket resale certificate.

(i) The resale certificate used by the buyer must, in all cases, be completed in its entirety. A resale certificate in which the section for the description of the items being purchased at wholesale is left blank by the buyer will not be considered a properly executed resale certificate.

(ii) As of July 1, 2008, renewal or updating of blanket resale certificates is not required as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of ((~~twelve~~)) 12 consecutive months.

To effectively administer this provision during an audit, the department will accept a resale certificate as evidence for wholesale sales that occur within four years of the certificate's effective date without evidence of sales transactions being made once every ((~~twelve~~)) 12 months. For sales transactions made more than four years after the date of the properly completed resale certificate, the seller must substantiate that a recurring business relationship with the buyer has occurred for any sales outside the period of more than four years after the effective date of the resale certificate.

(c) **Resale certificates for single transactions.** If the resale certificate is used for a single transaction, the language and information required of a resale certificate may be written or stamped upon a purchase order or invoice. The language contained in a "single use" resale certificate should be modified to delete any reference to subsequent orders or purchases.

(d) **Examples.** The following examples explain the proper use of types of resale certificates in typical situations. These examples

should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC is an automobile repair shop purchasing automobile parts for resale and tools for its own use from DE Supply. ABC must provide DE Supply with a resale certificate limiting the certificate's application to automobile part purchases. However, should ABC withdraw parts from inventory to install in its own tow truck, deferred retail sales tax or use tax must be remitted directly to the department. The buyer has the responsibility to report deferred retail sales tax or use tax upon any item put to its own use, including items for which it gave a resale certificate and later used for its own use.

(ii) X Company is a retailer selling lumber, hardware, tools, automotive parts, and household appliances. X Company regularly purchases lumber, hardware, and tools from Z Distributing. While these products are generally purchased for resale, X Company occasionally withdraws some of these products from inventory for its own use. X Company may provide Z Distributing with a resale certificate specifying "all products purchased" are purchased at wholesale. However, whenever X Company removes any product from inventory to put to its own use, deferred retail sales tax or use tax must be remitted to the department.

(iii) TM Company is a manufacturer of electric motors. When making purchases from its suppliers, TM issues a paper purchase order. This purchase order contains the information required of a resale certificate and a signature of the person ordering the items on behalf of TM. This purchase order includes a box that, if marked, indicates to the supplier that all or certain designated items purchased are being purchased at wholesale.

When the box indicating the purchases are being made at wholesale is marked, the purchase order can be accepted as a resale certificate. As TM Company's purchase orders are being accepted as resale certificates, they must be retained by the seller for at least five years. (See WAC 458-20-254 Recordkeeping.)

(8) **Other documentary evidence.** Other documentary evidence may be used by the seller and buyer in lieu of the resale certificate form described in this section. However, this documentary evidence must collectively contain the information and language generally required of a resale certificate. The conditions and restrictions applicable to the use of resale certificates apply equally to other documentary evidence used in lieu of the resale certificate form in this section. The following are examples of documentary evidence that will be accepted to show that sales were at wholesale:

(a) **Combination of documentary evidence.** A combination of documentation kept on file, such as a membership card or application, and a sales invoice or "certificate" taken at the point of sale with the purchases listed, provided:

(i) The documentation kept on file contains all information required on a resale certificate, including, for paper certificates, the names and signatures of all persons authorized to make purchases at wholesale; and

(ii) The sales invoice or "certificate" taken at the point of sale must contain the following:

(A) Language certifying the purchase is made at wholesale, with acknowledgment of the penalties for the misuse of resale certificate privileges, as generally required of a resale certificate; and

(B) The name and registration number of the buyer/business, and, if a paper certificate, an authorized signature.

(b) **Contracts of sale.** A contract of sale that within the body of the contract provides the language and information generally required of a resale certificate. The contract of sale must specify the products or services subject to the resale certificate privileges.

(c) **Other preapproved documentary evidence.** Any other documentary evidence that has been approved in advance and in writing by the department.

(9) **Sales to nonresident buyers.** If the buyer is a nonresident who is not engaged in business in this state, but buys articles here for the purpose of resale in the regular course of business outside this state, the seller must take from the buyer a resale certificate as described in this section. The seller may accept a resale certificate from an unregistered nonresident buyer with the registration number information omitted, provided the balance of the resale certificate is completed in its entirety. The resale certificate should contain a statement that the items are being purchased for resale outside Washington.

(10) **Sales to farmers.** Farmers selling agricultural products only at wholesale are not required to register with the department. (See WAC 458-20-101 Tax registration and tax reporting.) When making wholesale sales to farmers (including farmers operating in other states), the seller must take from the farmer a resale certificate as described in this section. Farmers not required to be registered with the department may provide, and the seller may accept, resale certificates with the registration number information omitted, provided the balance of the certificates are completed in full. Persons making sales to farmers should also refer to WAC 458-20-210 (Sales of tangible personal property for farming—Sales of agricultural products by farmers).

(11) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property, and not able 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 for any part of the purchase. If the buyer principally resells the articles, the buyer may issue a resale certificate for the entire purchase. For the purposes of this subsection, the term "principally" means greater than ((~~fifty~~)) 50 percent.

(a) **Deferred sales tax liability.** If the buyer gives a resale certificate for all purchases and thereafter consumes some of the articles purchased, the buyer must set up in his or her books of account the value of the article used and remit to the department the applicable deferred sales tax. The deferred sales tax liability should be reported under the use tax classification on the buyer's excise tax return.

(i) Buyers making purchases for dual purposes under the provisions of a resale certificate must remit deferred sales tax on all products or services they consume. If the buyer fails to make a good faith effort to remit this tax liability, the penalty for the misuse of resale certificate privileges may be assessed. This penalty will apply to the unremitted portion of the deferred sales tax liability.

A buyer will generally be considered to be making a good faith effort to report its deferred sales tax liability if the buyer discovers a minimum of ((~~eighty~~)) 80 percent of the tax liability within ((~~one hundred twenty~~)) 120 days of purchase, and remits the full

amount of the discovered tax liability upon the next excise tax return. However, if the buyer does not satisfy this ((~~eighty~~)) 80 percent threshold and can show by other facts and circumstances that it made a good faith effort to report the tax liability, the penalty will not be assessed. Likewise, if the department can show by other facts and circumstances that the buyer did not make a good faith effort in remitting its tax liability the penalty will be assessed, even if the ((~~eighty~~)) 80 percent threshold is satisfied.

(ii) The following example illustrates the use of a resale certificate for dual-use purchases. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances. BC Contracting operates both as a prime contractor and speculative builder of residential homes. BC Contracting purchases building materials from Seller D that are principally incorporated into projects upon which BC acts as a prime contractor. BC provides Seller D with a resale certificate and purchases all building materials at wholesale. BC must remit deferred sales tax upon all building materials incorporated into the speculative projects to be considered to be properly using its resale certificate privileges. The failure to make a good faith effort to identify and remit this tax liability may result in the assessment of the ((~~fifty~~)) 50 percent penalty for the misuse of resale certificate privileges.

(b) **Tax paid at source deduction.** If the buyer has not given a resale certificate, but has paid retail sales tax on all articles of tangible personal property and subsequently resells a portion of the articles, the buyer must collect the retail sales tax from its retail customers as provided by law. When reporting these sales on the excise tax return, the buyer may then claim a deduction in the amount the buyer paid for the property resold.

(i) This deduction may be claimed under the retail sales tax classification only. It must be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet, which must be filed with the excise tax return. Failure to properly identify the deduction may result in the disallowance of the deduction. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the seller's tax location code.

(ii) The following example illustrates the tax paid at source deduction on or after July 1, 2008. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances. Seller A is located in Spokane, Washington and purchases equipment parts for dual purposes from a supplier located in Seattle, Washington. The supplier ships the parts to Spokane. Seller A does not issue a resale certificate for the purchase, and remits retail sales tax to the supplier at the Spokane tax rate. A portion of these parts are sold and shipped to Customer B in Kennewick, with retail sales tax collected at the Kennewick tax rate. Seller A must report the amount of the sale to Customer B on its excise tax return, compute the local sales tax liability at the Kennewick rate, and code this liability to the location code for Kennewick (0302). Seller A would claim the tax paid at source deduction for the cost of the parts resold to Customer B, compute the local sales tax credit at the Spokane rate, and code this deduction amount to the location code for Spokane (3210).

(iii) Claim for deduction will be allowed only if the taxpayer keeps and preserves records in support of the deduction that show the

names of the persons from whom such articles were purchased, the date of the purchase, the type of articles, the amount of the purchase and the amount of tax that was paid.

(iv) Should the buyer resell the articles at wholesale, or under other situations where retail sales tax is not to be collected, the claim for the tax paid at source deduction on a particular excise tax return may result in a credit. In such cases, the department will issue a credit notice that may be used against future tax liabilities. However, a taxpayer may request in writing a refund from the department.

(12) **Waiver of penalty for resale certificate misuse.** The department may waive the penalty imposed for resale certificate misuse upon finding that the use of the certificate to purchase items or services by a person not entitled to use the certificate for that purpose was due to circumstances beyond the control of the buyer. However, the use of a resale certificate to purchase items or services for personal use outside of the business does not qualify for the waiver or cancellation of the penalty. The penalty will not be waived merely because the buyer was not aware of either the proper use of the resale certificate or the penalty. In all cases the burden of proving the facts is upon the buyer.

(a) **Considerations for waiver.** Situations under which a waiver of the penalty will be considered by the department include, but are not necessarily limited to, the following:

(i) The resale certificate was properly used to purchase products or services for dual purposes; or the buyer was eligible to issue the resale certificate; and the buyer made a good faith effort to discover all of its deferred sales tax liability within ((~~one hundred twenty~~)) 120 days of purchase; and the buyer remitted the discovered tax liability upon the next excise tax return. (Refer to subsection (11)(a)(i) of this section for an explanation of what constitutes "good faith effort.")

(ii) The certificate was issued and/or purchases were made without the knowledge of the buyer, and had no connection with the buyer's business activities. However, the penalty for the misuse of resale certificate privileges may be applied to the person actually issuing and/or using the resale certificate without knowledge of the buyer.

(b) **One time waiver of penalty for inadvertent or unintentional resale certificate misuse.** The penalty prescribed for the misuse of the resale certificate may be waived or canceled on a one time only basis if such misuse was inadvertent or unintentional, and the item was purchased for use within the business. If the department does grant a one time waiver of the penalty, the buyer will be provided written notification at that time.

(c) **Examples.** The following are examples of typical situations where the ((~~fifty~~)) 50 percent penalty for the misuse of resale privileges will or will not be assessed. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC Manufacturing purchases electrical wiring and tools from X Supply. The electrical wiring is purchased for dual purposes, i.e., for resale and for consumption, with more than ((~~fifty~~)) 50 percent of the wiring purchases becoming a component of items that ABC manufactures for sale. ABC Manufacturing issues a resale certificate to X Supply specifying "electrical wiring" as the category of items purchased for resale. ABC regularly reviews its purchases and remits deferred sales tax upon the wiring it uses as a consumer.

ABC is subsequently audited by the department and it is discovered that ABC Manufacturing failed to remit deferred sales tax upon three purchases of wiring for consumption. The unreported tax liability attributable to these three purchases is less than five percent of the total deferred sales tax liability for wiring purchases made from X Supply. It is also determined that the failure to remit deferred sales tax upon these purchases was merely an oversight. The ((~~fifty~~)) 50 percent penalty for the misuse of resale certificate privileges does not apply, even though ABC failed to remit deferred sales tax on these purchases. The resale certificate was properly issued, and ABC remitted to the department more than ((~~eighty~~)) 80 percent of the deferred sales tax liability for wiring purchases from X Supply.

(ii) During a routine audit examination of a jewelry store, the department discovers that a dentist has provided a resale certificate for the purchase of a necklace. This resale certificate indicates that in addition to operating a dentistry practice, the dentist also sells jewelry. The resale certificate contains the information required under RCW 82.04.470.

Upon further investigation, the department finds that the dentist is not engaged in selling jewelry. The department will look to the dentist for payment of the applicable retail sales tax. In addition, the dentist will be assessed the ((~~fifty~~)) 50 percent penalty for the misuse of resale certificate privileges. The penalty will not be waived or canceled as the dentist misused the resale certificate privileges to purchase a necklace for personal use.

(iii) During a routine audit examination of a computer dealer, it is discovered that a resale certificate was obtained from a bookkeeping service. The resale certificate was completed in its entirety and accepted by the dealer. Upon further investigation it is discovered that the bookkeeping service had no knowledge of the resale certificate, and had made no payment to the computer dealer. The employee who signed the resale certificate had purchased the computer for personal use, and had personally made payment to the computer dealer.

The ((~~fifty~~)) 50 percent penalty for the misuse of the resale certificate privileges will be waived for the bookkeeping service. The bookkeeping service had no knowledge of the purchase or unauthorized use of the resale certificate. However, the department will look to the employee for payment of the taxes and the ((~~fifty~~)) 50 percent penalty for the misuse of resale certificate privileges.

(iv) During an audit examination it is discovered that XYZ Corporation, a duplicating company, purchased copying equipment for its own use. XYZ Corporation issued a resale certificate to the seller despite the fact that XYZ does not sell copying equipment. XYZ also failed to remit either the deferred sales or use tax to the department. As a result of a previous investigation by the department, XYZ had been informed in writing that retail sales and/or use tax applied to all such purchases. The ((~~fifty~~)) 50 percent penalty for the misuse of resale certificate privileges will be assessed. XYZ was not eligible to provide a resale certificate for the purchase of copying equipment, and had previously been so informed. The penalty will apply to the unremitted deferred sales tax liability.

(v) AZ Construction issued a resale certificate to a building material supplier for the purchase of "pins" and "loads." The "pins" are fasteners that become a component part of the finished structure. The "load" is a powder charge that is used to drive the "pin" into the materials being fastened together. AZ Construction is informed during the course of an audit examination that it is considered the consumer

of the "loads" and may not issue a resale certificate for its purchase thereof. AZ Construction indicates that it was unaware that a resale certificate could not be issued for the purchase of "loads," and there is no indication that AZ Construction had previously been so informed.

The failure to be aware of the proper use of the resale certificate is not generally grounds for waiving the ((~~fifty~~)) 50 percent penalty for the misuse of resale certificate privileges. However, AZ Construction does qualify for the "one time only" waiver of the penalty as the misuse of the resale certificate privilege was unintentional and the "loads" were purchased for use within the business.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.780, and 82.32.783. WSR 11-12-021, § 458-20-102A, filed 5/24/11, effective 6/24/11.]

AMENDATORY SECTION (Amending WSR 15-04-104, filed 2/3/15, effective 3/6/15)

WAC 458-20-126 Sales of motor vehicle fuel, special fuel, and nonpolluting fuel. (1) **Introduction.** This rule explains the retail sales and use taxes for motor vehicle fuel, special fuel, and fuels commonly referred to as liquefied natural gas, compressed natural gas, or propane. This rule also provides documentation requirements to buyers and sellers of fuel for both on and off highway use.

(2) **What are motor vehicle fuel and special fuel, and how are they taxed?** "Motor vehicle fuel" as used in this rule means gasoline or any other inflammable gas or liquid the chief use of which is as fuel for the propulsion of motor vehicles. (See RCW 82.36.010.) "Special fuel" as used in this rule means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined above. (See RCW 82.38.020.) Diesel fuel is an example of a special fuel.

Retail sales tax or use tax applies to sales and uses of motor vehicle fuel or special fuel, unless an exemption applies, when the taxes of chapter 82.36 or 82.38 RCW have not been paid or have been refunded. Generally, fuel taxes apply to sales of fuel for highway consumption and retail sales or use tax applies to fuel sold for consumption off the highways (e.g., boat fuel, or fuel for farm machinery or construction equipment, etc.).

(3) **What motor vehicle fuel and special fuel exemptions are available?**

(a) **Passenger-only ferries.** RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for motor vehicle fuel or special fuel for use in passenger-only ferry vessels. These exemptions apply only to fuel purchased by public transportation benefit areas created under chapter 36.57A RCW, county owned ferries, or county ferry districts created under chapter 36.54 RCW.

(b) **Nonprofit transportation providers.** RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for motor vehicle fuel or special fuel purchased or used by private, nonprofit transportation providers certified under chapter 81.66 RCW, if the purchaser is entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(c) **Public transportation.** RCW 82.08.0255 and 82.12.0256 provide retail sales tax and use tax exemptions for motor vehicle fuel or special fuel purchased or used for the purpose of public transportation, if the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080.

(d) **Special fuel used in interstate commerce.** RCW 82.08.0255 provides a retail sales tax credit or refund for sales of special fuel that is delivered in this state but later transported and used outside this state by persons engaged in interstate commerce. The credit or refund also applies to persons hauling their own goods in interstate commerce.

Certificate. Persons selling special fuel to interstate carriers must obtain a completed "Certificate of Special Fuel Sales to Interstate Carriers" from the purchaser to document entitlement to the credit or refund. The certificate may be obtained from the department of revenue (department) on the internet at http://www.dor.wa.gov/, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
((~~1-800-647-7706~~)) 360-705-6705

The provisions of the certificate may be limited to a single sales transaction, or may apply to all sales transactions as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of ((~~twelve~~)) 12 consecutive months.

(e) **Farm fuel users of diesel or aircraft fuels.** For the purpose of this rule, a "farm fuel user" means either a farmer or a person who provides horticultural services for farmers, such as soil preparation, crop cultivation, or crop harvesting services.

(i) RCW 82.08.865 and 82.12.865 provided retail sales tax and use tax exemptions to farm fuel users for diesel, biodiesel, and aircraft fuel purchased for nonhighway use.

(ii) These exemptions also apply to a fuel blend if all the component fuels of the blend would otherwise be exempt under RCW 82.08.865 and 82.12.865 if the component fuels were sold as separate products. The exemptions do not apply to fuel used for residential heating purposes.

(iii) When purchasing an eligible fuel, a farm fuel user must provide the seller with a completed "Farmers' Retail Sales Tax Exemption Certificate," which may be obtained from the department using the contact information described in (d) of this subsection.

Sellers of eligible fuels to farm fuel users must document the tax exempt sales of red-dyed diesel, biodiesel, or aircraft fuel by accepting the certificate mentioned above and retaining it in their records for five years.

(4) **Nonpolluting fuels.** Nonpolluting fuels are described as liquefied natural gas, compressed natural gas, or liquefied petroleum gas, commonly called propane. Nonpolluting fuels may be purchased for either highway or "off-highway" use. Nonpolluting fuels purchased for highway use are normally subject to taxes under either chapter 82.36 or 82.38 RCW. Nonpolluting fuels purchased for "off-highway" use are subject to retail sales tax or use tax.

(a) **Highway fuel used by Washington licensed vehicle owners.** RCW 82.38.075 encourages the use of nonpolluting fuels by providing for

payment of an annual fee by users of nonpolluting fuels, in lieu of the motor vehicle fuel tax. This fee is paid at the time of original and annual renewals of vehicle license registrations. A decal or other identifying device must be displayed as prescribed by the department of licensing as authority to purchase these nonpolluting fuels.

Fuel dealers should not collect retail sales or use tax on any nonpolluting fuels sold to Washington licensed vehicle owners for highway use when the vehicle displays a valid decal or other identifying device issued by the department of licensing.

(b) **"Off-highway" fuel use.** Nonpolluting fuels purchased for "off-highway" use are not subject to the taxes of chapter 82.36 or 82.38 RCW, and therefore the retail sales tax applies.

(c) **Bulk purchases of fuel.** The department recognizes that certain licensed special fuel users may find it more practical to accept deliveries of nonpolluting fuels into a bulk storage facility rather than into the fuel tanks of motor vehicles. Persons selling nonpolluting fuels to such bulk purchasers must obtain from the purchaser an exemption certificate to document entitlement to the exemption. The "Certificate for Purchase of Nonpolluting Special Fuels" must certify the amount of fuel that the purchaser will consume in using motor vehicles upon the highways of this state. This procedure is limited to persons duly registered with the department. The registration number given on the certificate ordinarily will be sufficient evidence that the purchaser is properly registered. The "Certificate for Purchase of Nonpolluting Special Fuel" may be obtained from the department using the contact information described in subsection (3)(d) of this rule.

(i) When fuel is purchased for both on and off highway use, and it is not possible for a special fuel user licensee to determine the exact proportion purchased for highway use in this state, the amount of the off-highway use special fuel may be estimated. If an estimate is used and retail sales tax is not paid, the purchaser must make an adjustment on the next excise tax return and remit use tax on the portion of the fuel used for off-highway purposes.

(ii) Nonpolluting fuel not placed in motor vehicle fuel tanks by the seller are subject to retail sales tax, unless a "Certificate for Purchase of Nonpolluting Special Fuel" is obtained from the purchaser. The seller must collect and remit the retail sales tax to the department, or retain the certificate as part of its permanent records. When nonpolluting fuel is delivered by the seller into the bulk storage facilities of a special fuel user licensee or is otherwise sold to such buyers under conditions where it is not delivered into the fuel tanks of motor vehicles, the department will presume that the entire amount of fuel sold is subject to retail sales tax unless the seller has obtained a completed certificate.

(d) **Vehicles licensed outside the state of Washington.** Owners of out-of-state licensed vehicles are exempt from the requirement to purchase an annual license as provided in RCW 82.38.075.

(i) Therefore, the fuel taxes of chapters 82.36 and 82.38 RCW generally apply to the out-of-state licensed vehicle owner's purchases of nonpolluting fuel for highway use.

(ii) Retail sales tax applies to the out-of-state licensed vehicle owner's purchases of nonpolluting fuel for off-highway use.

(iii) If the fuel taxes of chapters 82.36 and 82.38 RCW have not been paid, have been refunded, or have not been applied, then retail sales tax is due on the out-of-state licensed vehicle owner's purchases of nonpolluting fuel, for either highway or off-highway use.

(e) Any person selling or dispensing liquefied natural gas, compressed natural gas, or propane into a tank of a motor vehicle powered by this fuel that does not comply with the provisions in chapter 82.38 RCW described in this rule, is subject to the penalty provisions in chapter 82.38 RCW.

(5) **Refunds are available for fuel taxes paid when fuel is consumed off the highway.** If a person purchases motor vehicle fuel or special fuel and pays the fuel taxes of chapter 82.36 or 82.38 RCW, and then consumes the fuel off the highway, the person is entitled to a refund of these taxes under the procedures of chapter 82.36 or 82.38 RCW. However, a person receiving a refund of vehicle fuel taxes because of the off-highway consumption of the fuel in this state is subject to use tax on the value of the fuel. The department of licensing administers the fuel tax refund provisions and will deduct from the amount of a refund the amount of use tax due.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.12.022, and 82.14.230. WSR 15-04-104, § 458-20-126, filed 2/3/15, effective 3/6/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.08.0255, 82.12.0256, 82.08.865, and 82.12.865. WSR 10-01-051, § 458-20-126, filed 12/9/09, effective 1/9/10; WSR 08-16-045, § 458-20-126, filed 7/29/08, effective 8/29/08. Statutory Authority: RCW 82.32.300. WSR 91-15-022, § 458-20-126, filed 7/11/91, effective 8/11/91; WSR 83-17-099 (Order ET 83-6), § 458-20-126, filed 8/23/83; WSR 83-07-034 (Order ET 83-17), § 458-20-126, filed 3/15/83; Order ET 73-1, § 458-20-126, filed 11/2/73; Order ET 70-3, § 458-20-126 (Rule 126), filed 5/29/70, effective 7/1/70.]

AMENDATORY SECTION (Amending WSR 22-24-096, filed 12/6/22, effective 1/6/23)

WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemptions for machinery and equipment. (1) **Introduction.**

(a) This rule explains the retail sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565 for sales to or use by manufacturers or processors for hire of machinery and equipment (M&E) used directly in a manufacturing operation or research and development operation. This rule explains the requirements that must be met to substantiate a claim of exemption. For information regarding the sales and use tax deferral for manufacturing and research/development activities in high unemployment counties, refer to WAC 458-20-24001 and chapter 82.60 RCW. For the high technology business sales and use tax deferral refer to chapter 82.63 RCW.

(b) Effective June 12, 2014, the retail sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565 do not apply to:

(i) Sales of machinery and equipment used directly in the manufacturing, research and development, or testing of cannabis; and

(ii) Sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such machinery and equipment.

(c) Effective August 1, 2015, an ineligible person, as defined in subsection (2)(e) of this rule, does not qualify for the retail sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565,

unless the taxpayer first used the qualifying machinery and equipment in this state prior to August 1, 2015.

(2) **Definitions.** For purposes of the manufacturing machinery and equipment tax exemptions, the following definitions apply:

(a) **Affiliated group.** "Affiliated group" means a group of two or more entities that are either:

(i) Affiliated as defined in RCW 82.32.655; or

(ii) Permitted to file a consolidated return for federal income tax purposes.

(b) **Cogeneration.** "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel. See RCW 82.08.02565.

(c) **Device.** "Device" means an item that is not attached to the building or site. Examples of devices are: Forklifts, chainsaws, air compressors, clamps, free standing shelving, software, ladders, wheelbarrows, and pulleys.

(d) **Industrial fixture.** "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and at the time of attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(e) **Ineligible person.** "Ineligible person" means all members of an affiliated group if all of the following apply:

(i) At least one member of the affiliated group was registered with the department of revenue (department) to do business in Washington state on or before July 1, 1981;

(ii) As of August 1, 2015, the combined employment in this state of the affiliated group exceeds 40,000 full-time and part-time employees, based on data reported to the employment security department by the affiliated group; and

(iii) The business activities of the affiliated group primarily include development, sales, and licensing of computer software and services.

(f) **Machinery and equipment (M&E).** "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. M&E includes pollution control equipment installed and used in a qualifying operation to prevent air pollution, water pollution, or contamination that might otherwise result from the operation.

(g) **Manufacturer.** "Manufacturer" has the same meaning as provided in chapter 82.04 RCW. Manufacturer also includes a person that prints newspapers or other materials; and effective August 1, 2015, a person engaged in the development of prewritten computer software that is not transferred to purchasers by means of tangible storage media. RCW 82.08.02565, chapter 5, Laws of 2015 3rd sp. sess. (ESSB 6138).

(h) **Manufacturing.** "Manufacturing" has the same meaning as "to manufacture" in chapter 82.04 RCW.

(i) **Manufacturing operation.** "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the processed material leaves the manufacturing site. The operation includes storage of raw materials at the site, the storage of in-process materials at the site, and the storage of the processed material at the site. The manufacturing operation is defined in terms

of a process occurring at a location. To be eligible as a qualifying use of M&E, the use must take place within the manufacturing operation, unless specifically exempted by law. Storage of raw material or other tangible personal property, packaging of tangible personal property, and other activities that potentially qualify under the "used directly" criterion, and that do not constitute manufacturing in and of themselves, are not within the scope of the exemption unless they take place at a manufacturing site. The statute specifically allows testing to occur away from the site.

The term "manufacturing operation" also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(i) Neither duration or temporary nature of the manufacturing activity nor mobility of the equipment determine whether a manufacturing operation exists. For example, operations using portable saw mills or rock crushing equipment are considered "manufacturing operations" if the activity in which the person is engaged is manufacturing. Rock crushing equipment that deposits material onto a roadway is not used in a manufacturing operation because this is a part of the constructing activity, not a manufacturing activity. Likewise, a concrete mixer used at a construction site is not used in a manufacturing operation because the activity is constructing, not manufacturing. Other portable equipment used in nonmanufacturing activities, such as continuous gutter trucks or trucks designed to deliver and combine aggregate, or specialized carpentry tools, do not qualify for the same reasons.

(ii) Manufacturing tangible personal property for sale can occur in stages, taking place at more than one manufacturing site. For example, if a taxpayer processes pulp from wood at one site, and transfers the resulting pulp to another site that further manufactures the product into paper, two separate manufacturing operations exist. The end product of the manufacturing activity must result in an article, substance, or commodity for sale.

(j) **Cannabis.** "Cannabis" is any product with a THC concentration greater than .3 percent.

(k) **Processor for hire.** "Processor for hire" has the same meaning as used in chapter 82.04 RCW and as explained in WAC 458-20-136 Manufacturing, processing for hire, fabricating.

(l) **Qualifying operation.** "Qualifying operation" means a manufacturing operation, a research and development operation, or a testing operation.

(m) **Research and development operation.** "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire. RCW 82.63.010 defines "research and development" to mean: Activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the Federal Food and Drug Administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include

surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(n) **Sale.** "Sale" has the same meaning as "sale" in chapter 82.08 RCW, which includes by reference RCW 82.04.040. RCW 82.04.040 includes by reference the definition of "retail sale" in RCW 82.04.050. "Sale" includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price.

(o) **Site.** "Site" means the location at which the manufacturing or testing takes place.

(p) **Support facility.** "Support facility" means 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 a microchip clean room, is a support facility. Without the slab, the delicate instruments in the clean room would not function properly. The ceiling and walls of the clean room 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.

(q) **Tangible personal property.** "Tangible personal property" has its ordinary meaning.

(r) **Testing.** "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(s) **Testing operation.** "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail. The testing operation is defined in terms of a process occurring at a location. To be eligible as a qualifying use of M&E, the use must take place within the testing operation, unless specifically excepted by law.

(3) **Retail sales and use tax exemptions.** The M&E exemptions provide retail sales and use tax exemptions for machinery and equipment used directly in a manufacturing operation or research and development operation, except for such sales or use relating to cannabis effective June 12, 2014. Sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying machinery and equipment are also exempt from sales tax, except for such sales or charges relating to cannabis effective June 12, 2014. However, because the exemption is limited to items with a useful life of one year or more, some charges for repair, labor, services, and replacement parts may not be eligible for the exemption.

In the case of labor and service charges that cover both qualifying and nonqualifying repair and replacement parts, the labor and services charges are presumed to be exempt. If all of the parts are nonqualifying, the labor and service charge is not exempt, unless the parts are incidental to the service being performed, such as cleaning, calibrating, and adjusting qualifying machinery and equipment.

The exemption may be taken for qualifying machinery and equipment used directly in a testing operation by a person engaged in testing for a manufacturer or processor for hire, with the exception of such testing relating to cannabis effective June 12, 2014.

Sellers remain subject to the retailing B&O tax on all sales of machinery and equipment to consumers if delivery is made within the state of Washington, notwithstanding that the sale may qualify for an exemption from the retail sales tax.

(a) **Sales tax.** The purchaser must provide the seller with an exemption certificate. The exemption certificate must be completed in its entirety. The seller must retain a copy of the certificate as a part of its records. This certificate may be issued for each purchase or in blanket form certifying all future purchases as being exempt from sales tax. Blanket certificates are valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of 12 consecutive months. RCW 82.08.050 (7)(c).

The form must contain the following information:

(i) Name, address, and registration number of the buyer;

(ii) Name of the seller;

(iii) Name and title of the authorized agent of the buyer/user;

(iv) Authorized signature;

(v) Date; and

(vi) Whether the form is a single use or blanket-use form.

A copy of an M&E certificate form may be obtained from the department's website at dor.wa.gov, or by contacting the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
((~~1-800-647-7706~~)) 360-705-6705

(b) **Use tax.** The use tax complements the retail sales tax by imposing a tax of like amount on the use within this state as a consumer of any tangible personal property purchased at retail, where the user has not paid retail sales tax with respect to the purchase of the property used. For additional information on use tax see chapter 82.12 RCW and WAC 458-20-178. If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the retail sales tax (commonly referred to as "deferred sales tax") or the use tax directly to the department unless the purchase and/or use is exempt from the retail sales and/or use taxes. A qualifying person using eligible machinery and equipment in Washington in a qualifying manner is exempt from the use tax. If an item of machinery and equipment that was eligible for use tax or sales tax exemption fails to overcome the majority use threshold or is entirely put to use in a nonqualifying manner, use tax is due on the fair market value at the time the item was put to nonqualifying use. See subsection (9) of this rule for an explanation of the majority use threshold.

(4) **Who may take the exemption?** The exemption may be taken by a manufacturer or processor for hire who manufactures articles, substances, or commodities for sale as tangible personal property (excluding cannabis), and who, for the item in question, meets the used directly test and overcomes the majority use threshold. (See subsection (8) of this rule for a discussion of the "used directly" criterion and see subsection (9) of this rule for an explanation of the majority use threshold.) However, for research and development operations, there is no requirement that the operation produce tangible personal property for sale. A processor for hire who does not sell tangible personal property is eligible for the exemption if the processor for hire manufactures articles, substances, or commodities that will be sold by the manufacturer. For example, a person who is a processor for hire but who is manufacturing with regard to tangible personal property that will be used by the manufacturer, rather than sold by the manufacturer, is not eligible. For additional information on manufacturing, processing for hire, or fabricating, see WAC 458-20-136 and RCW 82.04.110. Persons who engage in testing for manufacturers or processors for hire are eligible for the exemption. To be eligible for the exemption, the taxpayer need not be a manufacturer or processor for hire in the state of Washington, but must meet the definition of manufacturer provided in subsection (2)(g) of this rule.

(5) **What is eligible for the exemption?** Machinery and equipment used directly in a qualifying operation by a qualifying person is eligible for the exemption, subject to overcoming the majority use threshold.

There are three classes of eligible machinery and equipment: Industrial fixtures, devices, and support facilities. Also eligible is tangible personal property that becomes an ingredient or component of the machinery and equipment, including repair parts and replacement parts. "Machinery and equipment" also includes pollution control equipment installed and used in a qualifying operation to prevent air pollution, water pollution, or contamination that might otherwise result from the operation.

(6) **What is not eligible for the exemption?** In addition to items that are not eligible because they do not meet the used directly test or fail to overcome the majority use threshold, the following four categories of property are statutorily excluded from eligibility:

(a) **Hand-powered tools.** Screw drivers, hammers, clamps, tape measures, and wrenches are examples of hand-powered tools. Electric powered, including cordless tools, are not hand-powered tools, nor are calipers, plugs used in measuring, or calculators.

(b) **Property with a useful life of less than one year.** All eligible machinery and equipment must satisfy the useful life criterion, including repair parts and replacement parts. For example, items such as blades and bits are generally not eligible for the exemption because, while they may become component parts of eligible machinery and equipment, they generally have a useful life of less than one year. Blades generally having a useful life of one year or more, such as certain sawmill blades, are eligible. See subsection (7) of this rule for thresholds to determine useful life.

(c) **Buildings.** Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building. Buildings provide work space for people or shelter machinery and equipment or tangible personal property. The building itself is not eligible, however some of its components might be eligible for the exemption. The industrial fixtures and support facilities that become

affixed to or part of the building might be eligible. The subsequent real property status of industrial fixtures and support facilities does not affect eligibility for the exemption.

(d) **Building fixtures.** Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical. Examples of nonqualifying fixtures are: Fire sprinklers, building electrical systems, or washroom fixtures. Fixtures that are integral to the manufacturing operation might be eligible, depending on whether the item meets the other requirements for eligibility, such as the used directly test.

(7) **The "useful life" threshold.** RCW 82.08.02565 has a per se exception for "property with a useful life of less than one year." Property that meets this description is not eligible for the M&E exemption. The useful life threshold identifies items that do not qualify for the exemption, such as supplies, consumables, and other classes of items that are not expected or intended to last a year or more. For example, tangible personal property that is acquired for a one-time use and is discarded after use, such as a mold or a form, has a useful life of less than one year and is not eligible. If it is clear from taxpayer records or practice that an item is used for at least one year, the item is eligible, regardless of the answers to the four threshold questions. A taxpayer may work directly with the department to establish recordkeeping methods that are tailored to the specific circumstances of the taxpayer. The following steps should be used to determine whether an item meets the "useful life" threshold. The series of questions progress from simple documentation to complex documentation. To substantiate qualification under any step, a taxpayer must maintain adequate records or be able to establish by demonstrating through practice or routine that the threshold is overcome. Catastrophic loss, damage, or destruction of an item does not affect eligibility of machinery and equipment that otherwise qualifies. Assuming the machinery and equipment meets all of the other M&E requirements and does not have a single one-time use or is not discarded during the first year, useful life should be determined by answering the following questions for an individual piece of machinery and equipment:

(a) Is the machinery and equipment capitalized for either federal tax purposes or accounting purposes?

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(b) Is the machinery and equipment warranted by the manufacturer to last at least one year?

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(c) Is the machinery and equipment normally replaced at intervals of one year or more, as established by industry or business practice? (This is commonly based on the actual experience of the person claiming the exemption.)

- If the answer is "yes," it qualifies for the exemption.
- If the answer is "no,"

(d) Is the machinery and equipment expected at the time of purchase to last at least one year, as established by industry or business practice? (This is commonly based on the actual experience of the person claiming the exemption.)

- If the answer is "yes," it qualifies for the exemption.

• If the answer is "no," it does not qualify for the exemption.

(8) **The "used directly" criteria.** Items that are not "used directly" in a qualifying operation are not eligible for the exemption. The statute provides eight descriptions of the phrase "used directly." The manner in which a person uses an item of machinery and equipment must match one of these descriptions. Examples of items that are not used directly in a qualifying operation are cafeteria furniture, safety equipment not part of qualifying M&E, packaging materials, shipping materials, or administrative equipment. Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation, if the machinery and equipment meets any one of the following criteria:

(a) **Acts on or interacts with.** It acts on or interacts with an item of tangible personal property. Examples include drill presses, concrete mixers (agitators), ready-mix concrete trucks, hot steel rolling machines, rock crushers, and band saws. Also included is machinery and equipment used to repair, maintain, or install tangible personal property. Computers qualify under this criterion if:

(i) They direct or control machinery or equipment that acts on or interacts with tangible personal property; or

(ii) If they act on or interact with an item of tangible personal property.

(b) **Conveys, transports, handles, or temporarily stores.** It conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or the testing site. Examples include wheelbarrows, handcarts, storage racks, forklifts, tanks, vats, robotic arms, piping, and concrete storage pads. Floor space in buildings does not qualify under this criterion. Also not eligible under this criterion are items that are used to ship the product or in which the product is packaged, as well as materials used to brace or support an item during transport.

(c) **Controls, guides, measures, verifies, aligns, regulates or tests.** It controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site. Examples of "away from the site" are road testing of trucks, air testing of planes, or water testing of boats, with the machinery and equipment used off site in the testing eligible under this criterion. Machinery and equipment used to take readings or measurements is eligible under this criterion.

(d) **Provides physical support.** It provides physical support for or access to tangible personal property. Examples include catwalks adjacent to production equipment, scaffolding around tanks, braces under vats, and ladders near controls. Machinery and equipment used for access to the building or to provide a work space for people or a space for tangible personal property or machinery and equipment, such as stairways or doors, is not eligible under this criterion.

(e) **Produces power or lubricates.** It produces power for or lubricates machinery and equipment. A generator providing power to a sander is an example of machinery and equipment that produces such power. An electrical generating plant that provides power for a building is not eligible under this criterion. Lubricating devices, such as hoses, oil guns, pumps, and meters, whether or not attached to machinery and equipment, are eligible under this criterion.

(f) **Produces another item.** It produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation. Examples include ma-

chinery and equipment that make dies, jigs, or molds, and printers that produce camera-ready images.

(g) **Packs.** It places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported.

(h) **Is integral to research and development.** It is integral to "research and development" as it is defined in RCW 82.63.010.

(9) **The majority use threshold.**

(a) **M&E used both in a qualifying and nonqualifying manner.** Machinery and equipment used both directly in a qualifying operation and also in a nonqualifying manner is eligible for the exemption only if the qualifying use satisfies the majority use requirement. Examples of situations in which an item of machinery and equipment is used for qualifying and nonqualifying purposes include: The use of machinery and equipment in manufacturing and repair activities, such as using a power saw to make cabinets in a shop versus using it to make cabinets at a customer location; the use of machinery and equipment in manufacturing and constructing activities, such as using a forklift to move finished sheet rock at the manufacturing site versus using it to unload sheet rock at a customer location; and the use of machinery and equipment in manufacturing and transportation activities, such as using a mixer truck to make concrete at a manufacturing site versus using it to deliver concrete to a customer. Majority use can be expressed as a percentage, with the minimum required amount of qualifying use being greater than 50 percent compared to overall use. To determine whether the majority use requirement has been satisfied, the person claiming the exemption must retain records documenting the measurement used to substantiate a claim for exemption or, if time, value, or volume is not the basis for measurement, be able to establish by demonstrating through practice or routine that the requirement is satisfied. Majority use is measured by looking at the use of an item during a calendar year using any of the following:

(i) **Time.** Time is measured using hours, days, or other unit of time, with qualifying use of the M&E the numerator, and total time used the denominator. Suitable records for time measurement include employee time sheets or equipment time use logs.

(ii) **Value.** Value means the value to the person, measured by revenue if both the qualifying and nonqualifying uses produce revenue. Value is measured using gross revenue, with revenue from qualifying use of the M&E the numerator, and total revenue from use of the M&E the denominator. If there is no revenue associated with the use of the M&E, such as in-house accounting use of a computer system, the value basis may not be used. Suitable records for value measurement include taxpayer sales journals, ledgers, account books, invoices, and other summary records.

(iii) **Volume.** Volume is measured using amount of product, with volume from qualifying use of the M&E the numerator and total volume from use of the M&E the denominator. Suitable records for volume measurement include production numbers, tonnage, and dimensions.

(iv) **Other comparable measurement for comparison.** The department may agree to allow a taxpayer to use another measure for comparison, provided that the method results in a comparison between qualifying and nonqualifying uses. For example, if work patterns or routines demonstrate typical behavior, the taxpayer with the department's approval can satisfy the majority use test using work site surveys as proof.

(b) **Bundling similar M&E into classes.** Each piece of M&E does not require a separate record if the taxpayer can establish that it is

reasonable to bundle M&E into classes. Classes may be created only from similar pieces of machinery and equipment and only if the uses of the pieces are the same. For example, forklifts of various sizes and models can be bundled together if the forklifts are doing the same work, as in moving wrapped product from the assembly line to a storage area. An example of when not to bundle classes of M&E for purposes of the majority use threshold is the use of a computer that controls a machine through numerical control versus use of a computer that creates a camera ready page for printing.

(c) **Industry-wide standards.** Typically, whether the majority use threshold is met is decided on a case-by-case basis, looking at the specific manufacturing operation in which the item is being used. However, for purposes of applying the majority use threshold, the department may develop industry-wide standards. For instance, the aggregate industry uses concrete mixer trucks in a consistent manner across the industry. Based on a comparison of selling prices of the processed product picked up by the customer at the manufacturing site and delivery prices to a customer location, and taking into consideration the qualifying activity (interacting with tangible personal property) of the machinery and equipment compared to the nonqualifying activity (delivering the product) of the machinery and equipment, the department has determined that concrete trucks qualify under the majority use threshold. Only in those limited instances where it is apparent that the use of the concrete truck is atypical for the industry would the taxpayer be required to provide recordkeeping on the use of the truck to support the exemption.

[Statutory Authority: RCW 82.32.300 and 82.01.060. WSR 22-24-096, § 458-20-13601, filed 12/6/22, effective 1/6/23. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-07-046, § 458-20-13601, filed 3/14/16, effective 4/14/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.04.120, 82.04.213, 82.04.260, 82.04.4266, 82.08.02565, 82.12.022, and 82.12.02565. WSR 15-01-005, § 458-20-13601, filed 12/4/14, effective 1/4/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.08.02565, and 82.12.02565. WSR 08-14-024, § 458-20-13601, filed 6/20/08, effective 7/21/08. Statutory Authority: RCW 82.32.300. WSR 00-11-096, § 458-20-13601, filed 5/17/00, effective 6/17/00.]

AMENDATORY SECTION (Amending WSR 15-15-028, filed 7/7/15, effective 8/7/15)

WAC 458-20-174 Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce. (1) **Introduction.** This rule explains the application of the business and occupation tax on sales to for hire motor carriers operating in interstate or foreign commerce.

This rule also explains the retail sales tax exemptions provided by RCW 82.08.0262 and 82.08.0263 for sales to for hire motor carriers operating in interstate or foreign commerce, and addresses the requirements that must be met and the documents that must be preserved to substantiate a claim of retail sales tax exemption. Motor carriers should refer to WAC 458-20-17401 for a discussion of the use tax and use tax exemptions available to motor carriers for the purchase or use of vehicles and parts under RCW 82.12.0254. Use tax complements the

retail sales tax, and in most but not all cases mirrors the retail sales tax. Purchases of tangible personal property used or certain services purchased in Washington are subject to use tax if the retail sales tax has not been paid, or where an exemption for sales and use taxes are not available.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **Component parts** mean any tangible personal property that is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires.

(i) Component parts include the axle and wheels, referred to as a "converter gear" or "dolly," that is used to connect a trailer behind a tractor and trailer. Component parts also include tangible personal property that is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether they are permanently attached to the vehicle or held by brackets that are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle.

(ii) Component parts do not include antifreeze, oil, grease, and other lubricants that are considered consumed at the time they are placed into the vehicle, even though they are required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses, and belts.

(b) **Primary property location** is the address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The primary property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(3) **Business and occupation tax.** Business and occupation (B&O) tax is due on all sales to motor carriers that are sourced to Washington, notwithstanding that the retail sales tax may not apply because of the specific statutory exemptions provided by RCW 82.08.0262 and 82.08.0263.

(a) **Retailing of interstate transportation equipment B&O tax classification.** The retailing of interstate transportation equipment B&O tax classification (see RCW 82.04.250) applies to the following if the retail sales tax exemption requirements for RCW 82.08.0262 or 82.08.0263 are met:

(i) Sales of motor vehicles, trailers, and component parts thereof;

(ii) Leases of motor vehicles and trailers without operator; and

(iii) Charges for labor and services rendered in respect to constructing, cleaning, repairing, altering or improving vehicles and trailers or component parts thereof.

(b) **Retailing B&O tax classification.** The retailing B&O tax classification applies to the following:

(i) Sales and services as described in (a)(i) through (iii) of this subsection, that do not meet the exemption requirements provided in RCW 82.08.0262 or 82.08.0263;

(ii) Sales of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property therein;

(iii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice; and

(iv) Towing charges.

(c) **Allocation of income.** Except as provided in (d) of this subsection, all income from sales to motor carriers is allocated to where the sales are sourced under the general sourcing provisions of RCW 82.32.730. This includes leases to motor carriers that do not require recurring periodic payments.

(d) **Periodic lease payments.**

(i) Recurring periodic lease payments of leasing transactions described in (a) of this subsection are sourced as follows:

(A) The first payment is sourced to the location where the lessee takes possession of the transportation equipment. This is often the lessor's store location or a delivery location.

(B) Periodic payments made after the first payment are sourced for each period covered by the payment to the primary property location.

(ii) All recurring periodic lease payments of leasing transactions described in (b) of this subsection are sourced to the primary property location provided by the lessee to the lessor. The location where the lessee takes delivery of this type of equipment is immaterial.

(4) **Retail sales tax.** RCW 82.08.0262 and 82.08.0263 provide retail sales tax exemptions for certain sales to motor carriers when the sale is sourced to Washington.

(a) **Sales or leases of motor vehicles and trailers.** RCW 82.08.0263 provides an exemption from the retail sales tax for sales and leases of motor vehicles and trailers to be used for transporting persons or property for hire in interstate or foreign commerce. This exemption is available whether such use is by a for hire motor carrier, or by persons operating the vehicles and trailers under contract with a for hire motor carrier. The for hire carrier must hold a carrier permit issued by the Interstate Commerce Commission (ICC) or its successor agency to qualify for this exemption. The seller, at the time of the sale, must retain as a part of its records an exemption certificate that must be completed in its entirety. The buyers' retail sales tax exemption certificate is available on the department's website at dor.wa.gov, or can be obtained by contacting the department at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
((~~1-800-647-7706~~)) 360-705-6705

If the department's buyers' retail sales tax exemption certificate is not used, the form used must be in substantially the following form:

Exemption Certificate

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of carrier permit No. . . . ., issued by the Interstate Commerce Commission or its successor agency, and that the vehicle this date purchased from you being a (specify truck or trailer and make) , Motor No. . . . . , Serial No. . . . . is entitled to exemption from the Retail Sales Tax under RCW 82.08.0263. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated . . . . .

. . . . . .
(name of carrier-purchaser)

By. . . . . .
(title)

. . . . . .
(address)

The lease of motor vehicles and trailers to motor carriers, with or without operator, must satisfy all conditions and requirements provided by RCW 82.08.0263 to qualify for the retail sales tax exemption. Failure to meet these requirements will require the lessor to collect the retail sales tax on the lease as provided in (c) of this subsection.

(b) **Sales of component parts of motor vehicles and trailers and charges for repairs, etc.** RCW 82.08.0262 provides an exemption from the retail sales tax for sales of component parts and repairs of motor vehicles and trailers. This exemption is available only if the user of the motor vehicle or trailer is the holder of a carrier permit issued by the ICC or its successor agency that authorizes transportation by motor vehicle across the boundaries of Washington. Because carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to parts and repairs purchased for vehicles that are used in hauling for hire. The exemption includes labor and services rendered in constructing, repairing, cleaning, altering, or improving such motor vehicles and trailers.

(i) This exemption is available whether the motor vehicles or trailers are owned by, or operated under contract with, persons holding the carrier permit. This exemption applies even if the motor vehicle or trailer to which the parts are attached will not be used substantially in interstate hauls, provided the vehicles are used in for hire hauling.

(ii) The seller must retain as a part of its records a completed exemption certificate. This certificate may be:

(A) Issued for each purchase;

(B) Incorporated in or stamped upon the purchase order; or

(C) In blanket form certifying all future purchases as being exempt from sales tax. Blanket exemption certificates are valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of ((~~twelve~~)) 12 consecutive months. RCW 82.08.050.

(iii) The buyers' retail sales tax exemption certificate is available on the department's website at dor.wa.gov, or can be obtained from the department using the address provided in (a) of this subsection.

If the department's buyers' retail sales tax exemption certificate is not used, the form used must be in substantially the following form:

Exemption Certificate

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of a carrier permit, No.. . . . . ., issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state. The undersigned further certifies that the motor truck or trailer to be constructed, repaired, cleaned, altered, or improved by you, or to which the subject matter of this purchase is to become a component part, will be used in direct connection with the business of transporting therein persons or property for hire; and that such sale and/or charges are exempt from the Retail Sales Tax under RCW 82.08.0262. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated. . . . . .

. . . . . .
(name of carrier-purchaser)

. . . . . .
(address)

By . . . . . .
(title)

(c) **Taxable sales.** Sales that do not qualify for exemption under the provisions of RCW 82.08.0262 or 82.08.0263, are subject to the retail sales tax or deferred sales tax when sourced to Washington as follows.

(i) Sales, including single payment leases, are sourced under the general sourcing provision of RCW 82.32.730.

(ii) All recurring periodic lease payments are sourced to the primary property location provided by the lessee to the lessor.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 15-15-028, § 458-20-174, filed 7/7/15, effective 8/7/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.08.0262, and 82.08.0263. WSR 08-14-018, § 458-20-174, filed 6/20/08, effective 7/21/08. Statutory Authority: RCW 82.32.300. WSR 97-11-022, § 458-20-174, filed 5/13/97, effective 6/13/97; WSR 94-18-003, § 458-20-174, filed 8/24/94, effective 9/24/94; WSR 83-07-033 (Order ET 83-16), § 458-20-174, filed 3/15/83; Order ET 71-1, § 458-20-174, filed 7/22/71; Order 70-3, § 458-20-174 (Rule 174), filed 5/29/70, effective 7/1/70.]

AMENDATORY SECTION (Amending WSR 15-02-017, filed 12/29/14, effective 1/29/15)

WAC 458-20-178 Use tax and the use of tangible personal property. (1) **Introduction.** This rule provides general use tax-reporting information for consumers. It discusses who is responsible for remitting use tax, and when and how to remit the tax. The rule also explains the imposition of use tax as it applies to the use of tangible personal property within this state when the acquisition of the tangible personal property was not subject to retail sales or deferred sales tax.

(a) **Examples.** Examples found in this rule 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.

(b) **Additional information available.** For information on use tax exemptions please refer to chapter 82.12 RCW. When appropriate, this rule refers the reader to applicable statutes and rules. In addition, the reader may wish to refer to the following:

(i) WAC 458-20-145, Local sales and use tax, provides information on sourcing local sales and use taxes.

(ii) WAC 458-20-15503, Digital products, provides information on sales and use tax liability on digital products such as: Digital goods, including digital audio works, digital audio-visual works, and digital books; digital automated services; digital codes used to obtain digital goods or digital automated services; and remote-access software.

(iii) WAC 458-20-169, Nonprofit organizations, provides information on a use tax exemption for donated items to a nonprofit charitable organization.

(iv) WAC 458-20-17803, Use tax on promotional material, provides information about the use tax reporting responsibilities of persons who distribute or cause the distribution of promotional material, except newspapers, the primary purpose of which is to promote the sale of products or services in Washington.

(v) WAC 458-20-190, Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments, provides tax reporting information for businesses doing business with the United States.

(vi) WAC 458-20-192, Indians—Indian country, provides information on use tax pertaining to Indians and Indian tribes and use tax pertaining to non-Indians in Indian country.

(vii) WAC 458-20-257, Warranties and service contracts, provides information on tax responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements for tangible personal property.

(2) **What is use tax?** Use tax complements the retail sales tax, and in most cases mirrors the retail sales tax. Articles of tangible personal property used or certain services purchased in Washington are subject to use tax when the state's retail sales tax has not been paid, or where an exemption is not available. Tangible personal property or services used or purchased by the user in any manner are taxable including, but not limited to:

- Purchases directly from out-of-state sellers;
- Purchases through the internet, telemarketing, mail order; or
- Acquisitions at casual or isolated sales.

(a) **Example 1.** ABC Company (ABC) orders office supplies from out-of-state vendors and also through catalogs. In addition, ABC pays annual subscriptions for magazines for their own use. None of these vendors is required to collect Washington's retail sales tax. Use tax is due on all taxable items ordered including the annual subscriptions.

(b) **Example 2.** Mary is a music instructor that teaches adults how to play the piano. Mary does not charge her students retail sales tax on the costs of the weekly piano lessons. Use tax is not due on the lessons, as the lessons are not a retail sales taxable service. See WAC 458-20-224, Service and other business activities.

(3) **"Use" defined.** For purposes of this rule, "use," "used," "using," or "put to use" have their ordinary meaning and include the first act by which a person takes or assumes dominion or control over

the article (as a consumer). It includes installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within the state. (See RCW 82.12.010.) Multiple uses of the same article by the same person do not generally result in multiple use tax liabilities.

(4) **Measure of tax - Value of article used.** Use tax generally is levied and collected on an amount equal to the value of the article used by the taxpayer. RCW 82.12.010 defines this value to generally be the purchase price of the article. There are a number of specific situations where this value may be different than the amount of consideration paid or given by the buyer to the seller. See subsection (7) of this rule for exceptions.

(a) **When the value is the purchase price.** The term "purchase price" has the same meaning as "selling price." The selling price is the total amount of consideration, except trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise. The selling price, and therefore the "value of the article used" also includes delivery charges. Delivery charges are charges made by the seller for preparing and delivering tangible personal property to a location designated by the buyer and include, but is not limited to, charges for transportation, shipping, postage, handling, crating, and packing. (See RCW 82.08.010 and 82.12.010.)

(b) **When the purchase price does not represent true value.** When an article is sold under conditions in which the purchase price does not represent the true value, the "value of the article used" is to be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character. (See RCW 82.12.010.) This is frequently referred to as the fair market value of the property. For additional information regarding the measure of tax for articles in these situations, refer to WAC 458-20-112, Value of products. Refer to subsection (4)(i)(i) of this rule for determining use tax when there is no similar article of like quality and character.

A comparison/examination of arm's length sales transactions is required when determining the value of the article used on the basis of the retail selling price of similar products. An arm's length sale generally involves a transaction negotiated by unrelated parties, each acting in his or her own self-interest.

(i) In an arm's length sales transaction, the value placed on the property by the parties to the transaction may be persuasive evidence of the true value of the property. Where there is a conflict regarding the true value of tangible personal property between sales documents, entries in the accounting records and/or value reported for use tax purposes, the department often looks to the person's accounting records as an indication of the minimum value of capitalized property. Neither the department nor the taxpayer is necessarily bound by this value if it is established that the entry in the books of account does not fairly represent the true value of the article used.

(ii) Some arm's length sales transactions involve multiple pieces of property or different types of property (such as when both real and personal property are sold). While the total sales price may represent a true value for the property in total, the values allocated to the specific components may not in and of themselves represent true values for those components. This is especially apparent when the values assigned by the parties to the sales transaction vary from those entered

into the accounting records and/or reported for use tax purposes. In such cases, the value of the article used for the purpose of the use tax must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality and character.

(c) **Property acquired and used outside Washington before use occurs in Washington.** The purchase price of property acquired and used outside Washington before being used in this state may not represent the property's true value. Under these circumstances, the value of article used is the retail selling price at place of use of similar products of like quality and character as of the time the article is first used in Washington.

(d) **Imported property.** When property is imported from outside the United States for use in Washington state, the value of the article used includes any amount of tariff or duty paid with respect to importation.

(e) **Articles produced for commercial or industrial use.** A person who extracts or manufactures products or by-products for commercial or industrial use is subject to use tax and the business and occupation (B&O) tax on the value of products or by-products used. "Commercial or industrial use" is the use of products, including by-products, as a consumer by the person who extracted or manufactured the products or by-products. See WAC 458-20-134, Commercial or industrial use and WAC 458-20-136, Manufacturing, processing for hire, fabricating.

Tax applies even if the person is not generally in the business of extracting, producing, or manufacturing the products, or the extracting or manufacturing activity is incidental to the person's primary business activity. Thus, a clothing retailer who manufactures signs or other materials for display purposes incurs a liability even though the clothing retailer is not otherwise in the business of manufacturing signs and other display materials for sale.

(i) The extractor or manufacturer is responsible for remitting retail sales or use tax on all materials used while developing or producing an article for commercial or industrial use. This includes materials that are not components of the completed article.

(ii) The value of the extracted or manufactured article is subject to use tax when the article is completed and used. The measure of use tax due for the completed article may be reduced by the value of any materials actually incorporated into that article if the manufacturer or extractor previously paid sales or use tax on the materials. See subsection (4)(g) of this rule for an explanation of the measure of tax for a completed prototype.

(f) **Bailment.** For property acquired by bailment, the "value of the article used" for the bailee is an amount representing a reasonable rental for the use of the bailed article, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. (See RCW 82.12.010.) If the nature of the article is such that it can only be used once, the reasonable rental value is the full value of the article used. See also WAC 458-20-211, Leases or rentals of tangible personal property, bailments.

(g) **Prototypes.** The value of the article used with respect to an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product is:

• The retail selling price of such new or improved product when first offered for sale; or

• The value of materials incorporated into the prototype in cases where the new or improved product is not offered for sale. (See RCW 82.12.010.)

(h) **Articles manufactured and used in the production of products for the department of defense.** When articles are manufactured and used in the production of products for the department of defense, use tax is due except where there is an exemption. The value of the article used with respect to an article manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States is the value of the ingredients of the manufactured or produced article. (See RCW 82.12.010.) However, refer to WAC 458-20-13601, Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment to determine if such articles qualify for exemption under RCW 82.12.02565.

(i) **Property temporarily brought into Washington for business use.** In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than ((~~one hundred eighty~~)) 180 days in any period of ((~~three hundred sixty-five~~)) 365 consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under chapter 82.08 or 82.12 RCW upon the full value of the article used.

However, this measure of "value of article used" is a separate provision from RCW 82.12.0251 use tax exemption. The use tax exemption is provided to nonresidents bringing property into Washington for his or her use or enjoyment while temporarily within the state, unless the property is used in conducting a nontransitory business activity. The term "nontransitory business activity," for the purposes of this exemption, means and includes the business of extracting, manufacturing, selling tangible and intangible property, printing, publishing, and performing contracts for the constructing or improving of real or personal property. It does not include the business of conducting a circus or other form of amusement when the personnel and property of such business regularly moves from one state into another, nor does it include casual or incidental business done by a nonresident lawyer, doctor or accountant.

(i) **Reasonable rental value.** A reasonable rental value is normally determined by the rental price or using the fair market rental value of similar products of like quality and character if rental price is not reasonable. If a reasonable rental value cannot be determined because of the nature of property, such as it may not be possible to find similar products of like quality and character, monthly reasonable rental value may be determined based on depreciation plus one percent (per month) of the purchase price. For the purpose of this computation, depreciation should be computed on a straight-line basis with an assumption that there is no salvage value. The life of the asset must be based on "book" life rather than an accelerated life that might be used for federal tax purposes. This calculation applies even if the asset is fully depreciated.

(ii) **Example.** A piece of equipment that originally cost $100,000 and has a book life of ((~~forty-eight~~)) 48 months results in a monthly rental value of $3,083 ((100,000/48) + (100,000 x .01)). This monthly value applies even if the asset is fully depreciated or is greater or less than the actual depreciation used for federal tax purposes. A

lesser value can be used if the taxpayer retains documentation supporting the lesser value and that value is based on rental values.

(j) **Special provisions for vessel dealers and manufacturers.** The value of an article used for a vessel held in inventory and used by a vessel dealer or vessel manufacturer for personal use is the reasonable rental value of the vessel used. This value applies only if the vessel dealer or manufacturer can show that the vessel is truly held for sale and that the dealer or manufacturer is and has been making good faith efforts to sell the vessel. (See RCW 82.12.802.) This may result in a vessel manufacturer incurring multiple use tax liabilities with respect to multiple uses of the same vessel.

The use of a vessel by a vessel dealer or vessel manufacturer for certain purposes is not subject to use tax. For specific information on these exemptions see RCW 82.12.800 and 82.12.801.

(5) **Who is liable for the tax?** RCW 82.12.020 imposes use tax upon every person using tangible personal property or certain retail services as a consumer in the state of Washington. The law does not distinguish between persons using property (or certain retail services) for business or personal use. Thus, a Washington resident purchasing personal items via the internet or through a mail-order catalog has the same legal responsibility to report and remit use tax as does a corporation purchasing office supplies. The rate of the use tax is the same as the retail sales tax rate in the location where the property is used. Refer to WAC 458-20-145, Local sales and use tax for further discussion about determining where use occurs.

(a) **When tax liability arises.** Use tax is owed at the time the tangible personal property is first put to use in this state, unless an exemption is available.

(b) **Reporting and remitting payment to the department of revenue.**

(i) **Registered taxpayers.** Persons registered with the department under RCW 82.32.030 to do business in Washington should use their excise tax return to report and remit use tax.

(ii) **Unregistered persons.** Persons not required to be registered with the department should use a Consumer Use Tax Return to report and remit use tax. The Consumer Use Tax Return is available by:

(A) Using the department's website at dor.wa.gov;

(B) Calling the department's telephone information center at ((~~1-800-647-7706~~)) 360-705-6705; or

(C) Requesting the form at any of the department's local field offices.

The completed Consumer Use Tax Return, with payment, is due on or before the ((~~twenty-fifth~~)) 25th day of the month following the month in which the tax liability occurs. For example, a person acquires clothing without payment of the retail sales tax during August. The Consumer Use Tax Return and the tax are due by September 25th.

The return and payment can be submitted electronically using the department's online system at dor.wa.gov, mailed, or delivered to any of the department's local field offices.

(6) **How does use tax differ from the retail sales tax?** There are circumstances where the law does not provide a use tax exemption to complement a retail sales tax exemption. Where there is no complementary use tax exemption, the buyer/user is still responsible for remitting use tax on his or her use of the purchased property.

For instance, there is no complementary use tax exemption to the retail sales tax exemption in RCW 82.08.0251. This exemption provides a retail sales tax exemption for articles acquired in casual sales transactions, if the seller is not required to be registered with the

department. Because there is no complementary use tax exemption, the buyer/user is responsible for remitting the use tax on his or her use of the purchased property. For example, if a person purchases furniture through a classified ad from a homeowner, the buyer is responsible for reporting and paying the use tax although the sale is exempt from retail sales tax.

(7) **Exceptions.** The law provides certain exceptions to the imposition of tax on a single event. These exceptions occur when the law provides a method of determining the measure of tax different than the full value of the article being used.

(a) **Destroyed property.** The mere destruction or discarding of tangible personal property as unusable or worthless is usually not considered a taxable "use." The following examples identify a number of facts and then state a conclusion.

(i) **Example 4.** AA Computer Software (AA) has some obsolete inventory that will no longer sell as an updated version of the software is now available for purchase. AA decides to throw away this inventory even though it has never been used. As the software was never used, use tax is not owed on the destroyed inventory.

(ii) **Example 5.** WW Dealer purchases a used vehicle for resale. WW Dealer publicizes an upcoming sale by airing a television commercial in which WW Dealer destroys the vehicle. WW Dealer's destruction of the vehicle for publicity purposes is considered use by a consumer. The vehicle is subject to use tax sourced at the location where WW Dealer destroys the vehicle.

(b) **Tangible personal property acquired by gift or donation.** The use of property acquired by gift or donation is subject to the use tax, unless the person gifting or donating the property previously paid or remitted Washington retail sales or use tax on the purchase or use of the property. (See RCW 82.12.020.) However, a credit for tax paid in another jurisdiction is available if documentation of tax paid is provided. See subsection (8) of this rule for additional information.

Use tax does not apply when the same property is gifted or donated back to the original giftor or donor if the original giftor or donor previously paid the retail sales tax or use tax.

Example 6. John purchases a vehicle, pays retail sales tax on the purchase, and gifts the vehicle to Mary. Mary's use of the vehicle is not subject to use tax because John paid sales tax when he purchased the vehicle. After two years, Mary returns the vehicle to John. John's use of the vehicle is not subject to use tax because he paid sales tax when he originally purchased the vehicle. However, use tax is due if Mary gifts or donates the vehicle to a person other than John because Mary has not previously paid retail sales or use tax.

(c) **Tangible personal property put to both an exempt and taxable use.** If property is first used for an exempt or nontaxable purpose and is later used for a nonexempt or taxable purpose, use tax is due on the value of the property when first used for the nonexempt or taxable purpose. For instance, RCW 82.12.0251 provides a use tax exemption for the temporary use within Washington of watercraft brought in by certain nonresidents. (See WAC 458-20-238, Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents for a detailed explanation of the exemption requirements.) However, use tax is due if the nonresident exceeds the temporary use threshold or the nonresident subsequently becomes a Washington resident.

(d) **Intervening use of property purchased for resale.** Persons purchasing tangible personal property for resale in the regular course of business may purchase the property at wholesale without paying retail sales tax provided the property is not put to intervening use, and the buyer provides the seller with a completed reseller permit. (See RCW 82.04.050 and 82.04.060.)

A buyer who purchases taxable property at wholesale and subsequently puts the property to intervening use is subject to either the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax, unless a specific use tax exemption applies to the intervening use. The tax applies even if the property is at all times held out for sale and is in fact later sold. Tax is due even if the intervening use is the result of an unforeseen circumstance, such as when property is purchased for resale, the customer fails to satisfy the terms of the sales agreement, and the property is used until another customer is found. See WAC 458-20-102 Reseller permits regarding tax-reporting requirements when a person purchases property for both resale and consumption.

(e) **Using inventory to promote sales.** Intervening use does not include the use of inventory for floor or window display purposes if that merchandise is subsequently sold as new merchandise. Likewise, intervening use does not include the use of inventory for demonstration purposes occurring with efforts to sell the same merchandise if that merchandise is subsequently sold as new merchandise. The fact that the selling price may be discounted because the property is shop worn from display or demonstration is not, by itself, controlling for the purposes of determining whether intervening use has occurred.

Evidence that property has been put to intervening use includes, but is not limited to, the following:

(i) **Property not sold as new merchandise.** Intervening use occurs if, after use of the property for display or demonstration purposes, the property can no longer be sold as new merchandise. An indication that intervening use has occurred is if property is without a new model warranty if the sale of the property normally includes such a warranty.

(ii) **Capitalizing demonstrator or display property.** The capitalization and depreciation of property is evidence of intervening use. Thus, there is a rebuttable presumption that intervening use occurs if the accounting records identify the property as a demonstrator or as display merchandise. The burden is on the person making such entries in the accounting records to substantiate any claims the property was not put to intervening use.

(iii) **Loaning property to promote sales.** Intervening use includes loaning property to a customer or potential customer for the purpose of promoting sales of other products. For example, intervening use occurs if a coffee manufacturer and/or distributor loans brewing equipment to a customer to promote coffee sales, even if the equipment is subsequently sold to the same or different customer. In this example, the coffee manufacturer and/or distributor loaning the equipment would owe use tax on the full value of the equipment. If the manufacturer and/or distributor had not paid use tax, the customer would owe use tax on the reasonable rental value as this is a bailment situation. See subsection (4)(f) of this section for the measure of tax on bailed articles.

(f) **Effect of the trade-in exclusion.** The exclusion for the value of trade-in property from the measure of tax applies only if the trade-in property is of the same general type or classification as the

property for which it was traded-in. There is no requirement that Washington's retail sales or use tax be previously paid on the trade-in property. There is also no requirement that the property subject to use tax be acquired in Washington, or that the user be a Washington resident at the time he or she acquired the property. For additional information refer to WAC 458-20-247, Trade-ins, selling price, sellers' tax measure.

(8) **Credit for taxes paid in other jurisdictions.** RCW 82.12.035 provides a credit against Washington's use tax for legally imposed retail sales or use taxes paid by the purchaser to: Any other state, possession, territory, or commonwealth of the United States, or any political subdivision of a state, the District of Columbia, or any foreign country or political subdivision of a foreign country. (See RCW 82.56.010.)

(a) This use tax credit is available only if the present user, or his or her bailor or donor, has documentation that shows the retail sales or use tax was paid with respect to such property, extended warranty, digital products, digital codes, or service defined as a retail sale in RCW 82.04.050 to the other taxing jurisdiction.

(b) This credit is not available for other types of taxes such as, but not limited to, value-added taxes (VATs).

(c) For the purposes of allocating state and local use taxes, the department first applies the credit against the amount of any use tax due the state. Any unused portion of the credit is then applied against the amount of any use tax due to local jurisdictions. RCW 82.56.010, Multistate Tax Compact, Article V. Elements of Sales and Use Tax Laws.

(9) **No apportionment of use tax liability.** Unless specifically provided by law, the value of the article or use tax liability may not be apportioned even though the user may use the property both within and without Washington, or use the property for both taxable and exempt purposes.

(a) **Example 7.** A construction company using an airplane for traveling to and from its Washington office and out-of-state job sites must remit use tax on the full value of the airplane, even if the airplane was purchased and delivery taken outside Washington. There is no apportionment of this value even though the airplane is used both within and outside of Washington.

(b) **Exemption.** For an exemption pertaining to use tax liability, see WAC 458-20-17401, Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 15-02-017, § 458-20-178, filed 12/29/14, effective 1/29/15; WSR 14-09-036, § 458-20-178, filed 4/10/14, effective 5/11/14. Statutory Authority: RCW 82.32.300. WSR 87-01-050 (Order ET 86-19), § 458-20-178, filed 12/16/86; Order ET 71-1, § 458-20-178, filed 7/22/71; Order ET 70-3, § 458-20-178 (Rule 178), filed 5/29/70, effective 7/1/70.]

AMENDATORY SECTION (Amending WSR 16-01-037, filed 12/9/15, effective 1/9/16)

WAC 458-20-180 Motor carriers. (1) **Introduction.** This rule explains the tax reporting responsibilities of persons engaged in the

business of transporting by motor vehicle persons or property for hire. It explains transportation business and the application of public utility tax (PUT), business and occupation (B&O), and retail sales taxes to persons engaged in the business.

(a) **Examples.** This rule contains examples that 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 the facts and circumstances.

(b) **References to related rules.** The department of revenue (department) has adopted other rules that relate to the application of the PUT. Readers may want to refer to the rules in the following list:

(i) WAC 458-20-104 Small business tax relief based on income of business;

(ii) WAC 458-20-13501 Timber harvest operations;

(iii) WAC 458-20-171 Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic;

(iv) WAC 458-20-174 Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce;

(v) WAC 458-20-175 Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;

(vi) WAC 458-20-178 Use tax and the use of tangible personal property;

(vii) WAC 458-20-179 Public utility tax; and

(viii) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

(2) **What is a motor transportation business?** A "motor transportation business" is a business operating any motor propelled vehicle transporting persons or property of others for hire and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company, common carrier, or contract carrier as defined by RCW 81.68.010 and 81.80.010. See RCW 82.16.010. The term "motor transportation business" does not include any "urban transportation business" as described in subsection (4) of this rule.

(a) It includes hauling for hire any extracted or manufactured material, over the state's highways and over private roads but does not include:

(i) The transportation of logs or other forest products exclusively on private roads or private highways (which is subject to the service B&O tax, e.g., see WAC 458-20-13501 Timber harvest operations); and

(ii) A log transportation business as described in subsection (3) of this rule.

(b) It does not include the hauling of any earth or other substance excavated or extracted from or taken to the right of way of a publicly owned street, place, road, or highway, by a person taxable under the public road construction B&O tax classification, regardless of whether or not the earth moving portion is separately stated. See WAC 458-20-171 for more information.

(3) **What is a log transportation business?** A "log transportation business" means the business of transporting logs by truck, except when such transportation meets the definition of urban transportation business or occurs exclusively on private roads. See RCW 82.16.010.

Effective August 1, 2015, RCW 82.16.020 provides a preferential public utility tax rate for log transportation businesses.

(4) **What is an urban transportation business?** An "urban transportation business" is a business operating any vehicle for public use in the transportation of persons or property for hire, when:

• Operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof; or

• Operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof.

(a) **The five mile standard.** "Operating entirely within five miles of the corporate limits thereof" means the five-mile standard is applied on a straight line from the corporate limits and not based on road mileage. It is immaterial how many miles the carrier travels from the origin to the termination of the haul as long as the origin and the termination of the haul are within five miles of the corporate limits. See RCW 82.16.010.

(b) **What is included in urban transportation?** Urban transportation includes, but is not limited to, the business of operating passenger vehicles of every type and also the business of operating cartage, pickup or delivery services, including the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property. See subsection (7)(d) of this rule for deduction information for interstate transportation of persons or property.

(c) **What is not urban transportation?** Urban transportation does not include the business of operating any vehicle for transporting persons or property for hire when the origin or termination is more than five miles beyond the corporate limits of any city (or contiguous cities) through which it passes. Thus an operation extending from a city to a point which is more than five miles beyond its corporate limits does not constitute urban transportation. This is true even if the route is through intermediate cities that enable the vehicle to always be within five miles of a city's corporate limits. See subsection (2) of this rule for "What is a motor transportation business?"

(5) **What does "motor transportation" and "urban transportation" include?** Motor and urban transportation include the business of operating motor-driven vehicles, on public roads, used in transporting persons or property belonging to others, on a for-hire basis. These terms include the business of:

(a) Operating taxicabs, armored cars, and contract mail delivery vehicles, but do not include the businesses of operating auto wreckers or towing vehicles (taxable as sales at retail under RCW 82.04.050), school buses, ambulances, nor the collection and disposal of solid waste (taxable under the service and other activities B&O tax classification); and

(b) Renting or leasing trucks, trailers, buses, automobiles, and similar motor vehicles to others for use in the conveyance of persons or property when as an incident of the rental contract such motor vehicles are operated by the lessor or by an employee of the lessor.

(6) **Why is the distinction between the motor and urban transportation classifications important?** These tax classifications have different tax rates and it is important to segregate the gross income of each activity. The gross income of persons engaged in the business of motor transportation is taxed under the motor transportation PUT classification. The gross income of persons engaged in the business of ur-

ban transportation is taxed under the urban transportation PUT classification. The gross income of persons engaged in both urban and motor transportation is taxed under the motor transportation classification, unless the revenue is segregated as shown by their records.

(7) **Are deductions available?** Income, as described below, may be deducted from the taxable amounts reported, provided the amounts were originally included in the gross income. See WAC 458-20-179 for generally applicable deductions for PUT, such as bad debt and cash discount.

(a) **Fees and charges for public transportation services.** RCW 82.16.050 provides a deduction for amounts derived from fees or charges imposed on persons for transit services provided by a public transportation agency. Public transportation agencies must spend an amount equal to the tax reduction provided by this deduction solely to:

• Adjust routes to improve access for citizens using food banks and senior citizen services; or

• To extend or add new routes to assist low-income citizens and seniors.

(b) **Services furnished jointly.** In general, costs of doing business are not deductible under the public utility tax (PUT). However, RCW 82.16.050 does allow a deduction for amounts actually paid by a taxpayer to another person taxable under the PUT as the latter's portion of the consideration due for services furnished jointly by both, provided the full amount paid by the customer for the service is received by the taxpayer and reported as gross income subject to the PUT.

This includes the amount paid to a ferry company for the transportation of a vehicle and its contents (but not amounts paid to state owned or operated ferries) when the vehicle is carrying freight or passengers for hire and is being operated by a person engaged in the business of motor or urban transportation. This does not include amounts paid for transporting such vehicles over toll bridges.

Example 1. A customer hires ABC Transport (ABC) to haul goods from Tacoma to a manufacturing facility in Bellingham. ABC subcontracts part of the haul to XYZ Freight (XYZ) and has XYZ haul the goods from Tacoma to Everett where the goods are loaded into ABC's truck and transported to Bellingham. Assuming all other requirements of the deduction are met, ABC may deduct the payments it makes to XYZ from its gross income as XYZ's portion of the consideration paid by the customer for transportation services furnished jointly by ABC and XYZ.

(c) **Transportation of commodities to export facilities.** Income received from transporting commodities from points of origin in this state to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries is deductible under RCW 82.16.050. The deduction is only available when the commodities are forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. However, this deduction is not available when the point of origin and the point of delivery to the export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town.

(i) **Example 2.** AB Transport moves freight by tug and barge from points in Washington to terminal facilities at tidewater ports in Washington. The freight is subsequently shipped from the ports by vessel to interstate and foreign destinations. AB Transport may deduct the gross income from these shipments under RCW 82.16.050.

(ii) **Example 3.** ABC Trucking hauls widgets from the manufacturing plant to a storage area that is adjacent to the dock. The storage area is quite large and the widgets are moved from the storage area to alongside the ship in time for loading. The widgets are loaded on the ship and then transported to a foreign country. ABC Trucking may take a deduction for the amounts received for transporting the widgets from the manufacturer to the storage area. The movement of the widgets within the storage area is not considered "intervening transportation," but is part of the stevedoring activity.

(iii) **Example 4.** ABC Trucking hauls several types of widgets from the manufacturing plant to a "staging area" where the widgets are sorted. After sorting, XY Hauling transports some of the widgets from the staging area to local buyers and other widgets to the dock that is located approximately five miles from the staging area where the widgets are immediately loaded on a vessel for shipment to Japan. The dock and staging area are not within the corporate city limits of the same city. ABC Trucking may not take a deduction for amounts received for hauling widgets to the staging area. Even though some of the widgets ultimately were exported, ABC Trucking did not deliver the widgets to the dock where the widgets were loaded on a vessel.

However, XY Hauling may take a deduction for the gross income for hauls from the staging area to the dock. The widgets were loaded on the vessel in their original form with no additional processing. The haul also did not originate or terminate within the corporate city limits of the same city or town. All the conditions were met for XY Hauling to claim the deduction.

(d) **Interstate transportation of persons or property.** Income received from transporting persons or property by motor transportation equipment where either the origin or destination of the haul is outside the state of Washington is deductible. The interstate movement originates or terminates at the point where the transport obligation of the interstate carrier begins or ends. See WAC 458-20-193D for additional information on interstate activities. Transportation provided within the state prior to the point of origin of the interstate movement or subsequent to the point of destination within this state is wholly intrastate and not deductible.

Example 5. Airport B Shuttle provides transportation to and from the airport for persons departing or arriving from destinations that may or may not be out of state. This service is not incidental to any interstate movement and thus gross income is taxable under either motor or urban transportation.

(e) **Interstate transportation of commodities.** Income received from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state are deductible under RCW 82.16.050 where the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination.

(f) **Transportation of agricultural commodities.** Certain income received from the transportation of agricultural commodities can be deducted when the commodities do not include manufactured substances or articles. For the income to be deducted, the commodities must be transported from points of origin in the state to interim storage facilities in this state for transshipment, without intervening trans-

portation, to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. If agricultural commodities are transshipped from interim storage facilities in this state to storage facilities at a port on tidewater or its navigable tributaries, the same agricultural commodity dealer must operate both the interim storage facilities and the storage facilities at the port. RCW 82.16.050.

(i) The deduction under this subsection is available only when the person claiming the deduction obtains a completed "Certificate of Agricultural Commodity Shipped to Interstate and Foreign Destinations" from the agricultural commodity dealer operating the interim storage facilities.

(ii) A blank certificate can be found on the department's website at dor.wa.gov. The form may also be obtained by contacting the department's telephone information center at ((~~1-800-647-7706~~)) 360-705-6705, or by writing the department at:

Taxpayer Information and Education
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

(8) **Exemption for income from persons with special transportation needs.** RCW 82.16.047 provides an exemption from PUT for amounts received for providing commuter share riding or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. Transportation must be provided by a public social service agency or a private, nonprofit transportation provider as defined in RCW 81.66.010.

(9) **Business activities other than hauling.** Persons engaged in the business of motor or urban transportation may also receive income from other business activities. The tax consequences of this income is generally based on whether or not these services are performed as a part of or are incidental to the hauling activity, or are services where the taxpayer does not haul the shipment.

(a) **Handling and other services that are a part of or incidental to the hauling activity.** When a person performs activities such as packing, crating, loading or unloading of goods that the person is hauling for the customer, those services are considered to be performed as a part of the hauling activity, or are services incidental to the haul itself. The gross income from those services is taxed in the same manner as the hauling activity, e.g., motor or urban transportation.

Example 6. Mary hires Luke's Packing & Hauling Co. (Luke's) to load, haul, and unload her belongings at a local storage facility just a couple of miles down the street from the city apartment she is vacating. Luke's will report the gross income from Mary under the urban transportation PUT classification.

(b) **Handling and other services that are not a part of or incidental to the hauling activity.**

(i) If a person engaged in hauling activities packs, crates, loads, or unloads goods that the person is not also hauling for the customer, the gross income from these activities will generally be subject to service and other activities B&O tax.

Example 7. James hires Luke's Packing & Hauling (Luke's) to wrap, pack, and crate his belongings in preparation for long-term storage. Luke's will not be hauling James' belongings as Haul and Storage Inc.

has been hired to pick up the belongings and put them in their storage facility. Luke's will report the gross income for wrapping, packing, and crating James' belongings under the service and other activities B&O tax classification.

(ii) A person engaged in hauling activities may also perform services that are not a part of or are separate from the hauling activity. The gross income from these activities is not subject to the motor or urban transportation PUT, but is instead subject to tax based on the nature of the activity and other provisions of the law.

Example 8. Affordable Hauling and Storage (Affordable) hauls products for hire and also operates a warehouse. Big Manufacturing Company (Big) hires Affordable to pick-up and deliver products to and from Affordable's warehouse for long-term storage. Affordable charges Big for the hauling services as they occur and also separately invoices Big a monthly fee for storing the products. The income from the hauling services is subject to the motor transportation or urban transportation PUT classification, as the case may be. The monthly storage charges are subject to the warehousing B&O tax classification. See WAC 458-20-182 for an explanation of the tax-reporting responsibilities of warehouse businesses.

(c) **Sales, leases, or rentals of tangible personal property by motor carriers.** Persons engaged in either motor or urban transportation may also sell, lease, or rent tangible personal property, such as forklifts or trailers. Gross income from the sale, lease, or rental of tangible personal property without an operator to a consumer, is subject to retailing B&O and retail sales taxes, unless a specific exemption applies. If the sale is a sale for resale, the sale is subject to the wholesaling B&O tax classification. For information regarding the tax reporting responsibilities of persons that lease or rent tangible personal property see WAC 458-20-211.

If the sale, lease, or rental of the property qualifies for one of the retail sales tax exemptions for equipment used in interstate commerce provided by RCW 82.08.0262 or 82.08.0263 (e.g., as may be the case with a trailer used in interstate commerce), the retailing of interstate transportation equipment B&O tax classification applies. Refer to WAC 458-20-174 for information on limited exemptions that may apply to motor carriers operating in interstate or foreign commerce.

(10) **Purchases of tangible personal property.** Persons engaged in the business of motor or urban transportation must pay retail sales tax to their vendors when purchasing motor vehicles, trailers, parts, equipment, tools, supplies, and other tangible personal property for use in conducting their business. Refer to WAC 458-20-174 for limited exemptions that may apply to motor carriers operating in interstate or foreign commerce.

(11) **Purchases made for rental or lease to others.** Persons buying motor vehicles, trailers and similar equipment solely for the purpose of renting or leasing the same without an operator are making purchases for resale. The seller must obtain a copy of the buyer's reseller permit from the buyer to document the wholesale nature of any sale as provided in WAC 458-20-102 Reseller permits.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-01-037, § 458-20-180, filed 12/9/15, effective 1/9/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), and chapter 82.16 RCW. WSR 13-14-121, § 458-20-180, filed 7/3/13, effective 8/3/13. Statutory Authority: RCW 82.32.300. WSR 83-07-033 (Order ET 83-16), § 458-20-180, filed

3/15/83; Order ET 70-3, § 458-20-180 (Rule 180), filed 5/29/70, effective 7/1/70.]

AMENDATORY SECTION (Amending WSR 16-16-003, filed 7/20/16, effective 8/20/16)

WAC 458-20-190 Sales to and by the United States and certain entities created by the United States—Doing business on federal reservations—Sales to foreign governments. (1) **Introduction.** Federal law prohibits states from directly imposing taxes on the United States. Persons doing business with the United States, however, are subject to the taxes imposed by the state of Washington, unless specifically exempt. This rule explains the tax reporting responsibilities of persons making sales to the United States and to foreign governments. The rule also explains the tax reporting responsibilities of persons engaging in business activities within federal reservations and cleaning up radioactive waste and other by-products of weapons production for the United States.

(a) **Other rules that may be relevant.**

(i) WAC 458-20-17001 Government contracting—Construction, installations, or improvements to government real property.

(ii) WAC 458-20-171 Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.

(iii) WAC 458-20-178 Use tax and the use of tangible personal property.

(iv) WAC 458-20-186 Tax on cigarettes.

(b) **Examples.** This rule 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 the facts and circumstances.

(2) **"United States" defined.**

(a) For the purposes of this rule, the term "United States" means the federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity and whether the entity is required to collect and remit retail sales/use tax depends on the benefits and immunities conferred on it by Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

(b) "United States" does not include entities associated with but not a part of the United States, such as the National Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

(3) **Prohibition against taxing the United States.** The state of Washington is prohibited from imposing taxes directly on the United States.

(a) This prohibition applies to taxes imposed for the privilege of engaging in business such as business and occupation (B&O) (chapter 82.04 RCW) and public utility (chapter 82.16 RCW) taxes.

It also applies to taxes imposed on a buyer or user of goods or services including, but not limited to, the:

(i) State and local retail sales and car rental taxes (chapters 82.08 and 82.14 RCW);

(ii) State and local use tax (chapters 82.12 and 82.14 RCW);

(iii) Solid waste collection tax (chapter 82.18 RCW); and

(iv) Local government taxes such as the special hotel/motel (chapter 67.28 RCW) and convention and trade center (chapter 67.40 RCW) taxes.

(b) The state is also prohibited from requiring the United States to collect taxes imposed on the buyer (e.g., the retail sales tax) as an agent for the state. However, buyers must pay use tax on retail purchases from the United States, unless specifically exempt by law.

(c) In addition, federal law exempts certain nongovernmental entities from state taxes (for which Congress has given specific federal statutory tax exemptions). These specific federal statutory exemptions may not be absolute and may be limited to specific activities of an entity.

(d) The American Red Cross is an instrumentality of the United States. As a federal corporation providing aid and relief, it is exempt from retail sales, use, and B&O taxes under state law. RCW 82.08.0258, 82.12.0259, and 82.04.380.

The Red Cross provides some victims of natural disasters assistance by check, voucher, and/or direct deposits to the individuals' personal bank accounts. Assistance may also be provided with "client assistance cards" that may be used by the recipients at locations where bankcards are accepted or at automated teller machines (ATM). The retail sales tax treatment of purchases made using these payment methods is:

(i) Electronic funds transfers and checks. Purchases made by an individual using funds that have been transferred into the individual's bank account or received in the form of a check are subject to retail sales tax in the same manner as any other purchase made by that individual, unless specifically exempt by law.

(ii) Vouchers. A voucher is a certificate issued by the Red Cross to an individual that may be exchanged for a specific good or service. As the goods and services will be paid for directly by the Red Cross, the sales are not subject to retail sales tax. A vendor who accepts a voucher will send it and/or other proof of sale to the Red Cross, which will then send a check to the vendor to pay for the purchase.

(iii) Client assistance cards. Sales to individuals who use client assistance cards issued by the Red Cross, or who pay with cash withdrawn from an ATM using the card, are subject to retail sales tax, unless otherwise exempt from tax. These sales are not direct sales to the federal government or one of its instrumentalities.

(e) The Federal Emergency Management Administration (FEMA) is an agency of the federal government. As a federal corporation providing aid and relief, it is exempt from retail sales, use, and B&O taxes under state law. RCW 82.08.0258, 82.12.0259, and 82.04.380.

FEMA provides some victims of natural disasters assistance by check, voucher, and/or direct deposits to the individuals' personal bank accounts. Assistance may also be provided with emergency debit cards that can be used by the recipients at locations where bankcards

are accepted or at ATMs. The retail sales tax treatment of purchases made using these payment methods is:

(i) Electronic funds transfer and checks. Sales are subject to retail sales tax as described in (d)(i) of this subsection.

(ii) Vouchers. Sales are not subject to retail sales tax. As with the Red Cross, the goods and services will be paid for directly by FEMA. See (d)(ii) of this subsection.

(iii) Emergency debit cards. As with the Red Cross, "client assistance cards" purchases made with these cards, or with cash withdrawn from an ATM using these cards, are subject to retail sales tax. See (d)(iii) of this subsection.

(4) **Persons doing business with the United States.** Persons selling goods or services to the United States are subject to taxes imposed on the seller, such as the B&O and public utility taxes, unless a specific tax exemption applies. Persons receiving income from contracting with the United States government to administer its programs, either in whole or in part, are also subject to tax, unless a specific tax exemption applies.

(a) **Certain invoiced amounts not included in gross income.** Persons who contract with the United States may, for federal accounting purposes, be contractually required to invoice goods or services provided to the United States by third parties. The purpose of the invoices is to match the expenditures with the appropriate category of congressional funding. Amounts received under such invoices should be excluded from the person's gross income when reporting on the excise tax return if all of the following conditions are met with respect to the goods or services:

(i) The third party directly invoices the United States;

(ii) The United States directly pays the third party; and

(iii) The person has no liability, either primarily or secondarily, for making payment to the third party or for remitting payment to the third party.

(b) **Tax obligation with respect to the use of tangible personal property.** Persons performing services for the United States are also subject to the retail sales or use tax on property they use or consume when performing services for the United States, unless specifically exempt.

(i) **Manufacturing articles for commercial or industrial use.** In the case of products manufactured or produced by the person using the products as a consumer, the measure of the use tax is generally the value of the products as explained in WAC 458-20-112. If the articles manufactured or produced by the user are used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of articles used is the value of the ingredients of such articles. The manufacturing B&O tax also applies to the value of articles manufactured for commercial or industrial use.

(ii) **Use of government provided property.** When articles or goods used are acquired by bailment, the measure of the use tax to the bailee is the reasonable rental with the value to be determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. For more information on leases or rentals of tangible personal property see WAC 458-20-211. Thus, if a person has a contract to provide services for the United States and uses government supplied tangible personal property to perform the services, the person must pay use tax on the fair market rental value of the government supplied tangible personal property.

Persons who incorporate government provided articles into construction projects or improvements made to real property of or for the United States should refer to WAC 458-20-17001 for more specific tax-reporting information.

(c) **Exemption for certain machinery and equipment.** Manufacturers or processors for hire may be eligible for the retail sales or use tax exemption provided by RCW 82.08.02565 and 82.12.02565 on machinery and equipment used directly in a manufacturing or research and development operation. For information on the sales and use tax exemptions see WAC 458-20-13601.

(5) **Documenting exempt sales to the United States.** Only sales made directly to the United States are exempt from retail sales tax or other tax imposed on the buyer. To be entitled to the exemption, the purchase must be paid for using a qualified U.S. government credit card, a check from the United States payable to the seller, a United States voucher, or by electronic funds transfer made by the United States.

Sales to employees or representatives of the United States are subject to tax, even though the United States may reimburse the employee or representative for all or a part of the expense. Purchases by any other person, whether with federal funds or through a reimbursement arrangement, are subject to tax unless specifically exempt by law.

(a) **Documenting tax-exempt sales.** Sellers must document the tax-exempt nature of sales made to the United States by keeping a copy of the United States credit card receipt, a copy of the check from the United States, a copy of the federal government voucher, or a copy of documentation clearly indicating payment was made by the United States through electronic funds transfer. For information on how to determine whether purchases made with a U.S. government credit card are exempt from retail sales tax, refer to the department's website at dor.wa.gov.

(b) **Payment made by government contracted credit card.** Various United States government contracted credit cards are used to make payment for purchases of goods and services by or for the United States government. Sole responsibility for payment of these purchases may rest with the United States government or with the employee. The United States government's system of issuing government contracted credit cards is subject to change. For specific information about determining when payment is the direct responsibility of the United States government or the employee, contact the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

or call the department's telephone information center at ((~~1-800-647-7706~~)) 360-705-6705 or visit the department's website at dor.wa.gov.

(6) **Doing business on federal reservations.** The state of Washington has jurisdiction and authority to levy and collect taxes from persons residing within, or with respect to business transactions conducted on, federal reservations. 4 U.S.C. §§ 105-110. The term "federal reservation," as used in this rule, means any land or premises within the exterior boundaries of the state of Washington that are held or acquired by and for the use of the United States, its departments, in-

stitutions or entities. This means that a concessionaire operating within a federal reservation under a grant or permit issued by the United States or by a department or entity of the United States is taxable to the same extent as any private operator engaging in a similar business outside a federal reservation and without specific authority from the United States.

(a) **Sales tax collection requirements.** Persons making retail sales to members of the armed forces or others residing within or conducting business on federal reservations are required to collect and remit retail sales tax from the buyer.

(b) **Cigarette tax stamps.** Washington cigarette tax stamps must generally be affixed to all cigarettes sold to persons residing within or conducting business on federal reservations. However, such stamps need not be affixed to cigarettes sold to the United States or any of its entities including voluntary organizations of military personnel authorized by the Secretary of Defense or the Secretary of the Navy or by the United States or any of its entities to authorized purchasers, for use on such reservation. For additional information on cigarette stamps, rates, and refunds see WAC 458-20-186.

(7) **Sales made to authorized purchasers of the United States.** As explained in subsection (3)(b) of this rule, while sales by the United States are exempt of retail sales tax the purchaser is generally responsible for remitting use tax directly to the department. Federal law prohibits the imposition of use tax on tangible personal property sold to authorized purchasers by the United States, its entities, or voluntary unincorporated organization of armed forces personnel. 4 U.S.C. § 107(a).

(a) **Who is an "authorized purchaser"?** A person is an "authorized purchaser" only with respect to purchases he or she is permitted to make from commissaries, ships' stores, or voluntary unincorporated organizations of personnel of any branch of the armed forces of the United States, under regulations promulgated by the departmental secretary having jurisdiction over such branch. 4 U.S.C. § 107(b).

(b) **What is a "voluntary unincorporated organization"?** "Voluntary unincorporated organizations" are those organizations comprised of armed forces personnel operated under regulations promulgated by the departmental secretary having jurisdiction over such branch. Examples of voluntary unincorporated organizations are post flying clubs, officers or noncommissioned officers open messes, and recreation associations.

(8) **Purchases by persons using federal funds.** Retail sales or use tax applies to retail purchases made by any buyer, other than the United States, including the state of Washington and all of its political subdivisions, irrespective of whether or not the buyer uses or is reimbursed with federal funds, unless the purchase is specifically exempt by law.

(9) **Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.** RCW 82.04.263 provides a preferential tax rate for the gross income derived from cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development. This tax rate applies whether the person performing these activities is a general contractor or subcontractor.

(a) **What activities are entitled to the preferential tax rate?** Only those activities that meet the definition of "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" are entitled to the preferential tax rate.

The statute defines "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" to mean:

(i) The handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, nonradioactive hazardous solid and liquid wastes, or spent nuclear fuel;

(ii) Conditioning of spent nuclear fuel;

(iii) Removing contamination in soils and groundwater;

(iv) Decontaminating and decommissioning of facilities; and

(v) Services supporting the performance of cleanup. A service supports the performance of cleanup if it:

(A) Is within the scope of work under a clean-up contract with the United Stated Department of Energy; or

(B) Assists in the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy under a subcontract entered into with the prime contractor or another subcontractor in furtherance of a clean-up contract between the United States Department of Energy and a prime contractor.

(b) **When does a service not assist in the accomplishment of a requirement of a clean-up project?** Subject to specific exceptions provided by law, a service does not assist in the accomplishment of a clean-up project when the same services are routinely provided to businesses not engaged in clean-up activities.

The following exceptions are always deemed to contribute to the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy:

- Information technology and computer support services;
- Services rendered in respect to infrastructure; and
- Security, safety, and health services.

(c) **Guideline examples.** The following examples are to be used as a guideline when determining whether a service is "routinely provided to businesses not engaged in clean-up activities."

(i) **Accounting services.** The classification does not apply to general accounting services but does apply to performance audits performed for persons cleaning up radioactive waste.

(ii) **Legal services.** The classification does not apply to general legal services but does apply to those legal services that assist in the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy. Thus, legal services provided to contest any local, state, or federal tax liability or to defend a company against worker's compensation claim arising from a worksite injury do not qualify for the classification. However, legal services related to the resolution of contractual dispute between the parties to a clean-up contract between the United States Department of Energy and a prime contractor do qualify.

(iii) **General office janitorial.** General office janitorial services do not qualify for the radioactive waste clean-up classification, but the specialized cleaning of equipment exposed to radioactive waste does qualify.

(d) **Clean-up examples.**

(i) Company C is a land excavation contractor that contracts with Prime Contractor to dig trenches where waste will be reburied after processing. Company C's contract for digging trenches qualifies for the preferential tax rate under RCW 82.04.263 because the activity of digging trenches is one of the physical acts of cleaning up.

(ii) Company D contracts with Company C from the previous example to provide payroll and accounting services. Company D's activity does not qualify for the preferential tax rate under RCW 82.04.263 because the activity of general accounting is not an activity involving the physical act of cleaning up, nor is it a service supporting the performance of cleanup as defined in (a)(v) of this subsection.

(iii) Company E is an environmental engineering company that contracts with Prime Contractor to develop a plan on how best to decontaminate the soil at a tank farm and will monitor the cleanup/decontamination as it progresses. Company E's activities qualify for the preferential tax rate under RCW 82.04.263 because the activities are services supporting the performance of cleanup.

(iv) Company F is a security company that contracts with Prime Contractor to provide overall security to the federal reservation, including providing security at clean-up sites. Security services at clean-up sites are services that support the performance of cleanup.

(e) **Taxability of tangible personal property used or consumed in cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.** Persons cleaning up radioactive waste and other by-products of weapons production and nuclear research and development for the United States, or its instrumentalities, are consumers of any property they use or consume when performing these services. RCW 82.04.190. Therefore, tangible personal property used or consumed in the cleanup is subject to retail sales or use tax. If the seller does not collect retail sales tax on a retail sale, the buyer is required to pay the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically exempt by law. The "excise tax return" 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 excise tax return. For detailed information on the use tax, see WAC 458-20-178.

(10) **Sales to foreign governments or foreign diplomats.** Purchases by foreign governments are not subject to retail sales tax. Documentation, such as purchase orders and receipts, must be maintained by the seller to verify the exempt nature of the sale. Purchases by foreign diplomats are generally not subject to retail sales tax if a valid Diplomatic Tax Exemption Card issued by the United States Department of State is used. For specific information concerning the taxability of sales of goods and services to foreign missions and diplomats, contact the department's taxpayer services division at:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

or call the department's telephone information center at ((~~1-800-647-7706~~)) 360-705-6705 or visit the department's website at dor.wa.gov.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-16-003, § 458-20-190, filed 7/20/16, effective 8/20/16; WSR 10-10-030, § 458-20-190, filed 4/26/10, effective 5/27/10. Statutory Authority: RCW 82.32.300, 82.01.060(1), and 34.05.230. WSR 05-03-002, § 458-20-190, filed 1/5/05, effective 2/5/05. Statutory Authority: RCW 82.32.300. WSR 83-07-033 (Order ET 83-16), § 458-20-190, filed 3/15/83; Order ET

75-1, § 458-20-190, filed 5/2/75; Order ET 70-3, § 458-20-190 (Rule 190), filed 5/29/70, effective 7/1/70.]

AMENDATORY SECTION (Amending WSR 22-24-096, filed 12/6/22, effective 1/6/23)

WAC 458-20-209 Farming for hire and horticultural services performed for farmers. (1) **Introduction.** This rule provides tax reporting information for persons performing horticultural services for farmers. Persons providing horticultural services to persons other than farmers should refer to WAC 458-20-226 (Landscape and horticultural services). Farmers and persons making sales to farmers may also want to refer to the following rules:

(a) WAC 458-20-210 (Sales of tangible personal property for farming—Sales of agricultural products by farmers); and

(b) WAC 458-20-239 (Sales to nonresidents of farm machinery or implements, and related services).

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) "Farmer" means any person engaged in the business of growing, raising, or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product to be sold. "Farmer" does not include a person growing, raising, or producing such 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 or a slaughter or packing house; or a person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213.

(b) "Agricultural product" means 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; 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, or a bird, or insect, or the substances obtained from such an animal. "Agricultural product" does not include animals defined as pet animals under RCW 16.70.020. Effective June 12, 2014, "agricultural product" may not be construed to include cannabis. Cannabis is any product with a THC concentration greater than .3 percent. RCW 82.04.213.

(c) "Horticultural services" include services related to the cultivation of vegetables, fruits, grains, field crops, ornamental floriculture, and nursery products.

(i) The term "horticultural services" includes, but is not limited to, the following:

(A) Soil preparation services such as plowing or weed control before planting;

(B) Crop cultivation services such as planting, thinning, pruning, or spraying; and

(C) Crop harvesting services such as threshing grain, mowing and baling hay, or picking fruit.

(ii) Effective June 12, 2014, horticultural services does not include services related to the cultivation of cannabis. Cannabis is any product with a THC concentration greater than .3 percent.

(3) **Business and occupation (B&O) tax.** Persons performing horticultural services for farmers are generally subject to the service and other business activities B&O tax upon the gross proceeds. However, if the person providing horticultural services also sells tangible personal property for a separate and distinct charge, the charge made for the tangible personal property will be subject to either the wholesaling or retailing B&O tax, depending on the nature of the sale. Persons making sales of tangible personal property to farmers should refer to WAC 458-20-210 to determine whether the wholesaling or retailing tax applies, and under what circumstances retail sales tax must be collected.

(a) A farmer who occasionally assists another farmer in planting or harvesting a crop is generally not considered to be engaged in the business of performing horticultural services. These activities are generally considered to be casual and incidental to the farming activity. For example, a farmer owning baling equipment which is used primarily for baling hay produced by the farmer, but who may occasionally accommodate neighboring farmers by baling small quantities of hay produced by them, is not considered to be in business with respect thereto.

(b) The extent to which horticultural services are performed for others is determinative of whether or not they are considered taxable business activities. Persons who advertise or hold themselves out to the public as being available to perform farming for hire will be considered as being engaged in business. For example, a person who regularly engages in baling hay or threshing grain for others is engaged in business and taxable upon the gross proceeds derived therefrom, irrespective of the amount of such business or that this person also does some farming of his or her own land.

(c) In cases where doubt exists in determining whether or not a person is engaged in the business of performing horticultural services, all pertinent information should be submitted to the department of revenue (department) for a specific ruling. The department may be contacted using the website dor.wa.gov and selecting "contact us"; or by telephone at ((~~1-800-647-7706~~)) 360-705-6705.

(4) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Purchases of machinery, machinery parts and repair, tools, and cleaning materials by persons performing horticultural services are subject to retail sales tax.

(b) Persons taxable under the service and other business activities B&O tax classification are defined as consumers of anything they use in performing their services. (Refer to RCW 82.04.190.) As such, these persons are required to pay retail sales or use tax upon the purchase of all items used in performing the service, such as fertilizers, spray materials, and baling wire, which are not sold separate and apart from the service they perform.

(5) **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) John Doe is a wheat farmer owning threshing equipment which is generally used only for threshing his own wheat. Occasionally a neighbor's threshing equipment may break down and John will use his own equipment to assist the neighbor in completing the neighbor's wheat harvest. While John receives payment for providing the threshing

assistance, this activity is considered to be a casual and isolated sale. John does not hold himself out as being in the business of performing farming (threshing) for hire. John Doe is not considered to be engaging in taxable business activities. The amounts John Doe receives for assisting in the harvest of his neighbors' wheat is not subject to tax.

(b) X Spraying applies fertilizer to orchards owned by Farmer A. The sales invoice provided to Farmer A by X Spraying reflects a "lump sum" amount with no segregation of charges for the fertilizer and the application. When reporting its tax liability, X Spraying would report the total charge under the service B&O tax classification. X Spraying must also remit retail sales or use tax upon the purchase of the fertilizer. The entire amount charged by X Spraying is for horticultural services, and X Spraying is considered the consumer of the fertilizer.

(c) Z Flying aerial sprays pesticides on crops owned by Farmer B. The sales invoice Z Flying provides to Farmer B segregates the charge for the pesticides and the charge for the application. When reporting its tax liability, Z Flying would report the charge for the application under the service B&O tax classification. The charge for the sale of the spray materials is subject to the wholesaling B&O tax provided it is properly documented by a reseller permit. Reseller permits replaced resale certificates effective January 1, 2010. For additional information on reseller permits see WAC 458-20-102. Z Flying's purchase of the pesticides is a purchase for resale and not subject to the retail sales tax. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by Z Flying for five years from the date of last use or December 31, 2014, whichever first occurs.

[Statutory Authority: RCW 82.32.300 and 82.01.060. WSR 22-24-096, § 458-20-209, filed 12/6/22, effective 1/6/23. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 15-01-007, § 458-20-209, filed 12/4/14, effective 1/4/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), chapters 82.04, 82.08, 82.12 and 82.32 RCW. WSR 10-06-070, § 458-20-209, filed 2/25/10, effective 3/28/10. Statutory Authority: RCW 82.32.300. WSR 94-07-050, § 458-20-209, filed 3/10/94, effective 4/10/94; WSR 83-08-026 (Order ET 83-1), § 458-20-209, filed 3/30/83; Order ET 70-3, § 458-20-209 (Rule 209), filed 5/29/70, effective 7/1/70.]

AMENDATORY SECTION (Amending WSR 22-24-096, filed 12/6/22, effective 1/6/23)

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 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 facts and circumstances.

(b) **Other rules that may be relevant.** Farmers and persons making sales to farmers may also want to refer to rules in the following list for additional information:

(i) WAC 458-20-178 Use tax and the use of tangible personal property;

(ii) WAC 458-20-209 Farming for hire and horticultural services performed for farmers;

(iii) WAC 458-20-222 Veterinarians;

(iv) WAC 458-20-239 Sales to nonresidents of farm machinery or implements, and related services;

(v) WAC 458-20-243 Litter tax; and

(vi) WAC 458-20-262 Retail sales and use tax exemptions for agricultural employee housing.

(2) **Who is a farmer?** A "farmer" is any person engaged in the business of growing, raising, or producing, on the person's own lands or on the lands in which the person has a present right of possession, any agricultural product to be sold. Effective July 1, 2015, a "farmer" also includes eligible apiarists that grow, raise, or produce honey bee products for sale, or provide bee pollination services. 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.

(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; 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. Effective July 1, 2015, "agricultural product" includes honey bee products. An "agricultural product" does not include animals defined under RCW 16.70.020 as "pet animals." Effective June 12, 2014, RCW 82.04.213 excludes cannabis from the definition of "agricultural product." Cannabis is any product with a THC concentration greater than .3 percent. RCW 82.04.213.

(4) **Who is an eligible apiarist?** An "eligible apiarist" is a person who owns or keeps one or more bee colonies and who grows, raises, or produces honey bee products for sale at wholesale and is registered under RCW 15.60.021.

(5) **What are honey bee products?** "Honey bee products" are queen honey bees, packaged honey bees, honey, pollen, bees wax, propolis, or other substances obtained from honey bees. "Honey bee products" do not include manufactured substances or articles.

(6) **What is cannabis?** "Cannabis" is any product with a THC concentration greater than .3 percent. For additional information on cannabis see RCW 69.50.101.

(7) **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. Refer to subsection (9) of this rule for information about specific sales tax exemptions available for sales to farmers.

(a) **Documenting wholesale sales.** A seller must take and retain from the buyer a copy of the buyer's reseller permit, or a completed "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 excise tax return 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 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, the farmer must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department. For detailed information regarding use tax see WAC 458-20-178.

The Consumer Use Tax Return may be obtained by calling the department's telephone information center at ((~~1-800-647-7706~~)) 360-705-6705. The return may also be obtained from the department's website at 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, bees, or other 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, sugar, pollen patties, 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. For purposes of this

rule, "seed" does not include seeds or propagative portions of plants used to grow cannabis.

(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, mite, 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.**

(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 agricultural 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 copy of her reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Retail sales tax applies to her purchases of poultry feed, as the poultry 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 copy of their reseller permit, or a completed 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 must pay for the seed whether or not the crop meets the specified standard. The transfer of the possession of the seed to each farmer is a wholesale sale, provided Seed Co. obtains a copy of their reseller permit, or a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions from that farmer.

(d) **Chemical sprays or washes.** Sales of chemical sprays or washes, whether to farmers or other persons, for the purpose of postharvest 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 (7)(i) and (9) 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 who 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 copy of its reseller permit for any part of the purchase. If the buyer principally resells the articles, the buyer may provide a copy of its reseller permit for the entire purchase. For the purposes of this subsection, the term "principally" means greater than 50 percent.

If a buyer makes a purchase for dual purposes and does not give a 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. For additional information regarding purchases for dual purposes and the "taxable amount for tax paid at source" deduction see WAC 458-20-102.

(i) **Potential deferred sales tax liability.** If the buyer gives a 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 (b) of this subsection, 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 50 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 provide a copy of their reseller permit, or a completed 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 that 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. For information regarding the taxability of fruit packing by cooperative marketing as-

sociations and independent dealers acting as agents for others in the sales of fruit and produce see WAC 458-20-214.

(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 and use taxes provided that all requirements for the exemptions are met. RCW 82.08.02565 and 82.12.02565. 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 manufacturing process may be entitled to the M&E exemption on the acquisition of machinery and equipment used directly in their manufacturing operation. For more information on the M&E exemption see WAC 458-20-13601.

(8) **Sales by farmers.** Farmers are not subject to B&O tax on wholesale sales of agricultural products. Effective July 1, 2015, bee pollination services provided to farmers by eligible apiarists also qualify for the exemption provided by RCW 82.04.330. Farmers who manufacture products using agricultural products that they have grown, raised, or produced should refer to (b) of this subsection 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 on the seller's own land or 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 more information about the small business B&O tax credit see WAC 458-20-104.

(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. 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. In addition, 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 more information about the litter tax see chapter 82.19 RCW and WAC 458-20-243.

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 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. Refer to subsection (9)(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. 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.

(i) **Manufacturing fresh fruits and vegetables.** RCW 82.04.4266 provides a B&O tax exemption to persons manufacturing fresh fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables. For purposes of this rule, "fruits" and "vegetables" does not include cannabis.

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 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 tax performance report with the department under RCW 82.32.534. In addition, persons claiming this tax preference must report the amount of the exemption on their monthly or quarterly excise tax return. For more information on reporting requirements for this tax preference see RCW 82.32.808.

(B) RCW 82.04.4266 is scheduled to expire July 1, 2025, at which time the preferential B&O tax rate under RCW 82.04.260 will apply.

(ii) **Manufacturing dairy products.** RCW 82.04.4268 provides a B&O tax exemption to persons manufacturing dairy products, not including any cannabis-infused product, that as of 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.

The exemption also applies to persons selling manufactured dairy products to purchasers who transport the goods out of Washington state in the ordinary course of business. Unlike the exemption for certain wholesale sales of fresh fruits or vegetables (see (b)(i) of this subsection), the exemption for sales of qualifying dairy products does not require that the sales be made 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 tax performance report with the department under RCW 82.32.534. In addition, persons claiming this tax preference must report the amount of the exemption on their monthly or quarterly excise tax return. For more information on reporting requirements for this tax preference see RCW 82.32.808.

(B) RCW 82.04.4268 is scheduled to expire July 1, 2025, 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 70 percent dairy products measured by weight or volume.

(c) **Raising cattle for wholesale sale.** RCW 82.04.330 provides a B&O tax exemption to persons who raise cattle for wholesale sale provided that the cattle are held for at least 60 days prior to the sale. Persons who hold cattle for fewer than 60 days before reselling the cattle are not considered to be engaging in the normal activities of growing, raising, or producing livestock for sale.

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 for at least 60 days while they were prepared for market. However, the feedlot operator is subject to wholesaling B&O tax on wholesale sales of cattle held for fewer than 60 days prior to the sale.

(d) **B&O tax exemptions available to farmers.** In addition to the exemption for wholesale sales of agricultural products, several other B&O tax exemptions available to farmers 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.

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 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 for at least 60 days. Farmers are not considered to be engaging in the activity of raising cattle for sale unless the cattle are held for at least 60 days while the cattle are prepared for market. (See (c) of this subsection.)

(ii) **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 warehouser of such products is not exempt on amounts charged for processing or warehousing such products.

(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.

(9) **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. Refer to subsection (10) of this rule for additional information regarding exemption certificates.

(a) **Pollen.** RCW 82.08.0277 and 82.12.0273 exempt the sale and use of pollen from retail sales and use taxes.

(b) **Semen.** RCW 82.08.0272 and 82.12.0267 exempt the sale and use of semen used in the artificial insemination of livestock from retail sales and use taxes.

(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 from retail sales and use taxes.

(d) **Food products.** RCW 82.08.0293 and 82.12.0293 exempt the sale and use of food products for human consumption from retail sales and use taxes. These exemptions also apply to the sale or use of livestock for personal consumption as food. For more information about food products that qualify for this exemption see 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 tangible personal property, including household goods, which has been used in conducting a farm activity, if the property is purchased from a farmer, as defined in RCW 82.04.213, at an auction sale held or conducted by an auctioneer on a farm. Effective June 12, 2014, these exemptions do not apply to personal property used by a person in the production of cannabis.

(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.

Example 8. A poultry hatchery produces poultry from eggs. The resulting poultry are sold to egg producers. These sales are exempt from retail sales tax under RCW 82.08.0267. (They are also exempt from B&O tax. See subsection (8)(d)(iii) of this rule.)

(g) **Leases of irrigation equipment.** 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;

(iv) Effective June 12, 2014, the irrigation equipment is not used in the production of cannabis; and

(v) 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.

(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, from retail sales and use taxes.

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. John's sales of beef and dairy 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 (d) of this subsection, or the exemption for sales of livestock for breeding purposes described in this subsection (9)(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 from retail sales and use taxes.

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 and retains 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 the sale to and use of bedding materials by farmers to accumulate and facilitate the removal of chicken manure, provided the farmer is raising chickens that are sold as agricultural products.

(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 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 as long as Farmer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. See subsection (10) of this rule for where to find an exemption certificate. The seller must retain a copy of the exemption certificate for its records.

The 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 the sale to and use of propane or natural gas 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.

(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 as long as Farmer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. See subsection (10) of this rule for where to find an exemption certificate. The seller must retain a copy of the exemption certificate for its records.

The 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 (10) of this rule for where to find an exemption certificate. 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 used in distilling mint on a farm.** Effective October 1, 2013, RCW 82.08.220 and 82.12.220 exempt from retail sales and use taxes sales to and use by farmers of propane or natural gas 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 the exemption certificate for its records. See subsection (10) of this rule for where to find an exemption certificate. 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) **Nutrient management equipment and facilities.** RCW 82.08.890 and 82.12.890 provide retail sales and use tax exemptions for 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 (9)(m)(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 qualifies for the exemption provided under RCW 82.08.855. Effective June 12, 2014, the requirement for the department to issue exemption certificates was removed. A Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions should be completed and provided to the seller.

(vi) **Definitions. For the purpose 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 45 days or more in any 12-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, as required by chapter 90.64 RCW; 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 qualifies for the exemption provided 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 dry storage of manure, including roofed stacking facilities.

(n) **Anaerobic digesters (effective July 1, 2018).**

(i) RCW 82.08.900 and 82.12.900 provide retail sales and use tax exemptions for purchases and uses by eligible persons:

(A) In respect to equipment necessary to process biogas from a landfill into marketable coproducts including, but not limited to, biogas conditioning, compression, and electrical generation equipment, or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving equipment necessary to process biogas from a landfill into marketable coproducts; and

(B) 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. Anaerobic digester means a facility that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container as well as the equipment necessary to process biogas or digestate produced by an anaerobic digester into marketable coproducts including, but not limited to, biogas conditioning, compression, nutrient recovery, and electrical generation equipment.

(ii) **Exemption certificate.** Effective July 24, 2015, eligible persons no longer need to apply for an exemption certificate. An "eligible person" is any person establishing or operating an anaerobic digester or landfill or processing biogas from an anaerobic digester or landfill into marketable coproducts.

(iii) **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. Sellers may make tax exempt sales only if the buyer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions, and the seller retains a copy of the certificate for its files. See subsection (10) of this rule for where to find an exemption certificate.

(o) **Anaerobic digesters (effective until July 1, 2018).** 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 50 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.** Effective July 24, 2015, eligible persons no longer need to apply for an exemption certificate. 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. Sellers may make tax exempt sales only if the buyer provides the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions, and the seller retains a copy of the certificate for its files. See subsection (10) of this rule for where to find an exemption certificate.

(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 when sold to, or used by, farmers or veterinarians. To qualify for the exemption, the animal pharmaceutical must be administered to an animal raised by a farmer for the purpose of producing an agricultural product for sale. In addition, the animal pharmaceutical must be approved by the United States Department of Agriculture (USDA) or the United States Food and Drug Administration (FDA).

(i) **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.

(iv) **What type of animal must the pharmaceutical be administered to?** As explained above, the exemptions are limited to the sale 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.** 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.** 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 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) 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 in-

gredient 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, and effective July 1, 2015, providing bee pollination services, or both.

(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 (p) of this subsection.

(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.

(A) Persons claiming the exemptions must keep records necessary for the department to verify eligibility. Sellers making tax-exempt sales must obtain, and retain in its files, a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions from the farmer. In lieu of the exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement.

(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.

(10) **Sales tax exemption certificates.** As indicated in subsection (9) 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. Effective June 12, 2014, the requirement for the department to issue certificates to qualified farmers was removed. Instead, farmers may complete and use the department's Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Refer to the department's website 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.

[Statutory Authority: RCW 82.32.300 and 82.01.060. WSR 22-24-096, § 458-20-210, filed 12/6/22, effective 1/6/23. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 19-02-057, § 458-20-210, filed 12/27/18, effective 1/27/19. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.534, 82.32.585, 82.32.590, 82.32.600, 82.32.605, 82.32.607, 82.32.710, 82.32.790, 82.32.808, 82.04.240, 82.04.2404, 82.04.260, 82.04.2909, 82.04.426, 82.04.4277, 82.04.4461, 82.04.4463, 82.04.448, 82.04.4481, 82.04.4483, 82.04.449, 82.08.805, 82.08.965, 82.08.9651, 82.08.970, 82.08.980, 82.08.986, 82.12.022, 82.12.025651, 82.12.805, 82.12.965, 82.12.9651, 82.12.970, 82.12.980, 82.16.0421, 82.29A.137, 82.60.070, 82.63.020, 82.63.045, 82.74.040, 82.74.050, 82.75.040, 82.75.070, 82.82.020, 82.82.040, 84.36.645, and 84.36.655. WSR 18-13-094, § 458-20-210, filed 6/19/18, effective 7/20/18. Statutory Authority: RCW 82.32.300, 82.01.060(2), 2015 3rd sp.s. c 6 part XI and 2015 c 86 § 202. WSR 16-03-002, § 458-20-210, filed 1/6/16, effective 2/6/16. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 15-01-007, § 458-20-210, filed 12/4/14, effective 1/4/15; WSR 14-14-091, § 458-20-210, filed 6/30/14, effective 7/31/14. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 34.05.230. WSR 03-18-024, § 458-20-210, filed 8/25/03, effective 9/25/03. Statutory Authority: RCW 82.32.300. WSR 94-07-048, § 458-20-210, filed 3/10/94, effective 4/10/94; WSR 86-21-085 (Order ET 86-18), § 458-20-210, filed 10/17/86; WSR 86-07-005 (Order ET 86-3), § 458-20-210, filed 3/6/86; WSR 83-08-026 (Order ET 83-1), § 458-20-210, filed 3/30/83. Statutory Authority: RCW 82.01.060(2) and 82.32.300. WSR 78-07-045 (Order ET 78-4), § 458-20-210, filed 6/27/78; Order ET 70-3, § 458-20-210 (Rule 210), filed 5/29/70, effective 7/1/70.]

AMENDATORY SECTION (Amending WSR 16-13-039, filed 6/7/16, effective 7/8/16)

WAC 458-20-228 Returns, payments, penalties, extensions, interest, stays of collection. (1) **Introduction.** This rule discusses the responsibility of taxpayers to pay their tax by the appropriate due date, and the acceptable methods of payment. It discusses the interest and penalties that are imposed by law when a taxpayer fails to pay the correct amount of tax by the due date. It also discusses the circumstances under which the law allows the department of revenue (department) to waive interest or penalties.

(a) **Where can I get my questions answered, or learn more about what I owe and how to report it?** Washington's tax system is based largely on voluntary compliance. Taxpayers have a legal responsibility to become informed about applicable tax laws, to register with the department, to seek instruction from the department, to file accurate returns, and to pay their tax liability in a timely manner (chapter 82.32A RCW, Taxpayer rights and responsibilities). The department has a taxpayer services program to provide taxpayers with accurate tax-reporting assistance and instructions. The department staffs local district offices, maintains a ((~~toll-free~~)) question and information phone line (((~~1-800-647-7706~~)) 360-705-6705), provides information and electronic forms on the internet (http://dor.wa.gov), and conducts free public workshops on tax reporting. The department also publishes notices, interpretive statements, and rules discussing important tax issues and changes.

(b) **What is electronic filing (or e-file), and how can it help me?** E-file is an internet-based application that provides a secure and encrypted way for taxpayers to file and pay many of Washington state's business related excise taxes online. The e-file system automatically performs math calculations and checks for other types of reporting errors. **Using e-file to file electronically will help taxpayers avoid penalties and interest related to unintentional underpayments and delinquencies.** E-file can be accessed on the department's internet site http://dor.wa.gov. Open the page for electronic filing. The page contains additional links to pages answering frequently asked questions, and explains the registration process for e-file. Taxpayers may also call the department's toll-free electronic filing help desk for more information, during regular business hours.

All taxpayers are required to electronically file and electronically pay their taxes unless the department waives the requirement for good cause, or the taxpayer has an assigned reporting frequency that is less than quarterly. The requirement for electronic filing and payment also includes taxpayers who once met the criteria for being assigned to a monthly reporting frequency, but whom since have been authorized by the department to file and remit taxes on a less frequent basis. For more detailed information on the requirement and exceptions for electronic filing (e-file) and electronic payment (e-pay), see WAC 458-20-22802 (Electronic filing and payment).

(c) **Index of subjects addressed in this rule:**

Topic—Description	See subsection
Where can I get my questions answered, or learn more about what I owe and how to report it? - By phone or online, the department provides a number of free and easy resources to help you find answers.	(1)(a) of this rule, (see above)
What is electronic filing (or e-file), and how can it help me? - E-filing guides you through the return and helps you avoid many common mistakes.	(1)(b) of this rule, (see above)
Do I need to file a return? - How do I access returns and file them?	(2) of this rule
What methods of payment can I use? - What can I use to pay my taxes?	(3) of this rule
When is my tax payment due? - Different reporting frequencies can have different due dates. What if the due date is a weekend or a holiday? If my payment is in the mail on the due date, am I late or on time?	(4) of this rule
Penalties - What types of penalty exist? How big are they? When do they apply?	(5) of this rule
Statutory restrictions on imposing penalties - More than one penalty can apply at the same time, but there are restrictions. Which penalties can be combined?	(6) of this rule
Interest - In most cases interest is required. What interest rates apply? How is interest applied?	(7) of this rule

Topic—Description	See subsection
Application of payment towards liability - Interest, penalties, and taxes are paid in a particular order. If my payment doesn't pay the entire liability, how can I determine what parts have been paid?	(8) of this rule
Waiver or cancellation of penalties - I think I was on time, or I had a good reason for not paying the tax when I should have. What reasons qualify me for a waiver of penalty? How can I get a penalty removed?	(9) of this rule
Waiver or cancellation of interest - Interest will only be waived in two limited situations. What are they?	(10) of this rule
Interest and penalty waiver for active duty military personnel - Is a majority owner of the business on active duty with the military? BOTH interest and penalty can be waived if all the statutory requirements are met. What are the requirements?	(11) of this rule
Stay of collection - Revenue will sometimes temporarily delay collection action on unpaid taxes. When can this happen? Can I request that revenue delay collection?	(12) of this rule
Extensions - Can I get an extension of my due date? How long does an extension last? A special extension may be available if the governor proclaims a state of emergency in your area.	(13) of this rule

(2) **Do I need to file a return?** A "return" is defined as any paper or electronic document a person is required to file by the state of Washington in order to satisfy or establish a tax or fee obligation which is administered or collected by the department, and that has a statutorily defined due date. RCW 82.32.045.

(a) Electronic returns and payments are to be filed with the department by every person liable for any tax which the department administers and/or collects, except for the taxes imposed under chapter 82.24 RCW (Tax on cigarettes), which are collected through sales of revenue stamps. Returns must be filed through the electronic filing (e-file) system (see subsection (1)(b) of this rule), or by other means if approved by the department.

E-file taxpayers do not receive paper returns. However, if an e-file taxpayer specifically requests it, the department will send an electronic reminder for each upcoming return as the time to file approaches.

(b) Taxpayers whose accounts are placed on an "active nonreporting" status do not automatically receive a tax return and must request a return, or register to file by e-file, if they no longer qualify for this reporting status. (See WAC 458-20-101, Tax registration, for an explanation of the active nonreporting status.)

(c) Some consumers may not be required to register with the department and obtain a tax registration endorsement. (Refer to WAC 458-20-101 for detailed information about tax registration and when it is required.) But even if they do not have to be registered, consumers

may be required to pay use tax directly to the department if they have purchased items without paying Washington's sales tax. An unregistered consumer must report and pay their use tax liability directly to the department. Use tax can be reported and paid on a "Consumer Use Tax Return" or the consumer can create an online account at the department's website to conveniently report and pay use tax electronically. Consumer use tax returns are available from the department at any of the local district offices. A consumer may also call the department's ((~~toll free number 1-800-647-7706~~)) telephone information center at 360-705-6705 to request a consumer use tax return by fax or mail. Finally, the consumer use tax return is available for download from the department's internet site at http://dor.wa.gov, along with a number of other returns and forms which are available there.

The interest and penalty provisions of this rule may apply if use tax is not paid on time. Unregistered consumers should refer to WAC 458-20-178 (Use tax) for an explanation of their tax reporting responsibilities.

(3) **What methods of payment can I use?** The law requires taxpayers to file and pay their taxes electronically. There are two electronic payment methods: Electronic funds transfer (EFT) and credit card. The department may waive the electronic payment requirement for any taxpayer or class of taxpayers, for good cause or for whom the department has assigned a reporting frequency that is less than quarterly. Waivers may be temporary or permanent, and may be made on the department's own motion. (See WAC 458-20-22802 for more information on electronic filing and payment.)

(a) For taxpayers not required to pay electronically, payment may be made by cash, check, cashier's check, or money order.

(b) Payment by cash should only be made at an office of the department to ensure that the payment is safely received and properly credited.

(c) Payment may be made by uncertified bank check, but if the check is not honored by the financial institution on which it is drawn, the taxpayer remains liable for the payment of the tax, as well as any applicable interest and penalties. RCW 82.32.080. The department may refuse to accept any check which, in its opinion, would not be honored by the financial institution on which that check is drawn. If the department refuses a check for this reason the taxpayer remains liable for the tax due, as well as any applicable interest and penalties.

(4) **When is my tax payment due?** RCW 82.32.045 provides that payment of the taxes due with the excise tax return must be made monthly and within ((~~twenty-five~~)) 25 days after the end of the month in which taxable activities occur, unless the department assigns the taxpayer a longer reporting frequency. Payment of taxes due with returns covering a longer reporting frequency is due on or before the last day of the month following the period covered by the return. (For example, payment of the tax liability for a first quarter tax return is due on April 30th.) WAC 458-20-22801 (Tax reporting frequency—Forms) explains the department's procedure for assigning a quarterly or annual reporting frequency.

(a) If the date for payment of the tax due on a tax return falls upon a Saturday, Sunday, or legal holiday, the filing will be considered timely if performed on the next business day. RCW 1.12.070 and 1.16.050.

(b) When a taxpayer is not required to electronically file and pay taxes and chooses to file or pay taxes through the U.S. Postal Service, the postmark date as shown by the post office cancellation mark stamped on the envelope will be considered conclusive evidence by the department in determining if a tax return or payment was timely filed or received. RCW 1.12.070. It is the responsibility of the taxpayer to mail the tax return or payment sufficiently in advance of the due date to assure that the postmark date is timely.

(c) Taxpayers required to file and pay taxes electronically should refer to WAC 458-20-22802 (Electronic filing and payment) for more information regarding electronic filing (e-file), electronic payment (e-pay) due dates, and when electronic payments are considered received.

(d) If a taxpayer suspects that it will not be able to file and pay by the coming due date, it may be able to obtain an extension of the due date to temporarily avoid additional penalties. Refer to subsection (12) of this rule for details on requesting an extension.

(5) **Penalties.** Various penalties may apply as a result of the failure to correctly or accurately compute the proper tax liability, or to timely pay the tax. Separate penalties may apply and be cumulative for the same tax. Interest may also apply if any tax has not been paid when it is due, as explained in subsection (7) of this rule. (The department's electronic filing system (e-file) can help taxpayers avoid additional penalties and interest. See subsection (1)(b) of this rule for more information.)

The penalty types and rates addressed in this subsection are:

Penalty Type—Description	Penalty Rate	See subsection
Late payment of a return - Nine percent added when payment is not received by the due date, and increases if the tax due remains unpaid.	9/19/29%	(5)(a) of this rule
Unregistered taxpayer - Five percent added against unpaid tax when revenue discovers a taxpayer who has taxable activity but is not registered.	5%	(5)(b) of this rule
Assessment - Five percent added when a tax assessment is issued if the tax was "substantially underpaid," and increases if the tax due remains unpaid.	5/15/25% or 0/15/25%	(5)(c) of this rule
Issuance of a warrant - Ten percent added when a warrant is issued to collect unpaid tax, and does not require actual filing of a lien.	10%	(5)(d) of this rule
Disregard of specific written instructions - Ten percent added when the department has provided specific, written reporting instructions and tax is underpaid because the instructions are not followed.	10%	(5)(e) of this rule

Penalty Type—Description	Penalty Rate	See subsection
Evasion - Fifty percent added when tax is underpaid and there is an intentional effort to hide that fact.	50%	(5)(f) of this rule
Misuse of resale certificates or a reseller permit - Fifty percent added against unpaid sales tax when a buyer uses a resale certificate or reseller permit, but should not have.	50%	(5)(g) of this rule
Failure to remit sales tax to seller - Ten percent added against sales tax when the department proceeds directly against a buyer who fails to pay sales tax to the seller as part of a sales taxable retail purchase.	10%	(5)(h) of this rule
Failure to obtain the contractor's unified business identifier (UBI) number - A two hundred fifty dollar maximum penalty (does not require any tax liability) when specified businesses hire certain contractors but do not obtain and keep the contractor's UBI number.	$250 (max)	(5)(i) of this rule
Disregarded transaction - A thirty-five percent penalty of the additional tax found to be due as a result of engaging in a disregarded transaction.	35%	(5)(j) of this rule

(a) **Late payment of a return.** RCW 82.32.090(1) imposes a nine percent penalty if the tax due on a taxpayer's return is not paid by the due date. A total penalty of ((~~nineteen~~)) 19 percent is imposed if the tax due is not paid on or before the last day of the month following the due date, and a total penalty of ((~~twenty-nine~~)) 29 percent is imposed if the tax due is still not paid on or before the last day of the second month following the due date. The minimum penalty for late payment is five dollars.

Various sets of circumstances can affect how the late payment of a return penalty is applied. See (a)(i) through (iii) of this subsection for some of the most common circumstances.

(i) **Will I avoid the penalty if I file my return without the payment?** The department may refuse to accept any return that is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. RCW 82.32.080. Failure to file the return can result in the issuance of an assessment for the actual, or an estimated, amount of unpaid tax. Any assessment issued may include an assessment penalty. (See RCW 82.32.100 and (c) of this subsection for details of when and how the assessment penalty applies.) If the tax return is accepted without payment and payment is not made by the due date, the late payment of return penalty will apply.

(ii) **What if my account is given an active nonreporting status, but I later have taxes I need to report and pay?** WAC 458-20-101 pro-

vides information about the active nonreporting status available for tax reporting accounts. In general, the active nonreporting status allows persons, under certain circumstances, to engage in business activities subject to the Revenue Act without filing excise tax returns. Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities no longer meet the conditions to be in active nonreporting status. One of the conditions is that the person is not required to collect or pay a tax the department is authorized to collect. The late payment of return penalty will be imposed if a person on active nonreporting status incurs a tax liability that is not paid by the due date for taxpayers that are on an annual reporting basis (i.e., the last day of January next succeeding the year in which the tax liability accrued).

(iii) **I didn't register my business with the department when I started it, and now I think I was supposed to be paying taxes! What should I do?** You should fill out and send in a business license application to get your business registered. It is important for you to register before the department identifies you as an unregistered taxpayer and contacts you about your business activities. (WAC 458-20-101 provides information about registering your business.) Except as noted below, if a person engages in taxable activities while unregistered, but then registers prior to being contacted by the department, the registration is considered voluntary. When a person voluntarily registers, the late payment of return penalty does not apply to those specific tax-reporting periods representing the time during which the person was unregistered.

(A) However, even if the person has voluntarily registered as explained above, the late payment of return penalty will apply if the person:

(I) Collected retail sales tax from customers and failed to remit it to the department; or

(II) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or

(III) Engaged in taxable business activities during a period of time in which the person's previously open tax reporting account had been closed.

(B) Even though other circumstances may warrant retention of the late payment of return penalty, if a person has voluntarily registered, the unregistered taxpayer penalty (see (b) of this subsection) will not be due.

(b) **Unregistered taxpayer.** RCW 82.32.090(4) imposes a five percent penalty on the tax due for any period of time where a person engages in a taxable activity and does not voluntarily register prior to being contacted by the department. "Voluntarily register" means to properly complete and submit a master application to any agency or entity participating in the unified business identifier (UBI) program for the purpose of obtaining a UBI number, all of which is done before any contact from the department. For example, if a person properly completes and submits a business license application to the department of labor and industries for the purpose of obtaining a UBI number, and this is done prior to any contact from the department of revenue, the department considers that person to have voluntarily registered. A person has not voluntarily registered if a UBI number is obtained by any means other than submitting a properly completed business license application. WAC 458-20-101 (Tax registration and tax reporting) provides additional information regarding the UBI program.

(c) **Assessment.** If the department issues an assessment for substantially underpaid tax, a five percent penalty will be added to the assessment when it is issued. If any tax included in the assessment is not paid by the due date, or by any extended due date, the penalty will increase to a total of ((~~fifteen~~)) 15 percent against the amount of tax that remains unpaid. If any tax included in the assessment is not paid within ((~~thirty~~)) 30 days of the original or extended due date, the penalty will further increase to a total of ((~~twenty-five~~)) 25 percent against the amount of tax that remains unpaid. The minimum for this penalty is five dollars. RCW 82.32.090(2).

(i) As used in this rule, "substantially underpaid" means that:

(A) The taxpayer has paid less than ((~~eighty~~)) 80 percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination; and

(B) The amount of underpayment is at least ((~~one thousand dollars~~)) $1,000. If both of these conditions are true when an assessment is issued, it will include the initial five percent assessment penalty. If factual adjustments are made after issuance of an assessment, and those adjustments change whether a taxpayer paid less than ((~~eighty~~)) 80 percent of the tax due, the department will reevaluate imposition of the original five percent penalty.

(ii) If the initial five percent assessment penalty is included with an assessment when it is issued, the penalty is calculated against the total amount of tax that was not paid when originally due and payable (see RCW 82.32.045). Audit payments made prior to issuance of an assessment will be applied to the assessment after calculation of the initial five percent assessment penalty. At the discretion of the department, preexisting credits or amendments paid prior to an audit or unrelated to the scope of the assessment may be applied before the five percent assessment penalty is calculated, reducing the amount of the penalty. Additional assessment penalty is assessed against the amount of tax that remains unpaid at that particular time, after payments are applied to the assessment.

(d) **Issuance of a warrant.** If the department issues a tax warrant for the collection of any fee, tax, increase, or penalty, an additional penalty will immediately be added in the amount of ((~~ten~~)) 10 percent of the amount of the tax due, but not less than ((~~ten dollars~~)) $10.00. RCW 82.32.090(3). Refer to WAC 458-20-217 for additional information on the application of warrants and tax liens.

(e) **Disregard of specific written instructions.** If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, an additional penalty of ((~~ten~~)) 10 percent of the additional tax found due will be imposed because of the failure to follow the instructions. RCW 82.32.090(5).

(i) **What is "disregard of specific written instructions"?** A taxpayer is considered to have received specific written instructions when the department has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in this penalty being imposed. The specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement. The penalty applies when a taxpayer does not follow the specific written instructions, resulting in underpayment of the tax due. The penalty may be applied only against the taxpayer given the specific written instructions. However, the taxpayer will not be considered to have dis-

regarded the instructions if the taxpayer has appealed the subject matter of the instructions and the department has not issued its final instructions or decision.

(ii) **What if I try to follow the written instructions, but I still don't get it quite right?** The penalty will not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.

(f) **Evasion.** If the department finds that all or any part of the deficiency resulted from an intent to evade the tax due, a penalty of ((~~fifty~~)) 50 percent of the additional tax found to be due will be added. RCW 82.32.090(7). The evasion penalty is imposed when a taxpayer knows a tax liability is due but attempts to escape detection or payment of the tax liability through deceit, fraud, or other intentional wrongdoing. An intent to evade does not exist where a deficiency is the result of an honest mistake, miscommunication, or the lack of knowledge regarding proper accounting methods. The department has the burden of showing the existence of an intent to evade a tax liability through clear, cogent and convincing evidence.

(i) **Evasion penalty only applies to the specific taxes that a taxpayer intended to evade.** To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently underpaid. For example, if the department finds that the taxpayer intentionally understated the purchase price of equipment in reporting use tax and also inadvertently failed to collect or remit the sales tax at the correct rate on retail sales of merchandise, the evasion penalty will be added only to the use tax deficiency and not the sales tax.

(ii) **What actions may establish an intent to evade?** The following is a nonexclusive list of actions that are generally considered to establish an intent to evade a tax liability. This list should only be used as a general guide. A determination of whether an intent to evade exists may be ascertained only after a review of all the facts and circumstances.

(A) The use of an out-of-state address by a Washington resident to register property to avoid a Washington excise or use tax, when at the time of registration the taxpayer does not reside at the out-of-state address on a more than temporary basis. Examples of such an address include, but are not limited to, the residence of a relative, mail forwarding or post office box location, motel, campground, or vacation property;

(B) The willful failure of a seller to remit retail sales taxes collected from customers to the department; and

(C) The alteration of a purchase invoice or misrepresentation of the price paid for property (e.g., a used vehicle) to reduce the amount of tax owing.

(g) **Misuse of resale certificates, reseller permits, and other documents.** Any buyer who uses a resale certificate, a reseller permit, or other documentation authorized under RCW 82.04.470, to purchase items or retail services without payment of sales tax, and who is not entitled to use the certificate, permit, or other documentation for the purchase, will be assessed a penalty of ((~~fifty~~)) 50 percent of the tax due. RCW 82.32.291. The penalty can apply even if there was no intent to evade the payment of the tax. For more information concerning this penalty or the proper use of resale certificates, reseller permits, and other documentation, refer to WAC 458-20-102 (Resale certificates).

(h) **Failure to remit sales tax to seller.** The department may assert an additional ((~~ten~~)) 10 percent penalty against a buyer who has failed to pay the seller the retail sales tax on taxable purchases, if the department proceeds directly against the buyer for the payment of the tax. This penalty is in addition to any other penalties or interest prescribed by law. RCW 82.08.050.

(i) **Failure to obtain the contractor's unified business identifier (UBI) number.** If a person who is liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW contracts with another person or entity for work subject to chapter 18.27 RCW (Registration of contractors) or chapter 19.28 RCW (Electricians and electrical installations), that person must obtain and preserve a record of the UBI number of the person or entity performing the work. A person failing to do so is subject to the public works contracting restrictions in RCW 39.06.010 (Contracts with unregistered or unlicensed contractors prohibited), and a penalty determined by the director, but not to exceed ((~~two hundred and fifty dollars~~)) $250. RCW 82.32.070(2).

(j) **Engaging in disregarded transactions.** RCW 82.32.090 imposes a ((~~thirty-five~~)) 35 percent penalty for engaging in a disregarded transaction as defined in RCW 82.32.655(3). See RCW 82.32.090(6), 82.32.655, and 82.32.660.

(6) **Statutory restrictions on imposing penalties.** Depending on the circumstances, the law may impose more than one type of penalty on the same tax liability. However, those penalties are subject to the following restrictions:

(a) The penalties imposed for the late payment of a return, unregistered taxpayer, assessment, and issuance of a warrant (see subsection (5)(a) through (d) of this rule) may be applied against the same tax concurrently, each unaffected by the others, up to their combined maximum rates. Application of one or any combination of these penalties does not prohibit or restrict full application of other penalties authorized by law, even when they are applied against the same tax. RCW 82.32.090(8).

(b) The department may impose either the evasion penalty (subsection (5)(f) of this rule) or the penalty for disregarding specific written instructions (subsection (5)(e) of this rule), but may not impose both penalties on the same tax. RCW 82.32.090(9). The department also will not impose the penalty for the misuse of a resale certificate (subsection (5)(g) of this rule) in combination with either the evasion penalty or the penalty for disregarding specific written instructions on the same tax.

(c) The penalty provided in subsection (5)(j) of this rule may be assessed together with any other applicable penalties provided in this rule on the same tax found to be due, except for the evasion penalty provided in subsection (5)(f) of this rule.

(7) **Interest.** The department is required by law to add interest to assessments for tax deficiencies and overpayments. RCW 82.32.050 and 82.32.060. Interest accrued against an underpayment only applies to underpaid tax. (Refer to WAC 458-20-229 for a discussion of interest as it relates to refunds and WAC 458-20-230 for a discussion of the statute of limitations as applied to interest.)

(a) For interest imposed after December 31, 1998, interest will be added from the last day of the month following each calendar year included in a notice, or the last day of the month following the final month included in a notice if not the end of the calendar year, until the due date of the notice. However, for 1998 taxes only, interest may not begin to accrue any earlier than February 1, 1999, even if the

last period included in the notice is not at the end of calendar year 1998. If payment in full is not made by the due date of the notice, additional interest will be due until the date of payment. The rate of interest continues at the annual variable interest rates described below in (c) of this subsection.

(b) **How is interest applied to an assessment that includes underpaid tax from multiple years?** The following is an example of how the interest provisions apply. Assume that a tax assessment is issued with a due date of June 30, 2010. The assessment includes periods from January 1, 2008, through September 30, 2009.

(i) For calendar year 2008 tax, interest begins February 1, 2009, (from the last day of the month following the end of the calendar year). When the assessment is issued interest is computed through June 30, 2010, (the due date).

(ii) For the 2009 tax period ending with September 30, 2009, interest begins November 1, 2009, (from the last day of the month following the last month included in the assessment period). When the assessment is issued interest is computed through June 30, 2010, (the due date).

(iii) Interest will continue to accrue on any portion of the assessed taxes which remain unpaid after the due date, until the date those taxes are paid.

(c) **How is each year's interest rate determined?** The annual variable interest rate will be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate for each new year will be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. The average is calculated using the federal short-term rates from January, April, July of the calendar year immediately preceding the new year, and October of the previous preceding year, as published by the United States Secretary of the Treasury. The interest rate will be adjusted on the first day of January of each year.

(d) **How is the interest applied if an assessment includes some years that are underpaid and some that are overpaid?** If the assessment contains tax deficiencies in some years and overpayments in other years with the net difference being a tax deficiency, the interest rate for tax deficiencies will also be applied to the overpayments. (Refer to WAC 458-20-229 for interest on refunds.)

(8) **Application of payment towards liability.** The department will apply taxpayer payments in the following order:

- Interest((~~,~~));
- Penalties((~~,~~));
- Fees((~~,~~));
- Other nontax amounts((~~,~~));
- Tax, except spirits tax((~~,~~));
- Spirits tax((~~,~~));

without regard to any direction of the taxpayer. RCW 82.32.080.

In applying a partial payment to a tax assessment, the payment will first be applied against the oldest tax liability. For purposes of RCW 82.32.145 (Limited liability business entity – Terminated, dissolved, abandoned, insolvent – Collection of unpaid trust fund taxes), it will be assumed that any payments applied to the tax liability will be first applied against any retail sales tax liability, and then to other trust fund tax liabilities. For example, an audit assessment is issued covering a period of two years, which will be referred to as "YEAR 1" (the earlier year) and "YEAR 2" (the most recent year). The tax

assessment includes total interest and penalties for YEAR 1 and YEAR 2 of ((~~five hundred dollars~~)) $500, retail sales tax of ((~~four hundred dollars~~)) $400 for YEAR 1, ((~~six hundred dollars~~)) $600 retail sales tax for YEAR 2, ((~~two thousand dollars~~)) $2,000 of other taxes for YEAR 1, and ((~~seven thousand dollars~~)) $7,000 of other taxes for YEAR 2. The order of application of any payments will be first against the ((~~five hundred dollars~~)) $500 of total interest and penalties, second against the ((~~four hundred dollars~~)) $400 retail sales tax in YEAR 1, third against the ((~~two thousand dollars~~)) $2,000 of other taxes in YEAR 1, fourth against the ((~~six hundred dollars~~)) $600 retail sales tax of YEAR 2, and finally against the ((~~seven thousand dollars~~)) $7,000 of other taxes in YEAR 2.

(9) **Waiver or cancellation of penalties.** RCW 82.32.105 authorizes the department to waive or cancel penalties under limited circumstances.

(a) **Circumstances beyond the control of the taxpayer.** The department will waive or cancel the penalties imposed under chapter 82.32 RCW upon finding that the underpayment of the tax, or the failure to pay any tax by the due date, was the result of circumstances beyond the control of the taxpayer. It is possible that a taxpayer will qualify for a waiver of one type of penalty, without obtaining a waiver for all penalties associated with a particular tax liability. Circumstances determined to be beyond the control of the taxpayer when considering a waiver of one type of penalty are not necessarily pertinent when considering a waiver of a different penalty type. For example, circumstances that qualify for waiver of a late payment of return penalty do not necessarily also justify waiver of the substantial underpayment assessment penalty. Refer to WAC 458-20-102 (Reseller permits) for examples of circumstances which are beyond the control of the taxpayer specifically regarding the penalty for misuse of a reseller permit found in RCW 82.32.291.

(i) A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The taxpayer bears the burden of establishing that the circumstances were beyond its control and directly caused the late payment. The request should be made in the form of a letter; however, verbal requests may be accepted and considered at the discretion of the department. Any petition for correction of assessment submitted to the department's administrative review and hearings division for waiver of penalties must be made within the period for filing under RCW 82.32.160 (within ((~~thirty~~)) 30 days after the issuance of the original notice of the amount owed or within the period covered by any extension of the due date granted by the department), and must be in writing, as explained in WAC 458-20-100 (Informal administrative reviews). Refund requests must be made within the statutory limitation period.

(ii) The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to obtain an extension of the due date or otherwise timely file and pay. Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following.

(A) The return payment was mailed on time but inadvertently sent to another agency.

(B) Erroneous written information given to the taxpayer by a department officer or employee caused the delinquency. A penalty generally will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not canceling the penalty in cases of oral information is because of the uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.

(C) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver.

(D) The delinquency was caused by the unavoidable absence of the taxpayer or key employee, prior to the filing date. "Unavoidable absence of the taxpayer" does not include absences because of business trips, vacations, personnel turnover, or terminations.

(E) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.

(F) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place. See (a)(iii)(E) of this subsection.

(G) The department does not respond to the taxpayer's request for a tax return (or other forms necessary to compute the tax) within a reasonable period of time, which directly causes delinquent filing and payment on the part of the taxpayer. This assumes that, given the same situation, if the department had provided the requested form(s) within a reasonable period of time, the taxpayer would have been able to meet its obligation for timely payment of the tax. In any case, the taxpayer has responsibility to insure that its return is filed in a timely manner (e.g., by keeping track of pending due dates) and must anticipatively request a return for that purpose, if one is not received. (Note: Tax returns and other forms are available at no cost from the department's website, dor.wa.gov. When good cause exists, taxpayers are advised to contact the department and request an extension of the due date for filing, before the due date of concern has passed. See subsection (12) of this rule. Taxpayers who have registered to file electronically with e-file will avoid potential penalties relating to paper returns not received. See subsection (1)(b) of this rule.)

(iii) The following are examples of circumstances that are generally not considered to be beyond the control of the taxpayer and will not qualify for a waiver or cancellation of penalty:

(A) Financial hardship;

(B) A misunderstanding or lack of knowledge of a tax liability;

(C) The failure of the taxpayer to receive a tax return form, EXCEPT where the taxpayer timely requested the form and it was still not furnished in reasonable time to mail the return and payment by the due date, as described in (a)(ii)(G) of this subsection;

(D) Registration of an account that is not considered a voluntary registration, as described in subsection (5)(a)(iii) and (b) of this rule;

(E) Mistakes or misconduct on the part of employees or other persons contracted with the taxpayer (not including conduct covered in (a)(ii)(F) of this subsection); and

(F) Reliance upon unpublished, written information from the department that was issued to and specifically addresses the circumstances of some other taxpayer.

(b) **Waiver of the late payment of return penalty.** The late payment of return penalty (see subsection (5)(a) of this rule) may be waived either as a result of circumstances beyond the control of the taxpayer (RCW 82.32.105 (1) and (a) of this subsection) or after a ((~~twenty-four~~)) 24 month review of the taxpayer's reporting history, as described below.

(i) If the late payment of return penalty is assessed on a return but is not the result of circumstances beyond the control of the taxpayer, the penalty will still be waived or canceled if the following two circumstances are satisfied:

(A) The taxpayer requests the penalty waiver for a tax return which was required to be filed under RCW 82.32.045 (taxes reported on the combined excise tax return), RCW 82.23B.020 (oil spill response tax), RCW 82.27.060 (tax on enhanced food fish), RCW 82.29A.050 (leasehold excise tax), RCW 84.33.086 (timber and forest lands), RCW 82.14B.030 (tax on telephone access line use); and

(B) The taxpayer has timely filed and paid all tax returns due for that specific tax program for a period of ((~~twenty-four~~)) 24 months immediately preceding the period covered by the return for which the waiver is being requested. RCW 82.32.105(2).

If a taxpayer has obtained a tax registration endorsement with the department prior to engaging in business within the state and has engaged in business activities for a period less than ((~~twenty-four~~)) 24 months, the taxpayer is eligible for the waiver if the taxpayer had no delinquent tax returns for periods prior to the period covered by the return for which the waiver is being requested. As a result, the taxpayer's very first return due can qualify for a waiver under the ((~~twenty-four~~)) 24 month review provision. (See also WAC 458-20-101 for more information regarding the tax registration and tax reporting requirements.) This is the only situation under which the department will consider a waiver when the taxpayer has not timely filed and paid tax returns covering an immediately preceding ((~~twenty-four~~)) 24 month period.

(ii) A return will be considered timely for purpose of the waiver if there is no tax liability on it when it is filed. Also, a return will be considered timely if any late payment penalties assessed on it were waived or canceled due to circumstances beyond the control of the taxpayer (see (a) of this subsection). The number of times penalty has been waived due to circumstances beyond the control of the taxpayer does not influence whether the waiver in this subsection will be granted. A taxpayer may receive more than one of the waivers in this subsection within a ((~~twenty-four~~)) 24 month period if returns for more than one of the listed tax programs are filed, but no more than one waiver can be applied to any one tax program in a ((~~twenty-four~~)) 24 month period.

For example, a taxpayer files combined excise tax returns as required under RCW 82.32.045, and timber tax returns as required under RCW 84.33.086. This taxpayer may qualify for two waivers of the late

payment of return penalty during the same ((~~twenty-four~~)) 24 month period, one for each tax program. If this taxpayer had an unwaived late payment of return penalty for the combined excise tax return during the previous ((~~twenty-four~~)) 24 month period, the taxpayer may still qualify for a penalty waiver for the timber tax program.

(iii) The ((~~twenty-four~~)) 24 month period reviewed for this waiver is not affected by the due date of the return for which the penalty waiver is requested, even if that due date has been extended beyond the original due date.

For example, assume a taxpayer's September 2012 return has had the original due date of October ((~~twenty-fifth~~)) 25th extended to November ((~~twenty-fifth~~)) 25th. The return and payment are received after the November ((~~twenty-fifth~~)) 25th extended due date. A penalty waiver is requested. Since the delinquent return represented the month of September 2012, the ((~~twenty-four~~)) 24 months which will be reviewed begin on September 1, 2010, and end with August 31, 2012, (the ((~~twenty-four~~)) 24 months prior to September 2012). All of the returns representing that period of time will be included in the review. The extension of the original due date has no effect on the ((~~twenty-four~~)) 24 month period under review.

(iv) A ((~~twenty-four~~)) 24 month review is only valid when considering waiver of the late payment of return penalty described in subsection (5)(a) of this rule. The ((~~twenty-four~~)) 24 month review process cannot be used as justification for a waiver of interest, assessment penalty, or any penalty other than the late payment of return penalty.

(10) **Waiver or cancellation of interest.** The department will waive or cancel interest imposed under chapter 82.32 RCW only in the following situations:

(a) The failure to pay the tax prior to issuance of the assessment was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of the due date for payment of an assessment was not at the request of the taxpayer and was for the sole convenience of the department. RCW 82.32.105(3).

(11) **Interest and penalty waiver for active duty military personnel.** RCW 82.32.055 provides a waiver of BOTH interest and penalty imposed under chapter 82.32 RCW when:

(a) The majority owner of the business is:

(i) On active duty in the military;

(ii) Participating in an armed conflict;

(iii) Assigned to a location outside the territorial boundaries of the United States; and

(b) The gross income of the business is ((~~one million dollars~~)) $1,000,000 or less for the calendar year immediately prior to the year in which the majority owner is initially deployed outside the United States for the armed conflict.

Interest and penalty may not be waived or canceled for a period longer than ((~~twenty-four~~)) 24 months. The waiver applies to interest or penalty based on the date they are imposed, which must be within the ((~~twenty-four~~)) 24 month waiver period.

To receive a waiver or cancellation of interest and penalty under this subsection, the taxpayer must submit a copy of the majority owner's deployment orders for deployment outside the territorial boundaries of the United States.

(12) **Stay of collection.** RCW 82.32.190 allows the department to initiate a stay of collection, without the request of the taxpayer and

without requiring any bond, for certain tax liabilities when they may be affected by the outcome of a question pending before the courts (see (a) of this subsection). RCW 82.32.200 provides conditions under which the department, at its discretion, may allow a taxpayer to file a bond in order to obtain a stay of collection on a tax assessment (see (b) of this subsection). The department will grant a taxpayer's stay of collection request, as described in RCW 82.32.200, only when the department determines that a stay is in the best interests of the state.

(a) Circumstances under which the department may consider initiating a stay of collection without requiring a bond (RCW 82.32.190) include, but are not necessarily limited to, the existence of the following:

(i) A constitutional issue to be litigated by the taxpayer, the resolution of which is uncertain;

(ii) A matter of first impression for which the department has little precedent in administrative practice; or

(iii) An issue affecting other similarly situated taxpayers for whom the department would be willing to stay collection of the tax.

(b) The department will give consideration to a request for a stay of collection of an assessment (RCW 82.32.200) if:

(i) A written request for the stay is made prior to the due date for payment of the assessment; and

(ii) Payment of any unprotested portion of the assessment and other taxes due is made timely; and

(iii) The request is accompanied by an offer of a cash bond, or a security bond that is guaranteed by a specified authorized surety insurer. The amount of the bond will generally be equal to the total amount of the assessment, including any penalties and interest. However, where appropriate, the department may require a bond in an increased amount not to exceed twice the amount for which the stay is requested.

(c) Claims of financial hardship or threat of litigation are not grounds that justify the granting of a stay of collection. However, the department will consider a claim of significant financial hardship as grounds for staying collection procedures, but this will be done only if a partial payment agreement is executed and kept in accordance with the department's procedures and with such security as the department deems necessary.

(d) If the department grants a stay of collection, the stay will be for a period of no longer than two calendar years from the date of acceptance of the taxpayer request, or ((~~thirty~~)) 30 days following a decision not appealed from by a tribunal or court of competent jurisdiction upholding the validity of the tax assessed, whichever date occurs first. The department may extend the period of a stay originally granted, but only for good cause shown.

(e) Interest will continue to accrue against the unpaid tax portion of a liability under stay of collection.

(13) **Extensions.** The department, for good cause, may extend the due date for filing any return.

(a) Any permanent extension more than ((~~ten~~)) 10 days beyond the due date, and any temporary extension in excess of ((~~thirty~~)) 30 days, must be conditional upon deposit by the taxpayer with the department of an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit is credited to the taxpayer's account and may be applied to the taxpayer's liability upon cancellation of the permanent extension or upon

reporting of the tax liability where a temporary extension of more than ((~~thirty~~)) 30 days has been granted.

The amount of the deposit is subject to departmental approval. The amount will be reviewed from time to time, and a change may be required at any time that the department concludes that such amount does not approximate the tax liability for the reporting period or periods for which the extension was granted.

(b) RCW 82.32.080 allows department of revenue to grant extensions of the due date for any taxes due to department of revenue when the governor has proclaimed a state of emergency under RCW 43.06.040. In general, the bill gives department of revenue the authority to provide extensions on its own initiative, or at the specific request of any taxpayers affected by the emergency. The specific details of how, where, and to whom any extensions are granted will depend on the type and scope of each unique emergency and will be determined when an emergency is declared.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-13-039, § 458-20-228, filed 6/7/16, effective 7/8/16; WSR 16-06-046, § 458-20-228, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.080, 82.32.085, 82.32.655, and 82.04.470. WSR 13-22-049, § 458-20-228, filed 11/1/13, effective 12/2/13. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 10-07-134, § 458-20-228, filed 3/23/10, effective 4/23/10; WSR 07-06-077, § 458-20-228, filed 3/6/07, effective 4/6/07; WSR 05-22-095, § 458-20-228, filed 11/1/05, effective 12/2/05. Statutory Authority: RCW 82.32.300. WSR 01-05-022, § 458-20-228, filed 2/9/01, effective 3/12/01; WSR 00-04-028, § 458-20-228, filed 1/24/00, effective 2/24/00; WSR 92-03-025, § 458-20-228, filed 1/8/92, effective 2/8/92; WSR 85-04-016 (Order 85-1), § 458-20-228, filed 1/29/85; WSR 83-16-052 (Order ET 83-4), § 458-20-228, filed 8/1/83; Order ET 74-1, § 458-20-228, filed 5/7/74; Order ET 71-1, § 458-20-228, filed 7/22/72; Order ET 70-3, § 458-20-228, filed 5/29/70, effective 7/1/70.]

AMENDATORY SECTION (Amending WSR 16-12-075, filed 5/27/16, effective 6/27/16)

WAC 458-20-229 Refunds. (1) **Introduction.** This rule explains the procedures relating to refunds or credits for the overpayment of taxes, penalties, or interest. It describes the statutory time limits for refunds and the interest rates that apply to those refunds.

References to a "refund application" in this rule include a request for a credit against future tax liability as well as a refund to the taxpayer.

Examples provided in this rule 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 are the time limits for a tax refund or credit?**

(a) **Time limits.** No refund or credit may be made for taxes, penalties, or interest paid more than four years before the beginning of the calendar year in which a refund application is made or examination of records by the department is completed. See RCW 82.32.060. This is a nonclaim statute rather than a statute of limitations. This means a valid application must be filed within the statutory period, which may

not be extended or tolled, unless a waiver extending the time for assessment has been entered into as described in (c) of this subsection.

For example, a refund or credit may be granted for any overpayment made in a shaded year in the following chart:

Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
					Refund application is filed no later than December 31st

(b) **Relation back to date paid.** Because the time limits relate to the date the taxes, penalties, or interest is paid, a refund application can be timely even though the payment concerned liabilities for a tax year normally outside the time limits. For example, Taxpayer P owes $1,000 in B&O tax for activity undertaken in December 2000. In January 2001, Taxpayer P makes an arithmetic error and submits a payment of $1,500 with its December 2000 tax return. In December 2005, Taxpayer P requests a refund of $500 for the overpayment of taxes for the December 2000 period. This request is timely because the overpayment occurred within the time limits, even though the payment concerned tax liabilities incurred (December 2000) outside the time limits.

Fact situations can be complicated. For example, Taxpayer P pays B&O taxes in Years 1 through 4. The department subsequently conducts an audit of Taxpayer P that includes Years 1-4. The audit is completed in Year 5. As a result of the audit, the department issues an assessment in Year 5 for $50,000 in additional retail sales taxes that were due from Years 1-4. Taxpayer P pays the assessment in full in Year 6. In Year 10, Taxpayer P files an application requesting a refund of B&O taxes. Taxpayer P's application is timely because it relates to a payment (payment of the assessment in Year 6) made no more than four years before the year in which the application is filed. It does not matter that the taxes relate to years outside the time limits; the actual payment occurred within four years before the refund application. Nor does it matter that the refund is based on an overpayment of B&O taxes while the assessment involved retail sales taxes, because both taxes relate to the same tax years. However, the amount of any refund is limited to $50,000 - the amount of the payment that occurred within the time limits.

Assume the same facts as described above. When the department reviews Taxpayer P's refund application, it determines that the refund is valid. After reviewing the new information, however, the department also determines that Taxpayer P should have paid $20,000 in additional B&O taxes during Years 1-4. Because Taxpayer P paid $30,000 more than the amount properly due ($50,000 overpayment less $20,000 underpayment), the amount of the refund will be $30,000.

(c) **Waiver.** Under RCW 82.32.050 or 82.32.100, a taxpayer may agree to waive the time limits and extend the time for the assessment of taxes, penalties and interest. If the taxpayer executes such a waiver, the time limits for a refund or credit are extended for the same period.

(3) **How do I get a refund or credit?**

(a) **Departmental examination of returns.** If the department performs an examination of the taxpayer's records and determines that the taxpayer has overpaid taxes, penalties, or interest, the department will issue a refund or a credit, at the taxpayer's option. In this situation, the taxpayer does not need to apply for a refund.

(b) **Taxpayer application.**

(i) If a taxpayer discovers that it has overpaid taxes, penalties, or interest, it may apply for a refund or credit. Refund application forms are available from the following sources:

• The department's internet website at http://dor.wa.gov

• By facsimile by calling Fast Fax at 360-705-6705 ((~~or 800-647-7706 (using menu options)~~))

• By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

The application form should be submitted to the department at the following location:

Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476.

Taxpayers are encouraged to use the department's refund application form to ensure that all necessary information is provided for a timely valid application. However, while use of the department's application form is encouraged, it is not mandatory and any written request for refund or credit meeting the requirements of this rule shall constitute a valid application. Filing an amended return showing an overpayment will also constitute an application for refund or credit, provided that the taxpayer also specifically identifies the basis for the refund or credit.

(ii) A taxpayer must submit a refund application within the time limits described in subsection (2)(a) of this rule. An application must contain the following five elements:

(A) The taxpayer's name and UBI/TRA number must be on the application.

(B) The amount of the claim must be stated. Where the exact amount of the claim cannot be specifically ascertained at time of filing, the taxpayer may submit an application containing an estimated claim amount. Taxpayers must explain why the amount of the claim cannot be stated with specificity and how the estimated amount of the claim was determined.

(C) The tax type and taxable period must be on the application.

(D) The specific basis for the claim must be on the application. Any basis for a refund or credit not specifically identified in the initial refund application will be considered untimely, except that an application may be refiled to add additional bases at any time before the time limits in subsection (2) of this rule expire.

(E) The signature of the taxpayer or the taxpayer's representative must be on the application. If the taxpayer is represented, the confidential taxpayer information waiver signed by the taxpayer specifically for that refund claim must be received by the department by the date the substantiation documents are first required, without regard to any extensions. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an enti-

ty, every member or employee of that entity is authorized to represent the taxpayer. If the signed confidential taxpayer information waiver for the refund claim lists the representative as an individual, only that individual is authorized to represent the taxpayer.

(iii) If the nonclaim statute has run prior to the filing of the application, the department will deny the application and notify the taxpayer.

(iv) If the department determines that the taxpayer is not entitled to a refund as a matter of law, the application may be denied without requiring substantiation. The taxpayer shall be responsible for maintaining substantiation as may eventually be needed should taxpayer seek review.

(v) The taxpayer is encouraged to file substantiation documents at the time of filing the application. However, once an application is filed, the taxpayer must submit sufficient substantiation to support the claim for refund or credit before the department can determine whether the claim is valid. The department will notify the taxpayer if additional substantiation is required. The taxpayer must provide the necessary substantiation within ((~~ninety~~)) 90 days after such notice is sent, unless the documentation is under the control of a third party, not affiliated with or under the control of the taxpayer, in which case the taxpayer will have ((~~one hundred eighty~~)) 180 days to provide the documentation. The department may request any other books, records, invoices or electronic equivalents and, where appropriate, federal and state tax returns to determine whether to accept or deny the claimed refund and to assess an existing deficiency.

(vi) In its discretion and upon good cause shown, the department may extend the period for providing substantiation upon its own or the taxpayer's request, which may not be unreasonably denied.

(vii) If the department does not receive the necessary substantiation within the applicable time period, the department shall deny the claim for lack of adequate substantiation and shall so notify the taxpayer. Any application denied for lack of adequate substantiation may be filed again with additional substantiation at any time before the time limits in subsection (2) of this rule expire. Once the department determines that substantiation is sufficient, the department shall process the refund claim within ((~~ninety~~)) 90 days, except that the department may extend the time of processing such claim upon notice to the taxpayer and explanation of why the claim cannot be completed within such time.

(viii) The following examples illustrate the refund application process:

(A) A taxpayer discovers in January 2005 that its June 2004 excise tax return was prepared using incorrect figures that overstated its sales, resulting in an overpayment of tax. The taxpayer files an amended June 2004 tax return with the department's taxpayer account administration division. The department will treat the taxpayer's amended June 2004 tax return as an application for a refund or credit of the amounts overpaid during that tax period, except that the taxpayer must also specifically identify the basis for the refund or credit and provide sufficient substantiation to support the claim for refund or credit. The taxpayer may satisfy this obligation by submitting a completed refund application form with its amended return or providing the additional required substantiation by other means.

(B) On December 31, 2005, a taxpayer files an amended return for the 2001 calendar year. The return includes changed figures indicating that an overpayment occurred, but does not provide any supporting sub-

stantiation. No written waiver of the time limits, under subsection (2)(c) of this rule, for this time period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and substantiation must be provided within ((~~ninety~~)) 90 days or the application will be denied. If the taxpayer does not provide the necessary substantiation by the stated date, the claim will be denied and, if refiled, will not be granted because it is then past the nonclaim limit of the statute.

(C) Taxpayer submits a refund application on December 31, 2004, claiming that taxpayer overpaid use tax in 2000 on certain machinery and equipment obtained by the taxpayer at that time. No substantiation is provided with the application and no written waiver of the time limit, under subsection (2)(c) of this rule, for this taxable period exists. The department sends a letter notifying the taxpayer that the taxpayer's application is not complete and substantiation must be provided within ((~~ninety~~)) 90 days or the application will be denied. The taxpayer does not respond by the stated date. The claim will be denied and, if refiled, will not be granted since it is then past the nonclaim limit of the statute.

(D) Assume the same facts as in (b)(viii)(B) and (C) of this subsection, except that within ((~~ninety~~)) 90 days from the date the department sent the letter the taxpayer submits substantiation, which the department deems sufficient. The taxpayer's claim is valid, notwithstanding that the substantiation was provided after the nonclaim limit expired.

(E) Assume the same facts as in (b)(viii)(B) and (C) of this subsection, except that before the ((~~ninety~~)) 90-day period expires, the taxpayer requests an additional ((~~fifteen~~)) 15 days in which to respond, explaining why the substantiation will require the additional time to assemble. The department agrees to the extended deadline. If the taxpayer submits the requested substantiation within the resulting ((~~one hundred five~~)) 105-day period, the department will not deny the claim for failure to provide timely substantiation.

(F) Assume the same facts as in (b)(iii)(B) and (C) of this subsection, except that the taxpayer submits substantiation within ((~~ninety~~)) 90 days. The department reviews the substantiation and finds that it is still insufficient. The department, in its discretion, may extend the deadline and request additional substantiation from the taxpayer or may deny the refund claim as not substantiated.

(4) **May I get a refund of retail sales tax paid in error?**

(a) **Refund from seller.** Except as provided for in RCW 82.08.130 regarding deductions for tax paid at source, if a buyer pays retail sales tax on a transaction that the buyer later believes was not taxable, the buyer should request a refund or credit directly from the seller from whom the purchase was made. If the seller determines the tax was not due and issues a refund or credit to the buyer, the seller may seek its own refund from the department. It is better for a buyer to seek a retail sales tax refund directly from the seller. This is because the seller has the records to know if retail sales tax was collected on the original sale, knows the buyer, knows the circumstances surrounding the original sale, is aware of any disputes between itself and the buyer concerning the product, and may already be aware of the circumstances as to why a refund of sales tax is or is not appropriate. If a seller questions whether he or she should refund sales tax to a buyer, the seller may request advice from the department's telephone information center at ((~~1-800-647-7706~~)) 360-705-6705.

(b) **Refund from department.** In certain situations where the buyer has not received a refund from the seller, the department will refund retail sales tax directly to a buyer. The buyer must file a complete refund application as described in subsection (3)(b) of this rule and either a seller's declaration or a buyer's declaration, under penalty of perjury, must be provided for each seller.

(i) If the buyer is able to obtain a waiver from the seller of the seller's right to claim the refund, the buyer should file a seller's declaration, under penalty of perjury, with the refund application. A seller's declaration substantiates that:

(A) Retail sales tax was collected and paid to the department on the purchase for which a refund is sought;

(B) The seller has not refunded the retail sales tax to the buyer or claimed a refund from the department; and

(C) The seller will not seek a refund of the sales tax from the department.

(ii) If the seller no longer exists, the seller refuses to sign the declaration, under penalty of perjury, or the buyer is unable to locate the seller, the buyer should file a buyer's declaration, under penalty of perjury, with the refund application. The buyer's declaration explains why the buyer is unable to obtain a seller's declaration and provides information about the seller and declares that the buyer has not obtained and will not in the future seek a refund from the seller for that claim.

(iii) Seller's declaration, under penalty of perjury, and buyer's declaration, under penalty of perjury, forms are available from the following sources:

• The department's internet website at http://dor.wa.gov

• By facsimile by calling Fast Fax at 360-705-6705 ((~~or 800-647-7706 (using menu options)~~))

• By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

(5) **May I use statistical sampling to substantiate a refund?** Sampling will only be used when a detailed audit is not possible. However, if your applications for refund or credit involve voluminous documents, the preferred method for substantiating your application is the use of statistical sampling. Alternative methods of sampling, including but not limited to, random sampling, time period sampling, transaction sampling, and block sampling, may be used when the department agrees that such methods are appropriate.

When using statistical sampling or an alternative method to substantiate an application for refund or credit, the applicant must contact the department prior to preparing the sampling to obtain the department's approval of the sampling plan. The sampling plan will describe the following:

• Population and sampling frame;

• Sampling unit;

• Source of the random numbers;

• Who will physically locate the sample units and how and where they will be presented for review;

• Any special instructions to those who were involved in reviewing the sample units;

• Special valuation guidelines to any of the sample units selected in the sample;

• How the sample will be evaluated, including the precision and confidence levels; and

• The applicant must obtain a seller's declaration from those sellers identified in the sample and separately certify, under penalty of perjury, that applicant will not otherwise request or accept a refund or credit for sales or deferred sales tax paid to any seller or any use tax remitted during the taxable period covered by the audit.

Failure to contact the department before preparing the sampling may result in the department rejecting the application on the grounds that the results are not statistically valid.

Contact the department prior to performing a statistical sampling at these locations:

• The department's internet website at http://dor.wa.gov

• By facsimile by calling Fast Fax at 360-705-6705 ((~~or 800-647-7706 (using menu options)~~))

• By writing to:

Taxpayer Services
Washington State Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

(6) **Is my refund final?** The department may review a refund or credit provided on the basis of a taxpayer application without an examination by audit. If the refund or credit is granted and the department subsequently determines that the refund or credit exceeded the amount properly due the taxpayer, the department may issue an assessment to recover the excess amount. This assessment must be made within the time limits of RCW 82.32.050.

(7) **Refunds made as a result of a court decision.** The department will grant refunds or credits required by a court or Board of Tax Appeals decision, if the decision is not under appeal.

If the court action requires the refund or credit of retail sales taxes, the department will not require that buyers attempt to obtain a refund directly from the seller if it would be unreasonable and an undue burden on the buyer. In such a case, the department may refund the retail sales tax directly to the buyer and may use the public media to notify persons that they may be entitled to refunds or credits. The department will make available special refund application forms that buyers must use for these situations. The application will request the appropriate information needed to identify the buyer, item purchased, amount of sales tax to be refunded, and the seller. The department may, at its discretion, request additional documentation that the buyer could reasonably be expected to retain, based on the particular circumstances and value of the transaction. The department will approve or deny such refund requests within ((~~ninety~~)) 90 days after the buyer has submitted all documentation.

(8) **What interest is due on my refund?** Interest is due on a refund or credit granted to a taxpayer as provided in this subsection.

(a) **Rate for overpayments made between 1992 through 1998.** For amounts overpaid by a taxpayer between January 31, 1991 and December 31, 1998, the rate of interest on refunds and credits is:

(i) Computed the same way as the rate provided under (b) of this subsection minus one percent, for interest allowed through December 31, 1998; and

(ii) Computed the same way as the rate provided under (b) of this subsection, for interest allowed after December 31, 1998.

(b) **Rate for overpayments after 1998.** For amounts overpaid by a taxpayer after December 31, 1998, the rate of interest on refunds and credits is the average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate is adjusted on the first day of January of each year by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April and July of the immediately preceding calendar year and October of the previous preceding year, as published by the United States Secretary of Treasury.

(c) **Start date for the calculation of interest.** If the taxpayer made all overpayments for each calendar year and all reporting periods ending with the final month included in a credit notice or refund on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund, interest is computed from either:

(i) January 31st following each calendar year included in a notice or refund; or

(ii) The last day of the month following the final month included in a notice or refund.

If the taxpayer did not make all overpayments for each calendar year and all reporting periods ending with the final month included in the notice or refund, interest is computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(d) **Calculation of interest on credits.** The department will include interest on credit notices with the interest computed to the date the taxpayer could reasonably be expected to use the credit notice, generally the due date of the next tax return. If a taxpayer requests that a credit notice be converted to a refund, interest is recomputed to the date the refund (warrant) is issued, but not to exceed the interest that would have been granted through the credit notice.

(9) **May the department apply my refund against other taxes I owe?** The department may apply overpayments against existing deficiencies and/or future assessments for the same legal entity. However, if preliminary schedules have not been issued regarding existing deficiencies or future assessments and the taxpayer is not presently under audit, the refund of an overpayment may not be delayed when the department determines a refund is due. The following examples illustrate the application of overpayments against existing deficiencies:

(a) The taxpayer's records are audited for the period Year 1 through Year 4. The audit disclosed underpayments in Year 2 and overpayments in Year 4. The department will apply the overpayments in Year 4 to the deficiencies in Year 2. The resulting amount will indicate whether a refund or credit is owed the taxpayer or whether the taxpayer owes additional tax.

(b) The department has determined that the taxpayer has overpaid its real estate excise tax. The department believes that the taxpayer may owe additional B&O taxes, but this has yet to be established. The department will not delay the refund of the real estate excise tax while it schedules and performs an audit for the B&O taxes.

(c) The department simultaneously performed a timber tax audit and a B&O tax audit of a taxpayer. The audit disclosed underpayments of B&O tax and overpayments of timber tax. Separate assessments were issued on the same date, one showing additional taxes due and the other overpayments. The department may apply the overpayment against the tax deficiency assessment since both the underpayment and overpayment have been established.

(10) **How do I seek review of the department's decision?** The taxpayer may seek review of the denial of: A refund claim (or any part thereof, including tax, penalties, or interest overpayments), a request for an extension for providing substantiation, or a request to use a specific sampling technique. Taxpayer may seek review to either:

(a) The department as provided in WAC 458-20-100 (Informal administrative reviews); or

(b) Directly to Thurston County superior court.

(11) **Application.** This rule applies to refund applications or amended returns showing overpayments, where the taxpayer has also specifically identified the basis for the refund or credit, that are received by the department on or after the effective date of this rule.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-12-075, § 458-20-229, filed 5/27/16, effective 6/27/16; WSR 08-14-038, § 458-20-229, filed 6/23/08, effective 7/24/08; WSR 07-17-065, § 458-20-229, filed 8/13/07, effective 9/13/07. Statutory Authority: RCW 82.32.300. WSR 93-04-077, § 458-20-229, filed 2/1/93, effective 3/4/93; WSR 83-08-026 (Order ET 83-1), § 458-20-229, filed 3/30/83; Order ET 70-3, § 458-20-229 (Rule 229), filed 5/29/70, effective 7/1/70.]

AMENDATORY SECTION (Amending WSR 10-07-135, filed 3/23/10, effective 4/23/10)

WAC 458-20-235 Effect of rate changes on prior contracts and sales agreements. (1) **Introduction.** This section explains the principals that determine the applicability of changes in the rates of tax imposed under the Revenue Act, with respect to contracts, sales agreements, and installment sales made prior to the effective date of the change.

(2) **Unconditional sales contracts.**

• When an unconditional sales contract to sell tangible personal property is entered into prior to the effective date of a rate change, and the property is delivered after the rate change date, the new tax rate applies to the transaction.

• When an unconditional sales contract to sell tangible personal property is entered into prior to the effective date, and the property is delivered prior to the rate change date, the tax rate in effect for the prior period applies.

• When a contract to sell tangible personal property contains a specific provision to pass title at some time prior to delivery of the property, such a specific provision is controlling and the tax rate in effect at that time applies.

(3) **Conditional and installment sales.** The taxes due on conditional and installment sales must be wholly reported during the period in which the sale is made (see WAC 458-20-198 Installment sales, method of reporting), even when the seller receives payment in install-

ments. Sellers who receive installment payments after the effective date of a rate change on conditional and installment sales made prior to that date do not need to adjust the installment payment amounts to reflect the rate change.

(4) **Leasing or rental of tangible personal property.** Lessors who lease tangible personal property are required to collect from their lessees the retail sales tax measured by the gross income from leases or rentals as of the time the lease or rental payments are due (WAC 458-20-211 Leases or rentals of tangible personal property, bailments). Lessors must collect and remit taxes to the department of revenue (department) at the new rates on all lease or rental payments due on and after the effective date of a rate change, including lease or rental payments on contracts entered into prior to that date.

(5) **Repairing or improving tangible personal or real property.** When persons install, repair, clean, alter, imprint, or improve tangible person property for others, or improve buildings or other structures upon real property of others:

• Sales and use tax rate increases apply to the first billing period starting on or after the effective date of the increase; and

• Sales and use tax rate decreases apply when bills are rendered on or after the effective date of the decrease. (RCW 82.08.064)

The new tax rate applies to the full contract amount if the contract was executed prior to the effective date of the rate change, unless the contract work is completed and accepted prior to the effective date.

If under the terms of the contract, the seller is entitled to periodic payments, which amounts are calculated to compensate the seller for the work completed to the date of payment, the applicable tax rates upon such payments (including, in the case of public works contracts, the percentage retained by the public agency pursuant to the provisions of RCW 60.28.010) will be those in effect at the time the seller is entitled to receive the payments.

(6) **Do you have questions on rate changes?** If you have questions on how a rate change may affect you, please contact the Telephone Information Center at ((~~1-800-647-7706~~)) 360-705-6705, or write the department at:

Taxpayer Information and Education
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.08.064. WSR 10-07-135, § 458-20-235, filed 3/23/10, effective 4/23/10. Statutory Authority: RCW 82.32.300. WSR 83-07-032 (Order ET 83-15), § 458-20-235, filed 3/15/83; Order ET 70-3, § 458-20-235 (Rule 235), filed 5/29/70, effective 7/1/70.]

AMENDATORY SECTION (Amending WSR 09-15-057, filed 7/10/09, effective 8/10/09)

WAC 458-20-239 Sales to nonresidents of farm machinery or implements, and related services. (1) **Introduction.** This section explains the retail sales tax exemption provided by RCW 82.08.0268 for sales to nonresidents of farming machinery and implements, parts for farming

machinery and implements, and related labor and services. This section also explains the documents that must be preserved to substantiate a claim of exemption. Sellers should refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) if they deliver farm machinery or implements to the purchaser at an out-of-state location.

(2) **Tax-reporting requirements.** Retailing B&O and retail sales taxes generally apply to all sales of tangible personal property, parts, and repair labor in Washington.

(a) RCW 82.08.0268 provides an exemption from retail sales tax for sales to nonresidents of the following when used in conducting a farm activity outside the state of Washington:

(i) Machinery and implements;

(ii) Parts for machinery and implements; and

(iii) Labor and services for repair of machinery, implements, and parts.

(b) To qualify for the exemption, the machinery, implements, or parts must be transported outside the state immediately after sale or completion of the repair or service.

(c) This exemption is allowed even though the property sold or serviced is delivered to the purchaser in this state, but only when the seller receives from the buyer an exemption certificate, and examines acceptable proof such as a driver's license that the buyer is a resident of a state or country other than the state of Washington.

(d) The exempt nature of the transaction must be documented by using the department's "Farmers' Retail Sales Tax Exemption Certificate," or another certificate with substantially the same information as it relates to the exemption provided by RCW 82.08.0268. The certificate must be completed in its entirety, and retained by the seller.

The "Farmers' Retail Sales Tax Exemption Certificate" can be obtained via the internet at http://dor.wa.gov. The form may also be obtained by contacting the department's telephone information center at ((~~1-800-647-7706~~)) 360-705-6705, or by writing the department at:

Taxpayer Information and Education
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

If, prior to completion of the sale, the seller becomes aware of any information inconsistent with the purchaser's claim of residency, such as a Washington address on a credit application, the seller should not accept an exemption certificate.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.08.0268. WSR 09-15-057, § 458-20-239, filed 7/10/09, effective 8/10/09. Statutory Authority: RCW 82.32.300. WSR 00-09-092, § 458-20-239, filed 4/19/00, effective 5/20/00; WSR 83-08-026 (Order ET 83-1), § 458-20-239, filed 3/30/83; Order ET 70-3, § 458-20-239 (Rule 239), filed 5/29/70, effective 7/1/70.]

AMENDATORY SECTION (Amending WSR 18-13-094, filed 6/19/18, effective 7/20/18)

WAC 458-20-24001 Sales and use tax deferral—Manufacturing and research/development activities in high unemployment counties—Applications filed after June 30, 2010. (1) **Introduction.** Chapter 82.60 RCW established a limited sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create new employment opportunities in distressed areas, and reduce poverty in certain distressed counties of the state. RCW 82.60.010.

(a) **Deferral program.** This deferral program applies to an eligible investment project for sales and use taxes imposed on the construction, expansion, or renovation of qualified buildings or acquisition of qualified machinery and equipment. The program requires the recipient of the deferral to maintain the manufacturing or research and development activity for an eight-year period.

This rule does not address specific requirements of RCW 82.08.02565 and 82.12.02565 that provide statewide sales and use tax exemptions for machinery and equipment used directly in a manufacturing operation. Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565. For additional information on statewide sales and use tax exemptions for machinery and equipment refer to WAC 458-20-13601.

(b) **Program enacted.** The legislature first enacted this program in 1985. It has since made major revisions to the program criteria, specifically to the definitions of "eligible area," "eligible investment project," and "qualified building." For applications made prior to July 1, 2010, see WAC 458-20-24001A.

(c) **Administration of employment and related programs.** The employment security department and the department of commerce administer programs for high unemployment counties and job training and should be contacted directly for information concerning these programs.

(d) **Examples.** Examples found in this rule 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.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Acquisition of machinery and equipment"** means the machinery and equipment is under the dominion and control of the recipient or its agent.

(b) **"Applicant"** means a person applying for a tax deferral under chapter 82.60 RCW.

(c) **"Certificate holder"** means an applicant to whom a tax deferral certificate has been issued.

(d) **"Community empowerment zone (CEZ)"** means an area meeting the requirements of RCW 43.31C.020 and officially designated as a CEZ by the director of the department of community, trade, and economic development.

(e) **"Date of application"** means the date of the U.S. Post Office postmark, fax, or electronic transmittal, or when the application is hand delivered to the department. The statute in effect on the "date of application" will determine the program criteria the applicant must satisfy.

(f) **"Department"** means the department of revenue.

(g) **"Eligible area"** means:

(i) Beginning July 1, 2010, an eligible area is a county that has an unemployment rate, as determined by the employment security department, which is at least ((~~twenty~~)) 20 percent above the state average for the three calendar years immediately preceding the year in which the list of qualifying counties is established or updated, as the case may be. RCW 82.60.020.

The department, with the assistance of the employment security department, established a list of qualifying counties effective July 1, 2010. RCW 82.60.120. The list of qualifying counties is effective for a ((~~twenty-four~~)) 24-month period and must be updated by July 1st of the year that is two calendar years after the list was established or last updated, as the case may be; or

(ii) A designated community empowerment zone approved under RCW 43.31C.020. RCW 82.60.049.

(h) **"Eligible investment project"** means an investment project that is located, as of the date the application required by RCW 82.60.030 is received by the department, in an eligible area. "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site where the cogeneration project is an integral part. It also does not include investment projects that have already received deferrals under chapter 82.60 RCW. RCW 82.60.020 and 82.60.049.

(i) **"Industrial fixture"** means an item attached to a building or to land. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and improvements to land such as concrete slabs.

(j) **"Initiation of construction"** means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building when the lessor pays, if the economic benefits of the deferral are passed to a lessee as provided in subsection (3) of this rule; or

(iii) Tenant improvements for a qualified building when the owner/lessor pays, if the economic benefits of the deferral are passed to a lessee as provided in subsection (3) of this rule; or

(iv) Tenant improvements for a qualified building when the lessee pays and receives the benefit of the deferral.

"Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

If the investment project is a phased project, "initiation of construction" shall apply separately to each phase.

(k) **"Investment project"** means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(l) **"Manufacturing"** has the meaning given in RCW 82.04.120. Manufacturing, in addition, includes the activities performed by research and development laboratories and commercial testing laboratories, and the conditioning of vegetable seeds.

For purposes of this rule, both manufacturers and processors for hire may qualify for the deferral program as being engaged in manufacturing activities. For additional information on processors for hire, refer to WAC 458-20-136.

For purposes of this rule, "vegetable seeds" include the seeds of those crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state. "Vegetable seeds" include, but are not limited to, cabbage seeds, carrot seeds, onion seeds, tomato seeds, and spinach seeds. Vegetable seeds do not include grain seeds, cereal seeds, fruit seeds, flower seeds, tree seeds, and other similar properties.

(m) **"Office"** means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. An office may be located in a separate building from the building used for manufacturing or research and development activities, but the office must be located at the same site as the qualified building to qualify. Each individual office may qualify or disqualify only in its entirety.

(n) **"Operationally complete"** means the project is capable of being used for its intended purpose as described in the application.

(o) **"Person"** has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" may be either a lessee or a lessor/owner, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW.

(p) **"Qualified buildings"** means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing or research and development activities. "Qualified buildings" includes plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. "Qualified buildings" include construction of:

• Specialized sewerage pipes connected to a qualified building that are specifically designed and used exclusively for manufacturing or research and development; and

• Parking lots connected to or adjacent to the building if the parking lots are for the use of workers performing manufacturing or research and development in the building. Parking lots may be apportioned based on qualifying use.

"Qualified buildings" does not include construction of landscaping or most other work outside the building itself, even though the landscaping or other work outside the building may be required by the city or county government in order for the city or county to issue a permit for the construction of a building.

(q) **"Qualified employment position"** means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of ((~~twelve~~)) 12 consecutive months. "Full-time" means at least ((~~thirty-five~~)) 35 hours a week, ((~~four hundred fifty-five~~)) 455 hours a quarter, or ((~~one thousand eight hundred twenty~~)) 1,820 hours a year.

(r) **"Qualified machinery and equipment"** means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" also includes computers; desks; filing cabinets; photocopiers; printers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(s) **"Qualifying county"** means a county that has an unemployment rate, as determined by the employment security department, which is at least ((~~twenty~~)) 20 percent above the state average for the three calendar years immediately preceding the year in which the list of qualifying counties is established or updated, as the case may be.

(t) **"Recipient"** means a person receiving a tax deferral under this program.

(u) **"Research and development"** means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. For purposes of this rule, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed ((~~one million dollars~~)) $1,000,000.

(v) **"Site"** means one or more immediately adjacent parcels of real property. Adjacent parcels of real property separated only by a public road comprise a single site.

(w) **"Warehouse"** means buildings or facilities used for the storage of raw materials or finished goods. A warehouse may be located in a separate building from the building used for manufacturing or research and development activities, but to qualify the warehouse must be located at the same site as the qualified building. Warehouse space may be apportioned based on qualifying use.

(3) **Who is eligible for the sales and use tax deferral program?** A person engaged in manufacturing or research and development activity is eligible for this deferral program for its eligible investment project.

(a) The lessor or owner of the qualified building is not eligible for deferral unless:

(i) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(ii) The lessor, by written contract, has agreed to pass the economic benefit of the deferral to the lessee;

(iii) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.60.070; and

(iv) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

For example, the economic benefit of the deferral can be passed through to the lessee when evidenced in writing that the amounts paid

to the lessor for construction of tenant improvements are reduced by the amount of the sales tax deferred. Another method of passing the economic benefit is if the lessee receives a credit for tenant improvements or other mechanism in the lease, equal to the amount of the sales tax deferred.

(b) The lessor of the qualified building who receives a letter of intent from a qualifying lessee may be eligible for deferral, assuming that all other requirements of chapter 82.60 RCW are met. At the time of application, the lessor, or another qualifying lessee must provide to the department a letter of intent by the lessee to lease the qualified building and any other information to prove that the lessee will engage in qualified manufacturing or research and development once the building construction is complete. After the investment project is certified as operationally complete, the lessee must actually occupy the building as a lessee and engage in qualified manufacturing or research and development. Otherwise, deferred taxes will be immediately due from the lessor.

The following examples illustrate the application process with lessors and lessees.

Example 1. Prior to the initiation of construction, Owner/Lessor AA enters into an agreement with Lessee BB, a company engaged in qualified manufacturing or research and development. Under the agreement, AA will build a building to house BB's research and development activities, will apply for a tax deferral on construction of the building, will lease the building to BB, and will pass on the economic benefit in the amount of the deferral to BB. BB agrees in writing with the department to complete annual tax performance reports. AA applies for the deferral before the initiation of construction that is prior to the date the building permit is issued. AA is entitled to a deferral on building construction costs assuming all eligibility qualifications are met.

Example 2. The following example assumes no deferral on initial construction activity. After the building construction has begun, Lessee CC asks that certain tenant improvements be added to the building. Lessor DD and Lessee CC each agree to pay a portion of the cost of the improvements. DD agrees with CC in writing that DD will pass on the entire value of DD's portion of the tax deferral to CC, and CC agrees in writing with the department to complete annual tax performance reports. CC and DD each apply for a deferral on the costs of the tenant improvements they are legally responsible for before the date the building permit is issued for the tenant improvements. The department will approve both applications assuming all eligibility qualifications are met. While construction of the building was initiated before submission of the applications, tenant improvements on a building under construction are deemed to be the expansion or renovation of an existing structure. In addition, lessees are entitled to the deferral only if they are legally responsible and actually pay contractors for the improvements, rather than merely reimbursing lessors for the costs.

Example 3. After building construction has begun but before machinery or equipment has been acquired, Lessee EE applies for a deferral on machinery and equipment. The department will approve the application assuming all eligibility qualifications are met, and EE will be required to complete annual tax performance reports. Even though it is too late to apply for a deferral of tax on building costs, it is not too late to apply for a deferral for the machinery and equipment.

(4) **What if an investment project is located in an area that qualifies as a high unemployment county and as a CEZ?** If an investment

project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect.

Example 4. On October 1, 2014, a city in a high unemployment county qualifies as a CEZ, and the high unemployment county is on the list as a qualifying county. The CEZ employment requirements are more restrictive than those for qualifying counties. The department will assign the project to the qualifying county designation unless the applicant elects in writing to be bound by the CEZ employment requirements. Refer to subsection (7) of this rule for more information on the application process.

(5) **When is apportionment of qualified buildings appropriate?** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of an existing building used in manufacturing or research and development. Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this rule, apportionment is necessary.

(a) **What are the apportionment methods?** The deferral is determined by one of the following two apportionment methods. The first method of apportionment is based on square footage and does not require tracking the costs of materials for the qualifying/nonqualifying areas of a building. The second method of apportionment tracks the costs of materials used in the qualifying/nonqualifying areas, and it is primarily used by those industries with specialized building requirements.

(i) **First method.** The applicable tax deferral is determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent of building eligible}$$

Percent of building eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" is the cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation.

Eligible Costs (as determined above) x Tax Rate = Eligible Tax Deferred.

Example 5. A taxpayer is constructing a 10,000 square foot building, of which 8,000 square feet will be eligible for tax deferral. The cost of the project is $1,000,000. The combined sales/use tax rate at this location is 9.2%.

$$\frac{\text{8,000 qualifying square feet}}{\text{10,000 total square feet}} = \text{80 percent of the building is eligible}$$

Based on the above apportionment formula, 80% of the building is eligible for deferral. By multiplying the qualifying percentage 80% by the cost of $1,000,000 to determine eligible costs of $800,000. Multi-

ply the eligible cost of $800,000 by the sales/use tax rate of 9.2% to determine a sales/use tax deferral of $73,600.

(ii) **Second method.** If the applicable tax deferral is not determined by the first method, it will be determined by calculating the cost of construction of qualifying/nonqualifying areas as follows:

(A) Tax on the cost of construction of areas devoted solely to manufacturing or research and development may be deferred.

(B) Tax on the cost of construction of areas not used at all for manufacturing or research and development may not be deferred.

(C) Tax on the cost of construction of areas used in common for manufacturing or research and development and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to manufacturing or research and development, excluding areas used in common, to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the common areas is determined by:

$$\frac{\text{Square feet devoted to manufacturing or research and development, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \text{Percentage of common areas eligible for deferral}$$

Example 6. Taxpayer is planning to build a 10,000 square foot building of which 7,000 square feet will be used for manufacturing and 1,000 square feet will be common area. The remaining portion of the building will not be eligible for any deferral. The cost of the project will be $850,000 for the manufacturing area, $260,000 for the common area, and $140,000 for the remaining portion of the building, for a total cost of construction of $1,250,000. The combined sales/use tax rate at this location is 8.8%.

$$\frac{\text{7,000 square feet devoted to manufacturing, excluding square feet of common areas}}{\text{9,000 total square feet, excluding square feet of common areas}} = \text{78\% of common areas eligible for deferral}$$

Based on the apportionment formula: 78% of common area costs are eligible. Multiply the common area costs of $260,000 by 78% to determine that $202,800 of common area costs are eligible for deferral. Therefore the $850,000 for the manufacturing portion of the building plus the $202,800 for common areas total $1,052,800 of eligible project costs. Multiply the eligible project costs of $1,052,800 by the tax rate of 8.8% to determine a sales/use tax deferral of $92,646.

(b) **Are qualified machinery and equipment subject to apportionment?** Unlike buildings, machinery and equipment cannot be apportioned if used for both qualifying and nonqualifying purposes.

(c) **To what extent is leased equipment eligible for the deferral?** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or

option to renew, up to the last date for repayment of the deferred taxes. After that date, the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(6) **Are there any hiring requirements for an investment project?** There may or may not be a hiring requirement, depending on the location of the project.

(a) **High unemployment county.** There are no hiring requirements for qualifying projects located in high unemployment counties.

(b) **Community empowerment zone (CEZ).** There are hiring requirements for qualifying projects located in CEZs or in counties containing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on a formula. The applicant will create a position and hire at least one qualified employee for each ((~~seven hundred fifty thousand dollars~~)) $750,000 of qualified investment in the project. Refer to subsection (7) of this rule for more information on the application process. The recipient must fill the positions with persons who at the time of hire are residents of the CEZ. The persons must be hired after the date the application is filed with the department. As used in this subsection, "resident" means the person makes his or her home in the CEZ or the county in which the zone is located. A mailing address alone is insufficient to establish that a person is a resident. For example, a "P.O. Box" is not a valid address as it does not establish residence at a physical location where the person actually lives. A street address would be an example of a valid address.

The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's website at dor.wa.gov. A recipient must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the positions during the entire tax year. Refer to subsection (12) of this rule for more information on certification of an investment project as operationally complete. If the recipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(7) **What are the application and review processes?** An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to taking possession of machinery and equipment, and prior to the filling of qualified employment positions. Persons, applying after construction is initiated or finished or after taking possession of machinery and equipment, are not eligible for the program. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) **How does a taxpayer obtain an application form?** Application forms may be obtained ((~~at department district offices, by downloading~~)) from the department's website at dor.wa.gov, or by ((~~telephoning the telephone information center at 800-647-7706, or by~~)) contacting the ((~~department's special programs division at:~~

~~Special Programs Division~~
~~Department of Revenue~~
~~P.O. Box 47477~~
~~Olympia, WA 98504-7477~~
~~Fax: 360-534-1498~~
~~Email: DORdeferrals@dor.wa.gov.~~

~~Applicants must mail, email, or fax applications to the special programs division at the address, email address, or fax number given above~~)) department at 360-705-6705. Applications approved by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. RCW 82.60.100.

(b) **Will the department approve the deferral application?** In considering whether to approve or deny an application for a deferral, the department will not approve an application for a project involving construction unless:

(i) The construction will begin within one year from the date of the application; or

(ii) The applicant shows proof that, if the construction will not begin within one year of application, there is a specific and active program to begin construction of the project within two years from the date of application. Proof may include, but is not limited to:

(A) Affirmative action by the board of directors, governing body, or other responsible authority of the applicant toward an active program of construction;

(B) Itemized reasons for the proposed construction;

(C) Clearly established plans for financing the construction; or

(D) Building permits.

Similarly, after an application has been granted, a deferral certificate is no longer valid and should not be used if construction has not begun within one year from the date of application or there is not a specific and active program to begin construction within two years from the date of application. However, the department will grant requests to extend the period for which the certificate is valid if the holder of the certificate can demonstrate that the delay in starting construction is due to circumstances beyond the certificate holder's control such as the acquisition of building permit(s). Refer to subsection (9) of this rule for more information on the use of tax deferral certificates.

(c) **When will the department notify approval or disapproval of the deferral application?** The department will verify the information contained in the application and approve or disapprove the application within ((~~sixty~~)) 60 days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval.

(d) **May an applicant request a review of department disapproval of the deferral application?** The applicant may request administrative review of the department's disapproval of an application, within ((~~thirty~~)) 30 days from the date of notice of the disallowance, pursuant to the provisions of WAC 458-20-100, Appeals. The filing of a petition for review with the department starts a review of departmental action.

(8) **What happens after the department approves the deferral application?** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral

the recipient is eligible for. Recipients must keep track of how much tax is deferred.

(9) **How should a tax deferral certificate be used?** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in this rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collecting sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(10) **May an applicant apply for multiple deferrals at the same project location?** The department may not issue a certificate for an investment project that has already received a deferral under chapter 82.60 RCW. For example, replacement machinery and equipment that replaces qualified machinery and equipment is not eligible for the deferral. In addition, if an existing building that received a deferral under chapter 82.60 RCW for the construction of the building is renovated, the renovation is not eligible for the deferral unless the original deferral project is closed and has no more deferral requirements.

(a) If expansion is made from an existing building that has already received a deferral under chapter 82.60 RCW for the construction of the building, the expanded portion of the building may be eligible for the deferral. The expansion must be made for new square footage, either vertically or horizontally. Acquisition of machinery and equipment to be used in the expanded portion of the qualified building may also be eligible.

(b) A certificate may be amended or a certificate issued for a new investment project at an existing facility if all eligibility requirements are met.

(11) **May an applicant or recipient amend an application or certificate?** Applicants and recipients may make a written request to the special programs division to amend an application or certificate when the original estimates change.

(a) Assuming the project continues to meet all eligibility requirement, grounds for requesting amendment include, but are not limited to:

(i) The project will exceed the costs originally stated;

(ii) The project will take more time to complete than originally stated;

(iii) The original application is no longer accurate because of changes in the project;

(iv) The project location changes (only applicable to machinery and equipment); and

(v) Transfer of ownership of the project.

(b) An application may not be amended if the location of the qualified building changes. Taxes become immediately due if the project location changes after the application has been approved.

(c) The department must rule on the request within ((~~sixty~~)) 60 days. If the request is denied, the department must explain in writing the basis for the denial. An applicant or recipient may appeal a denial within ((~~thirty~~)) 30 days under WAC 458-20-100, Appeals.

(12) **What are the processes for an investment project?** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) **What should a certificate holder do if its investment project reaches the estimated costs but the project is not yet operationally complete?** If an investment project has reached its estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount on which the deferral taxes are requested along with an explanation for the increase in estimated costs. Requests must be mailed, emailed, or faxed to the department.

(b) **What should a certificate holder do if its investment project reaches the completion date but the project is not yet operationally complete?** If an investment project has reached the completion date and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised completion date along with an explanation for the new completion date. Requests must be mailed, emailed, or faxed to the department prior to the expiration date on the certificate.

(c) **What should a certificate holder do when its investment project is operationally complete?** The certificate holder must notify the department in writing when the investment project is operationally complete. The project is operationally complete once it can be used for its intended purpose as described in the application. The department will certify the qualifying costs and the date when the project became operationally complete. The certificate holder of the deferral must maintain the manufacturing or research and development activity beginning the year the project is operationally complete and the following seven calendar years. It is important to remember that annual tax performance report reporting requirements begin the year following the operationally complete date, even though the audit certification may not be complete. For information on submitting annual tax performance reports, see subsection (13) of this rule.

Example 7. Taxpayer estimated a project end date of June 2018, but the project was actually operationally complete in November 2017. Taxpayer must submit the 2017 annual tax performance report by May 31, 2018. Taxpayer is responsible for notifying the department when the project is operationally complete regardless of the estimated completion date. If the 2017 annual tax performance report is not submitted timely, taxpayer will be assessed 12.5% of the deferred sales/use tax for this project.

Example 8. Taxpayer estimated a project end date of May 2017, but the project was actually not operationally complete until December 2017. Taxpayer must submit the 2017 annual tax performance report by May 31, 2018. Taxpayer is responsible for notifying the department when the project is operationally complete regardless of the estimated

completion date. If the 2017 annual tax performance report is not submitted timely, taxpayer will be assessed 12.5% of the deferred sales/use tax for this project.

(i) If all or any portion of the project does not qualify, the recipient must repay all or a proportional part of the deferred taxes. The department will notify the recipient of the amount due and the due date.

(ii) The department must explain in writing the basis for not qualifying all or any portion of a project. The decision of the department to not qualify all or a portion of a project may be appealed under WAC 458-20-100, Appeals, within ((~~thirty~~)) 30 days.

(13) **Is a recipient of a tax deferral required to submit annual tax performance report?** RCW 82.32.534 requires each recipient of a tax deferral to complete an annual tax performance report, every year, by May 31st for eight years following the year in which the project is operationally complete, regardless if the department has audited the project. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.025, the lessee must agree in writing to complete the annual tax performance report and the applicant is not required to complete the annual tax performance report. If the annual tax performance report is not submitted by the due date, or any extension under RCW 82.32.590, the recipient of the tax deferral or lessee, if required to submit, will be billed 12.5% of the deferred tax amount. For example, the deferral project is operationally complete in 2017. The recipient is required to submit the 2017-2024 annual tax performance reports that are due by May 31, 2018-2025, respectively. For more information on the requirements to file annual tax performance reports refer to WAC 458-20-267.

(14) **Is a recipient of a tax deferral required to repay deferred taxes for reasons other than not submitting the annual tax performance report?** Repayment of tax deferred under chapter 82.60 RCW is waived, as long as all eligibility requirements are met, except as provided in RCW 82.60.070 and this subsection (14).

The following describes the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined as of December 31st of each year by reference to the following table. No proration is allowed for completing a partial year of the deferral use requirement.

Repayment Year		Percentage of Deferred Tax Waived
1	(Year operationally complete)	0%
2		0%
3		0%
4		10%
5		15%
6		20%
7		25%
8		30%

Any action taken by the department to disqualify a recipient for tax deferral or assess interest will be subject to administrative review pursuant to the provisions of WAC 458-20-100, Appeals. The filing of a petition for review with the department starts a review of departmental action.

(a) **Failure of investment project to satisfy general conditions.** If based on the recipient's annual tax performance report or other information, including that submitted by the employment security department, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, including failure to continue qualifying activity, the department will declare the amount of deferred taxes outstanding to be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales or use taxes; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(b) **Failure of investment project to satisfy required employment positions conditions.** If based on the recipient's annual tax performance report or other information, the department finds that an investment project has been operationally complete and has failed to create the required number of qualified employment positions the amount of taxes deferred will be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales or use taxes; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(15) **When will the tax deferral program expire?** This tax deferral program is scheduled to expire July 1, 2020. No applications for deferral of taxes will be accepted after June 30, 2020. Businesses wishing to take advantage of this program are advised to apply to the department by April 30, 2020. While the department will make every effort to process applications in a timely manner, the department is allowed ((~~sixty~~)) 60 days to review applications and issue deferral certificates. Applications received after April 30, 2020, may not be processed in time for the business to receive a deferral certificate and would not be eligible for the program. In addition, incomplete applications may be denied or not processed in time for the business to be issued a deferral certificate before July 1, 2020.

(16) **Is debt extinguishable because of insolvency or sale?** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes.

(17) **Does transfer of ownership terminate tax deferral?** Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral. For additional information on successorship or quitting business refer to WAC 458-20-216.

Any questions regarding the potential eligibility of deferrals to be transferred on the sale of a business, should be directed to the special programs division as provided for in subsection (7)(a) of this rule.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.534, 82.32.585, 82.32.590, 82.32.600, 82.32.605, 82.32.607, 82.32.710, 82.32.790, 82.32.808, 82.04.240, 82.04.2404, 82.04.260, 82.04.2909, 82.04.426, 82.04.4277, 82.04.4461, 82.04.4463, 82.04.448, 82.04.4481,

82.04.4483, 82.04.449, 82.08.805, 82.08.965, 82.08.9651, 82.08.970, 82.08.980, 82.08.986, 82.12.022, 82.12.025651, 82.12.805, 82.12.965, 82.12.9651, 82.12.970, 82.12.980, 82.16.0421, 82.29A.137, 82.60.070, 82.63.020, 82.63.045, 82.74.040, 82.74.050, 82.75.040, 82.75.070, 82.82.020, 82.82.040, 84.36.645, and 84.36.655. WSR 18-13-094, § 458-20-24001, filed 6/19/18, effective 7/20/18. Statutory Authority: RCW 82.32.300, 82.01.060(2), and chapter 82.60 RCW. WSR 15-13-109, § 458-20-24001, filed 6/16/15, effective 7/17/15. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 10-21-052, § 458-20-24001, filed 10/14/10, effective 11/14/10. Statutory Authority: RCW 82.32.300, 82.01.060(2), chapters 82.04, 82.08, 82.12 and 82.32 RCW. WSR 10-06-070, § 458-20-24001, filed 2/25/10, effective 3/28/10. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 06-17-007, § 458-20-24001, filed 8/3/06, effective 9/3/06; WSR 04-01-127, § 458-20-24001, filed 12/18/03, effective 1/18/04. Statutory Authority: RCW 82.32.300. WSR 01-12-041, § 458-20-24001, filed 5/30/01, effective 6/30/01; WSR 88-17-047 (Order 88-5), § 458-20-24001, filed 8/16/88; WSR 87-19-139 (Order 87-6), § 458-20-24001, filed 9/22/87; WSR 86-14-019 (Order ET 86-13), § 458-20-24001, filed 6/24/86; WSR 85-21-013 (Order ET 85-5), § 458-20-24001, filed 10/7/85.]

AMENDATORY SECTION (Amending WSR 16-12-075, filed 5/27/16, effective 6/27/16)

WAC 458-20-24001A Sales and use tax deferral—Manufacturing and research/development activities in rural counties—Applications filed prior to July 1, 2010. (1) **Introduction.** Chapter 82.60 RCW establishes a sales and use tax deferral program. The purpose of the program is to promote economic stimulation, create employment opportunities, and reduce poverty in certain areas of the state. The legislature established this program to be effective solely in those areas and for those circumstances where the deferral is for investments that result in the creation of a specified minimum number of jobs or investment for a qualifying project.

The program applies to sales and use taxes on materials and labor and services rendered in the construction of qualified buildings or acquisition of qualified machinery and equipment and requires the recipient of the deferral to maintain the manufacturing or research and development activity for an eight-year period. This rule does not address RCW 82.08.02565 and 82.12.02565, which provide a statewide sales and use tax exemption for machinery and equipment used directly in a manufacturing operation. Refer to WAC 458-20-13601 for more information regarding the statewide exemption.

(2) **Program background.** This program was enacted in 1985. The legislature made major revisions to program criteria in 1993, 1994, 1995, 1996, 1999, 2004, 2009, and 2010, specifically to the definitions of "eligible area," "eligible investment project," "qualified building," and "qualifying county." Each revision created additional criteria for prospective applicants. This rule is written in five parts and covers applications made prior to July 1, 2010. Each part sets forth the requirements on the basis of the period of time in which application is made. Refer to the year during which application was made for information on an individual application. For applications made after June 30, 2010, see WAC 458-20-24001.

The employment security department and the department of community, trade, and economic development administer additional programs for distressed areas and job training and should be contacted directly for information concerning these programs.

PART I

Applications from March 31, 2004, to June 30, 2010

(101) **Who is eligible for the sales and use tax deferral program?** A person engaged in manufacturing or research and development activity is eligible for this deferral program for its eligible investment project.

(a) **What does the term "person" mean for purposes of this rule?** "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW.

(i) The lessor or owner of the qualified building is not eligible for deferral unless:

(A) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(B) All of the following conditions are met:

(I) The lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee;

(II) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.60.070;

(III) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor; and

(IV) Upon request, the lessor must provide the department with written documentation to support the eligibility of the deferral, including any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

For example, economic benefit of the deferral is passed through to the lessee when evidenced by written documentation that the amounts paid to the lessor for construction of tenant improvements are reduced by the amount of the sales tax deferred, or that the lessee receives more tenant improvements through a credit for tenant improvements or other mechanism in the lease equal to the amount of the sales tax deferred.

(ii) The lessor of the qualified building who receives a letter of intent from a qualifying lessee may be eligible for deferral, assuming that all other requirements of chapter 82.60 RCW are met. At the time of application, the lessor must provide to the department a letter of intent by the lessee to lease the qualified building and any other information to prove that the lessee will engage in qualified research and development or pilot scale manufacturing once the building construction is complete. After the investment project is certified as operationally complete, the lessee must actually occupy the building as a lessee and engage in qualified research and development or pilot scale manufacturing. Otherwise, deferred taxes will be immediately due to the lessor, and interest will be assessed retroactively from the date of deferral.

(b) **What is "manufacturing" for purposes of this rule?** "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, in addition, includes:

(i) Computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article or tangible personal property for sale (chapter 16, Laws of 2010);

(ii) The activities performed by research and development laboratories and commercial testing laboratories; and

(iii) Effective July 1, 2006, manufacturing also includes the conditioning of vegetable seeds.

For purposes of this rule, both manufacturers and processors for hire may qualify for the deferral program as being engaged in manufacturing activities. Refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) for more information on processors for hire.

For purposes of this rule, "computer-related services" means activities such as programming for the manufactured product. It includes creating operating systems, software, and other similar goods that will be copied and sold as canned software. "Computer-related services" does not include information services, such as data or information processing. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

For purposes of this rule, "vegetable seeds" includes the seeds of those crops that are grown in gardens and on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state. "Vegetable seeds" includes, but is not limited to, cabbage seeds, carrot seeds, onion seeds, tomato seeds, and spinach seeds. Vegetable seeds do not include grain seeds, cereal seeds, fruit seeds, flower seeds, tree seeds, and other similar properties.

(c) **What is "research and development" for purposes of this rule?** "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property. (Chapter 16, Laws of 2010.) For purposes of this rule, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed ((~~one million dollars~~)) $1,000,000.

(102) **What is eligible for the sales and use tax deferral program?** This deferral program applies to an eligible investment project for sales and use taxes imposed on the construction, expansion, or renovation of qualified buildings and acquisition of qualified machinery and equipment.

(a) **What is an "eligible investment project" for purposes of this rule?** "Eligible investment project" means an investment project in an eligible area. Refer to (g) of this subsection for more information on eligible area. "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(b) **What is an "investment project" for purposes of this rule?** "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(c) **What is "qualified buildings" for purposes of this rule?** "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing or research and development activities.

(i) "Qualified buildings" is limited to structures used for manufacturing and research and development activities. "Qualified buildings" includes plant offices and warehouses if such facilities are essential to or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development.

(A) "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. An office may be located in a separate building from the building used for manufacturing or research and development activities, but the office must be located at the same site as the qualified building in order to qualify. Each individual office may only qualify or disqualify in its entirety.

(B) "Warehouse" means buildings or facilities used for the storage of raw materials or finished goods. A warehouse may be located in a separate building from the building used for manufacturing or research and development activities, but the warehouse must be located at the same site as the qualified building in order to qualify. Warehouse space may be apportioned based upon its qualifying use.

(C) A site is one or more immediately adjacent parcels of real property. Adjacent parcels of real property separated only by a public road comprise a single site.

(ii) "Qualified buildings" does not include construction of landscaping or most other work outside the building itself, even though the landscaping or other work outside the building may be required by the city or county government in order for the city or county to issue a permit for the construction of a building.

However, "qualified buildings" includes construction of specialized sewerage pipes connected to a qualified building that are specifically designed and used exclusively for manufacturing or research and development.

Also, "qualified buildings" includes construction of parking lots connected to or adjacent to the building if the parking lots are for the use of workers performing manufacturing or research and development in the building. Parking lots may be apportioned based upon its qualifying use.

(d) **When is apportionment of qualified buildings appropriate?** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of an existing building used in manufacturing or research and development. Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this rule, apportionment is necessary.

(e) **What are the apportionment methods?** The deferral is determined by one of the following two apportionment methods. The first

method of apportionment is based on square footage and does not require tracking the costs of materials for the qualifying/nonqualifying areas of a building. The second method of apportionment tracks the costs of materials used in the qualifying/nonqualifying areas, and it is primarily used by those industries with specialized building requirements.

(i) **First method.** The applicable tax deferral can be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways, bathrooms, and conference rooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Costs x Tax Rate = Eligible Tax Deferred.

(ii) **Second method.** If the applicable tax deferral is not determined by the first method, it will be determined by tracking the cost of construction of qualifying/nonqualifying areas as follows:

(A) Tax on the cost of construction of areas devoted solely to manufacturing or research and development may be deferred.

(B) Tax on the cost of construction of areas not used at all for manufacturing or research and development may not be deferred.

(C) Tax on the cost of construction of areas used in common for manufacturing or research and development and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to manufacturing or research and development, excluding areas used in common, to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

$$\frac{\text{Square feet devoted to manufacturing or research and development, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \text{Percentage of total cost of construction of common areas eligible for deferral}$$

(f) **What is "qualified machinery and equipment" for purposes of this rule?** "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and de-

velopment operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

For purposes of this rule, "industrial fixture" means an item attached to a building or to land. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and improvements to land such as concrete slabs.

(i) **Are qualified machinery and equipment subject to apportionment?** Qualified machinery and equipment are not subject to apportionment.

(ii) **To what extent is leased equipment eligible for the deferral?** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date, the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(g) **What is an "eligible area" for purposes of this rule?** "Eligible area" means:

(i) **Rural county.** A rural county is a county with fewer than ((~~one hundred~~)) 100 persons per square mile or a county smaller than ((~~two hundred twenty-five~~)) 225 square miles as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th; or

(ii) **Community empowerment zone (CEZ).** A "community empowerment zone" means an area meeting the requirements of RCW 43.31C.020 and officially designated as a CEZ by the director of the department of commerce, or a county containing a CEZ.

(h) **What if an investment project is located in an area that qualifies both as a rural county and as a CEZ?** If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on October 1, 2004, the city of Yakima qualifies as a CEZ, and the entire county of Yakima has fewer than ((~~one hundred~~)) 100 persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than ((~~one hundred~~)) 100 persons per square mile. The department will assign the project to the "fewer than ((~~one hundred~~)) 100 persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements. Refer to subsection (104) of this rule for more information on the application process.

(i) **Are there any hiring requirements for an investment project?** There may or may not be a hiring requirement, depending on the location of the project.

(i) **Rural county.** There are no hiring requirements for qualifying projects located in rural counties.

(ii) **Community empowerment zone (CEZ).** There are hiring requirements for qualifying projects located in CEZs or in counties contain-

ing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on the following formula:

Number of qualified employment positions to be hired x
$750,000 = amount of investment eligible for deferral

Applicants must make good faith estimates of anticipated hiring. Refer to subsection (104) of this rule for more information on the application process. The recipient must fill the positions by persons who at the time of hire are residents of the CEZ. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's ((~~internet~~)) website at ((~~http://www.dor.wa.gov~~)) dor.wa.gov. A recipient must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the position during the entire tax year. Refer to subsection (107) of this rule for more information on certification of an investment project as operationally complete. If the recipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(A) **What is a "qualified employment position" for purposes of this rule?** "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of ((~~twelve~~)) 12 consecutive months. "Full-time" means at least ((~~thirty-five~~)) 35 hours a week, ((~~four hundred fifty-five~~)) 455 hours a quarter, or ((~~one thousand eight hundred twenty~~)) 1,820 hours a year.

(B) **Who are residents of the CEZ?** "Resident" means the person who fills the qualified employment position makes his or her home in the CEZ. A mailing address alone is insufficient to establish that a person is a resident.

(103) **What are the application and review processes?** An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to the acquisition of machinery and equipment, and prior to the filling of qualified employment positions. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) **What is "initiation of construction" for purposes of this rule?** "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of onsite construction work. Neither planning nor land clearing prior to excavation of the building site constitutes the commencement of onsite construction work.

(b) **What is "acquisition of machinery and equipment" for purposes of this rule?** "Acquisition of machinery and equipment" means the ma-

chinery and equipment is under the dominion and control of the recipient or its agent.

(c) **How may a taxpayer obtain an application form?** Application forms may be obtained ((~~at department of revenue district offices, by downloading~~)) from the department's website ((~~(dor.wa.gov), by telephoning the telephone information center at 1-800-647-7706, or by~~)) at dor.wa.gov, or by contacting the ((~~department's special programs division at:~~

~~Washington State Department of Revenue~~
~~Special Programs Division~~
~~Post Office Box 47477~~
~~Olympia, WA 98504-7477~~
~~Fax 360-586-2163~~

~~Applicants must mail or fax applications to the special programs division at the address or fax number given above~~)) department at 360-705-6705. Applications received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. RCW 82.60.100.

For purposes of this rule, "applicant" means a person applying for a tax deferral under chapter 82.60 RCW, and "department" means the department of revenue.

(d) **Will the department approve the deferral application?** In considering whether to approve or deny an application for a deferral, the department will not approve an application for a project involving construction unless:

(i) The construction will begin within one year from the date of the application; or

(ii) The applicant shows proof that, if the construction will not begin within one year of construction, there is a specific and active program to begin construction of the project within two years from the date of application. Proof may include, but is not limited to:

(A) Affirmative action by the board of directors, governing body, or other responsible authority of the applicant toward an active program of construction;

(B) Itemized reasons for the proposed construction;

(C) Clearly established plans for financing the construction; or

(D) Building permits.

Similarly, after an application has been granted, a deferral certificate is no longer valid and should not be used if construction has not begun within one year from the date of application or there is not a specific and active program to begin construction within two years from the date of application. However, the department will grant requests to extend the period for which the certificate is valid if the holder of the certificate can demonstrate that the delay in starting construction is due to circumstances beyond the certificate holder's control such as the acquisition of building permit(s). Refer to subsection (106) of this rule for more information on the use of tax deferral certificate.

(e) **What is the date of application?** "Date of application" means the date of the U.S. Post Office postmark, fax, or electronic transmittal, or when the application is hand delivered to the department. The statute in effect on the "date of application" will determine the program criteria the applicant must satisfy.

(f) **When will the department notify approval or disapproval of the deferral application?** The department will verify the information contained in the application and approve or disapprove the application

within ((~~sixty~~)) 60 days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval.

(g) **May an applicant request a review of department disapproval of the deferral application?** The applicant may seek administrative review of the department's disapproval of an application within ((~~thirty~~)) 30 days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-10001 (Adjudicative proceedings—Brief adjudicative proceedings—Certificate of registration (tax registration endorsement) revocation). The filing of a petition for review with the department starts a review of departmental action.

(104) **What happens after the department approves the deferral application?** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

For purposes of this rule, "recipient" means a person receiving a tax deferral under this program.

(105) **How should a tax deferral certificate be used?** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in this rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

For purposes of this rule, "certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(106) **What are the processes of an investment project that is certified by the department as operationally complete?** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

For purposes of this rule, "operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(a) **What should a certificate holder do if its investment project reaches the estimated costs but the project is not yet operationally complete?** If a certificate holder has an investment project that has reached its level of estimated costs and the project is not operation-

ally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral taxes are requested. Requests must be mailed or faxed to the department.

(b) **What should a certificate holder do when its investment project is operationally complete?** The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project is operationally complete. The certificate holder of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(107) **Is a recipient of tax deferral required to submit annual surveys?** Each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(108) **Is a recipient of tax deferral required to repay deferred taxes?** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection.

(a) **Is repayment required for machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565?** Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565.

(b) **When is repayment required?** The following subsections describe the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year		Percentage of Deferred Tax Waived
1	(Year operationally complete)	0%
2		0%
3		0%
4		10%
5		15%
6		20%
7		25%
8		30%

Any action taken by the department to disqualify a recipient for tax deferral or assess interest will be subject to administrative review pursuant to the provisions of WAC 458-20-10001 (Adjudicative proceedings—Brief adjudicative proceedings—Certificate of registration (tax registration endorsement) revocation). The filing of a petition for review with the department starts a review of departmental action.

(i) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual survey or other information, including that submitted by the employment security department, the department of revenue finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately

due. An example of a disqualification under this rule is a facility not being used for a manufacturing or research and development operation. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(ii) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual survey or other information, the department finds that an investment project has been operationally complete and has failed to create the required number of qualified employment positions under subsection (102)(i) of this rule, the amount of taxes deferred will be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(109) **When will the tax deferral program expire?** No applications for deferral of taxes will be accepted after June 30, 2010.

(110) **Is debt extinguishable because of insolvency or sale?** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes.

(111) **Does transfer of ownership terminate tax deferral?** Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral.

PART II
Applications from August 1, 1999, to March 31, 2004

(201) **Definitions.** The following definitions apply to applications made on and after August 1, 1999, and before April 1, 2004:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means activities such as programming for the manufactured product. It includes creating operating systems, software, and other similar goods that will be copied and sold as canned software. "Computer-related services" does not include information services, such as data or information processing. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

(e) "Date of application" means the date of the U.S. Post Office postmark, fax, or electronic transmittal, or when the application is hand delivered to the department. The statute in effect on the "date of application" will determine the program criteria the applicant must satisfy.

(f) "Department" means the department of revenue.

(g) "Eligible area" means:

(i) Rural county. A rural county is a county with fewer than ((~~one hundred~~)) 100 persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th; or

(ii) Community empowerment zone (CEZ). A "community empowerment zone" means an area meeting the requirements of RCW 43.31C.020 and officially designated as a CEZ by the director of the department of community, trade, and economic development or a county containing a CEZ.

(h) "Eligible investment project" means an investment project in an eligible area. "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(i) "Industrial fixture" means an item attached to a building or to land. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and improvements to land such as concrete slabs.

(j) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of onsite construction work. Neither planning nor land clearing prior to excavation of the building site constitutes the commencement of onsite construction work.

(k) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing also includes computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" means construction of new structures and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings"

include plant offices and warehouses if such facilities are essential to or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means buildings or facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of ((~~twelve~~)) 12 consecutive months. Full-time means at least ((~~thirty-five~~)) 35 hours a week, ((~~four hundred fifty-five~~)) 455 hours a quarter, or ((~~one thousand eight hundred twenty~~)) 1,820 hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Recipient" means a person receiving a tax deferral under this program.

(s) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed ((~~one million dollars~~)) $1,000,000.

(t) "Resident" means the person who fills the qualified employment position makes his or her home in the CEZ. A mailing address alone is insufficient to establish that a person is a resident.

(202) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(203) **Eligible investment amount.** There may or may not be a hiring requirement, depending on the location of the project.

(a) **No hiring requirements.** There are no hiring requirements for qualifying projects located in counties with fewer than ((~~one hundred~~)) 100 persons per square mile. Monitoring and reporting procedures are explained in subsection (210) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (204) of this rule explains the procedure for apportionment.

(b) **Hiring requirements.** There are hiring requirements for qualifying projects located in CEZs or in counties containing CEZs. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired based on the following formula:

Number of qualified employment positions to be hired x
$750,000 = amount of investment eligible for deferral

Applicants must make good faith estimates of anticipated hiring. The recipient must fill the positions by persons who at the time of hire are residents of the CEZ. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet website at http://www.dor.wa.gov. A recipient must fill the qualified employment positions by the end of the calendar year following the year in which the project is certified as operationally complete and retain the position during the entire tax year. If the recipient does not fill the qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due.

(204) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development, or commercial testing laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by one of the following apportionment methods. The first method of apportionment is based on square footage and does not require tracking the costs of materials for the qualifying/nonqualifying areas of a building. The second method of apportionment tracks the costs of materials used in the qualifying/nonqualifying areas and is primarily used by those industries with specialized building requirements.

(i) The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(ii) If a building is used partly for manufacturing, research and development, or commercial testing and partly for other purposes, the applicable tax deferral shall be determined as follows:

(A) Tax on the cost of construction of areas devoted solely to manufacturing, research and development, or commercial testing may be deferred.

(B) Tax on the cost of construction of areas not used at all for manufacturing, research and development, or commercial testing may not be deferred.

(C) Tax on the cost of construction of areas used in common for manufacturing, research and development, or commercial testing and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to manufacturing, research and development, or commercial testing, excluding areas used in common to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

$$\frac{\text{Square feet devoted to manufacturing, research and development, or commercial testing, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \text{Percentage of total cost of construction of common areas eligible for deferral}$$

(b) Qualified machinery and equipment is not subject to apportionment.

(205) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(206) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction, prior to the acquisition of machinery and equipment, and prior to the filling of qualified employment positions. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms ((~~will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:~~

~~Washington State Department of Revenue~~
~~Special Programs~~
~~P.O. Box 47477~~

~~Olympia, WA 98504-7477~~)) may be obtained from the department's website at dor.wa.gov, or by contacting the department at 360-705-6705.

Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

(b) In considering whether to approve or deny an application for a deferral, the department will not approve an application for a project involving construction unless:

(i) The construction will begin within one year from the date of the application; or

(ii) If the construction will not begin within one year of application, the applicant shows proof that there is a specific and active program to begin construction of the project within two years from the date of application. Proof may include, but is not limited to:

(A) Affirmative action by the board of directors, governing body, or other responsible authority of the applicant toward an active program of construction;

(B) Itemized reasons for the proposed construction;

(C) Clearly established plans for financing the construction; or

(D) Building permits.

Similarly, after an application has been granted, a deferral certificate is no longer valid and should not be used if construction has not begun within one year from the date of application or there is not a specific and active program to begin construction within two years from the date of application. However, the department will grant requests to extend the period for which the certificate is valid if the holder of the certificate can demonstrate that the delay in starting construction is due to circumstances beyond the certificate holder's control such as the acquisition of building permit(s).

(c) The department will verify the information contained in the application and approve or disapprove the application within ((~~sixty~~)) 60 days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval.

(d) The applicant may seek administrative review of the department's disapproval of an application within ((~~thirty~~)) 30 days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(207) **Eligible area criteria.** The office of financial management will determine annually the counties with fewer than ((~~one hundred~~)) 100 persons per square mile. The department will update and distribute the list each year. The list will be effective on July 1 of each year.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on October 1, 1999, the city of Yakima qualifies as a CEZ, and the entire county of Yakima has fewer than ((~~one hundred~~)) 100 persons per square mile. The CEZ requirements are more restrictive than counties containing fewer than ((~~one hundred~~)) 100 persons per square mile. The department will assign the project to

the "fewer than ((~~one hundred~~)) 100 persons per square mile designation" unless the applicant elects to be bound by the CEZ requirements.

(208) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified building or qualified machinery and equipment as defined in Part I. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(209) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral taxes are requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project is operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(210) **Reporting and monitoring procedure.**

(a) **Requirement to submit annual reports.** Each recipient of a tax deferral under chapter 82.60 RCW must submit a report on December 31st of the year in which the investment project is certified by the department as having been operationally completed and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(b) **Requirement to submit annual surveys.** Effective April 1, 2004, each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey **instead of an annual report.** If the economic benefits of the deferral are passed to a

lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(211) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection.

(a) Repayment of tax deferred under chapter 82.60 RCW is not required, and interest and penalties under RCW 82.60.070 will not be imposed, on machinery and equipment that qualifies for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following subsections describe the various circumstances under which repayment of the deferral may occur. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year		Percentage of Deferred Tax Waived
1	(Year operationally complete)	0%
2		0%
3		0%
4		10%
5		15%
6		20%
7		25%
8		30%

Any action taken by the department to disqualify a recipient for tax deferral or assess interest will be subject to administrative review pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(c) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the employment security department, the department of revenue finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. An example of a disqualification under this rule is a facility not being used for a manufacturing or research and development operation.

(d) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. There is no proration of the amount owed under this subsection. No penalties or interest will be assessed on the deferred sales/use tax; however, all other penalties and interest applicable to excise tax assessments may be assessed and imposed.

(212) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred tax-

es. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of chapter 82.60 RCW, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient of the deferral.

(213) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.) Effective April 1, 2004, all information collected in annual surveys, except the amount of tax deferral taken, is confidential and not subject to disclosure. Information on the amount of tax deferral taken in annual surveys is not confidential and may be disclosed to the public upon request.

PART III
Applications from July 1, 1995, to July 31, 1999

(301) **Definitions.** For the purposes of this part, the following definitions apply for applications made on and after July 1, 1995, and before August 1, 1999:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services.

(e) "Department" means the department of revenue.

(f) "Eligible area" means one of the areas designated according to the following classifications:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by ((~~twenty~~)) 20 percent. In making this calculation, the department will compare the county's average unemployment rate in the prior three years to ((~~one hundred twenty~~)) 120 percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) Median income county. On and after June 6, 1996, a county that has a median household income that is less than ((~~seventy-five~~)) 75 percent of the state median income for the previous three years;

(iii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by ((~~twenty~~)) 20 percent;

(iv) CEZ and county containing a CEZ. A designated community empowerment zone (CEZ) approved under RCW 43.63A.700 or a county containing such a community empowerment zone;

(v) Timber impact area towns. A town with a population of less than ((~~twelve hundred~~)) 1,200 persons that is located in a county that is a timber impact area, as defined in RCW 43.31.601, but that is not an unemployment county as defined in Part I;

(vi) Governor's designation county. A county designated by the governor as an eligible area under RCW 82.60.047; or

(vii) Contiguous county. A county that is contiguous to an unemployment county or a governor's designation county.

(g)(i) "Eligible investment project" means:

(A) An investment project in an unemployment county, a median income county, an MSA, a timber impact area town, or a governor's designation county; or

(B) That portion of an investment project in a CEZ, a county containing a CEZ, or a contiguous county, that is directly utilized to create at least one new full-time qualified employment position for each ((~~seven hundred fifty thousand dollars~~)) $750,000 of investment.

(ii) "Eligible investment project" does not include an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. It also does not include an investment project that has already received a deferral under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction, expansion, or renovation of buildings, means the commencement of onsite construction work. Land clearing prior to excavation of the building site does not commence construction nor does planning commence construction.

(j) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(k) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined under RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

(l) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(m) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for indi-

vidual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests exclusively in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(n) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing and research and development activities.

"Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(o) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of ((~~twelve~~)) 12 consecutive months. "Full time" means at least 35 hours a week, 455 hours a quarter, or 1,820 hours a year.

(p) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes computers, desks, filing cabinets, photocopiers, printers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(q) "Recipient" means a person receiving a tax deferral under this program.

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed ((~~one million dollars~~)) $1,000,000.

(302) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(303) **Eligible investment amount.** There may or may not be a hiring requirement, depending on the location of the project.

(a) **No hiring requirements.** There are no hiring requirements for qualifying projects located in distressed counties, MSAs, median income counties, governor-designated counties, or timber impact towns. Monitoring and reporting procedures are explained in subsection (310) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (304) of this rule explains the procedure for apportionment.

(b) **Hiring requirements.** There are hiring requirements for qualifying projects located in CEZs, in counties containing CEZs, or in contiguous counties. Total qualifying project costs, including any part of the project that would qualify under RCW 82.08.02565 and 82.12.02565, must be examined to determine the number of positions associated with the project. An applicant who knows at the time of application that he or she will not fill the required qualified employment positions is not eligible for the deferral. Applicants must make good faith estimates of anticipated hiring. The applicant applies for a deferral of investment that correlates to the estimated number of persons to be hired. The investment must include the sales price of machinery and equipment eligible for the sales and use tax exemption under RCW 82.08.02565 and 82.12.02565. An applicant can amend the number of persons hired until completion of the project. The qualified employment positions filled by December 31 of the year of completion are the benchmark to be used during the next seven years in determining hiring compliance.

(i) Total qualifying project costs are divided by ((~~seven hundred fifty thousand~~)) 750,000, the result being the qualified employment positions.

(ii) In addition, the number of qualified employment positions created by an investment project will be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project. This reduction requires a reexamination of whether the ((~~seventy-five~~)) 75 percent hiring requirement (as explained below) is met.

(iii) This number, which is the result of (i) and (ii) of this subsection, is the number of positions used as the benchmark over the life of the deferral. For recipients locating in a CEZ or a county containing a CEZ, ((~~seventy-five~~)) 75 percent of the new positions must be filled by residents of a CEZ located in the county where the project is located. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet website at http://www.dor.wa.gov. For recipients located in a contiguous county, residents of an adjacent unemployment or governor-designated county must fill ((~~seventy-five~~)) 75 percent of the new positions.

(iv) The qualified employment positions are reviewed each year, beginning December 31st of the year the project is operationally complete and each year for seven years. If the recipient has failed to create the requisite number of positions, the department will issue an assessment as explained under subsection (311) of this rule.

(v) In addition to the hiring requirements for new positions under (b) of this subsection, the recipient of a deferral for an expansion or diversification of an existing facility must ensure that he or she maintains the same percentage of employment positions filled by

residents of the contiguous county or the CEZ that existed prior to the application being made. This percentage must be maintained for seven years.

(vi) Qualified employment positions do not include those positions filled by persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee, so long as the position is not actually vacant for any period in excess of ((~~thirty~~)) 30 consecutive days.

(304) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development, or commercial testing.

(a) Where a building(s) is used partly for manufacturing, research and development, or commercial testing and partly for purposes that do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing, research and development, or commercial testing purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(b) Qualified machinery and equipment is not subject to apportionment.

(305) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(306) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of machinery and equipment. Persons who apply after construction is initiated or after acquisition of machinery and equipment are not eligible for the program. Applications for persons subject to hiring requirements must include information regarding the estimated total project cost and the qualified employment positions.

(a) Application forms ((~~will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:~~

~~Washington State Department of Revenue~~
~~Special Programs~~
~~P.O. Box 47477~~
~~Olympia, WA 98504-7477~~)) may be obtained from the department's website at dor.wa.gov, or by contacting the department at 360-705-6705.

(b) The department will verify the information contained in the application and approve or disapprove the application within ((~~sixty~~)) 60 days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within ((~~thirty~~)) 30 days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(307) **Eligible area criteria.** The statewide and county unemployment statistics last published by the department will be used to determine eligible areas based on unemployment. Median income county designation is based on data produced by the office of financial management and made available to the department on November 1 of each year. The timber impact town designation is based on information provided by the department of employment security.

If an investment project is located in an area that qualifies under more than one type of eligible area, the department will automatically assign the project to the eligible area that imposes the least burden on the taxpayer and with the greatest benefit to the taxpayer. If the applicant elects to be bound by the requirements of the other potential eligible area, the applicant must make a written statement to that effect. For example, on May 1, 1998, the city of Yakima qualifies as a CEZ, and the entire county of Yakima qualifies as an unemployment county. The CEZ requirements are more restrictive than the unemployment county requirements. The department will assign the project to the distressed area eligible area unless the applicant elected to be bound by the CEZ requirements.

(308) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified building or qualified machinery and equipment as defined in subsection (301) of this rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

The tax deferral certificate is used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller is relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for

a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(309) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(310) **Reporting and monitoring procedure.**

(a) Requirement to submit annual reports. Each recipient of a deferral granted after July 1, 1995, must submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(b) **Requirement to submit annual surveys.** Effective April 1, 2004, each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey **instead of an annual report.** If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(311) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection, on an investment project for which a deferral has been granted under chapter 82.60 RCW after June 30, 1994.

(a) Taxes deferred under this chapter need not be repaid on machinery and equipment for lumber and wood product industries, and sales of or charges made for labor and services, of the type which qualified for exemption under RCW 82.08.02565 or 82.12.02565.

(b) The following describes the various circumstances under which repayment of the deferral may be required. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year.

Repayment Year		Percentage of Deferred Tax Waived
1	(Year operationally complete)	0%
2		0%
3		0%
4		10%
5		15%
6		20%
7		25%
8		30%

Any action taken by the department to disqualify a recipient for tax deferral or require payment of all or part of deferred taxes is subject to administrative review pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action. See subsection (24)(d) of this rule for repayment and waiver for deferrals with hiring requirements.

(c) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be that the facilities are not used for a manufacturing or research and development operation.

(d) **Failure of investment project to satisfy required employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date the application was filed). There is no proration of the amount owed under this subsection. No penalties will be assessed.

(e) **Failure of investment project to satisfy employee residency requirements.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project under RCW 82.60.040 (1)(b) or (c) has failed to comply with any requirement of RCW 82.60.045 for any calendar year for which reports are required under this subsection, ((~~twelve and one-half~~)) 12.5 percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met ((~~twelve and one-half~~)) 12.5 percent of the amount of deferred taxes will be waived. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date the application was filed. Each year the employment requirement is met, ((~~twelve and one-half~~)) 12.5 percent of the deferred tax will be waived, if all other program requirements are met. No penalties will be assessed.

(f) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection.

(312) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(313) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.) Effective April 1, 2004, all information collected in annual surveys, except the amount of tax deferral taken, is confidential and not subject to disclosure. Information on the amount of tax deferral taken in annual surveys is not confidential and may be disclosed to the public upon request.

PART IV
Applications from July 1, 1994, to June 30, 1995

(401) **Definitions.** For the purposes of this part, the following definitions apply for applications made on and after July 1, 1994, and before July 1, 1995.

(a) "Acquisition of equipment or machinery" means the date the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, and upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services in this instance.

(e) "Department" means the department of revenue.

(f) "Eligible area" means:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by ((~~twenty~~)) 20 percent. The department may compare the county's average unemployment rate in the prior three years to ((~~one hundred twenty~~)) 120 percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an applica-

tion is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by ((~~twenty~~)) 20 percent;

(iii) CEZ. A designated community empowerment zone approved under RCW 43.63A.700;

(iv) Timber impact area towns. A town with a population of less than ((~~twelve hundred~~)) 1,200 persons that is located in a county that is a timber impact area, as defined in RCW 43.31.601, but that is not an unemployment county as defined in this subsection;

(v) Contiguous county. A county that is contiguous to an unemployment county or a governor's designation county; or

(vi) Governor's designation county. A county designated by the governor as an eligible area under RCW 82.60.047.

(g)(i) "Eligible investment project" means that portion of an investment project which:

(A) Is directly utilized to create at least one new full-time qualified employment position for each ((~~seven hundred fifty thousand dollars~~)) $750,000 of investment on which a deferral is requested; and

(B) Either initiates a new operation, or expands or diversifies a current operation by expanding, equipping, or renovating an existing facility with costs in excess of ((~~twenty-five~~)) 25 percent of the true and fair value of the facility prior to improvement. "Improvement" means the physical alteration by significant expansion, modernization, or renovation of an existing facility, excluding land, where the cost of such expansion, etc., exceeds ((~~twenty-five~~)) 25 percent of the true and fair value of the existing facility prior to the initiation of the expansion or renovation. The term "improvement" is further defined to include those portions of an existing facility which do not increase the usable floor space, but is limited to the renovation, modernization, or any other form of alteration or addition and the equipment and machinery installed therein during the course of construction. The ((~~twenty-five~~)) 25 percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least ((~~forty~~)) 40 percent of the total renovation costs must be attributable to the physical renovation of the building structure alone. "True and fair value" means the value listed on the assessment roles as determined by the county assessor for the buildings or equipment for ad valorem property tax purposes at the time of application.

(ii) "Eligible investment project" does not include either an investment project undertaken by a light and power business as defined in RCW 82.16.010, other than cogeneration projects that are both an integral part of a manufacturing facility and owned at least ((~~fifty~~)) 50 percent by the manufacturer, or investment projects that have already received deferrals under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction of new buildings, means the commencement of on-site construction work.

(j) "Initiation of construction," in regards to the construction of expanding or renovating existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development, means the commencement of the new construction by renovation, modernization, or expansion, by physical alteration.

(k) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. A person who does not build or remodel his or her own building, but leases from a third party, is eligible for sales and use tax deferral on the machinery and equipment provided that an investment in qualified machinery and equipment is made by such person and a new structure used to house the manufacturing activities is constructed.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of chapter 82.60 RCW. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests exclusively in the lessor/owner, or unless the lessor has by written contract agreed to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(o) "Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of ((~~twelve~~)) 12 consecutive months. "Full time" means at least 35 hours per week, 455 hours a quarter, or 1,820 hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation or research and development operation. "Qualified machinery and equipment" includes: Computers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a lease by the re-

cipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed ((~~one million dollars~~)) $1,000,000.

(s) "Recipient" means a person receiving a tax deferral under this program.

(402) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much tax is deferred.

(403) **Eligible investment amount.**

(a) Projects located in unemployment counties, MSAs, governor-designated counties, or timber impact towns are eligible for a deferral on the portion of the investment project that represents one new qualified employment position for each ((~~seven hundred fifty thousand dollars~~)) $750,000 of investment. The eligible amount is computed by dividing the total qualifying project costs by ((~~seven hundred fifty thousand~~)) 750,000, the result being the qualified employment positions. In addition, the number of qualified employment positions created by an investment project will be reduced by the number of full-time employment positions maintained by the recipient in any other community in this state that are displaced as a result of the investment project. This is the number of positions used as the hiring benchmark. The qualified employment positions must be filled by the end of year three. Monitoring and reporting procedures are set forth in subsection (410) of this rule. In addition, buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (404) of this rule explains the procedure for apportionment.

(b) Projects located in CEZs, counties containing CEZs, or counties contiguous to an eligible county, are eligible for a deferral if the project meets specific hiring requirements. The recipient is eligible for a deferral on the portion of the investment project that represents one new qualified employment position for each ((~~seven hundred fifty thousand dollars~~)) $750,000 of investment. The eligible amount is computed by dividing the total qualifying project costs by ((~~seven hundred fifty thousand~~)) 750,000, the result being the qualified employment positions. This is the number of positions used as the hiring benchmark over the life of the deferral. The qualified employment positions are reviewed each year, beginning December 31st of the year the project is operationally complete and each year for seven years. Monitoring and reporting procedures are set forth in subsection (410) of this rule. In addition, buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (404) of this rule explains the procedure for apportionment.

(c) In addition to the hiring requirements for new positions under (b) of this subsection, the recipient of a deferral for an expansion or diversification of an existing facility must ensure that he or

she maintains the same percentage of employment positions filled by residents of the contiguous county or the CEZ that existed prior to the application being made. This percentage must be maintained for seven years. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet website at www.dor.wa.gov.

(d) Qualified employment positions does not include those persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee so long as the position is not actually vacant for any period in excess of ((~~thirty~~)) 30 consecutive days.

(404) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings used in manufacturing, research and development.

(a) Where a building(s) is used partly for manufacturing or research and development and partly for purposes which do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(b) Qualified machinery and equipment is not subject to apportionment.

(405) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(406) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior to the initiation of construction and the acquisition of machinery and equipment. Persons who apply after construction is initiated or after

acquisition of machinery and equipment are not eligible for the program.

(a) Application forms ((~~will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:~~

~~Washington State Department of Revenue~~
~~Special Programs~~
~~P.O. Box 47477~~
~~Olympia, WA 98504-7477~~)) may be obtained from the department's website at dor.wa.gov, or by contacting the department at 360-705-6705.

(b) The department will verify the information contained in the application and approve or disapprove the application within ((~~sixty~~)) 60 days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's disapproval of an application within ((~~thirty~~)) 30 days from the date of notice of disallowance pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(407) **Eligible area criteria.** The department will use the statewide and county unemployment statistics as last published by the department. Timber impact town designation is based on information provided by the department of employment security. The department will update the list of eligible areas by county, annually.

(408) **Use of the certificate.** A tax deferral certificate issued under this program will be for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in subsection (401) of this rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment. In addition, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient. The tax deferral certificate is be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales.

(409) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the application and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral of sales and use taxes is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(c) The recipient will be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes must be paid, and any reports required to be submitted in the subsequent years. If the department disallows any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action within ((~~thirty~~)) 30 days from the date of the notice of disallowance pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(410) **Reporting and monitoring procedure.**

(a) Requirement to submit annual reports. Each recipient of a sales and use tax deferral must submit a report to the department on December 31st of the year in which the investment project is certified by the department as having been operationally completed, and on December 31st of each of the seven succeeding calendar years. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately due and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(b) Requirement to submit annual surveys. Effective April 1, 2004, each recipient of a tax deferral granted under chapter 82.60 RCW after June 30, 1994, must complete an annual survey **instead of an annual report.** If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. Refer to WAC 458-20-268 (Annual surveys for certain tax adjustments) for more information on the requirements to file annual surveys.

(411) **Repayment of deferred taxes.** Repayment of tax deferred under chapter 82.60 RCW is excused, except as otherwise provided in RCW 82.60.070 and this subsection on an investment project for which a deferral has been granted under chapter 82.60 RCW after June 30, 1994.

(a) The following describes the various circumstances under which repayment of the deferral may be required. Outstanding taxes are determined by reference to the following table. The table presumes the taxpayer maintained eligibility for the entire year. See subsection (c) for repayment and waiver for deferrals with hiring requirements.

Repayment Year		Percentage of Deferred Tax Waived
1	(Year operationally complete)	0%
2		0%

Repayment Year	Percentage of Deferred Tax Waived
3	0%
4	10%
5	15%
6	20%
7	25%
8	30%

Any action taken by the department to disqualify a recipient for tax deferral or require payment of all or part of deferred taxes is subject to administrative review pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(b) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral, other than failure to create the required number of positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be that the facility is not used for manufacturing or research and development operations.

(c) **Failure of investment project to satisfy employment positions conditions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the amount of taxes deferred will be immediately due. The department will assess interest at the rate and as provided for delinquent excise taxes under RCW 82.32.050 (retroactively to the date of deferral). No penalties will be assessed.

(d) **Failure of investment project to satisfy employee residency requirements.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project under RCW 82.60.040 (1)(b) or (c) has failed to comply with the special hiring requirements of RCW 82.60.045 for any calendar year for which reports are required under this subsection, ((~~twelve and one-half~~)) 12.5 percent of the amount of deferred taxes will be immediately due. For each year a deferral's requirements are met ((~~twelve and one-half~~)) 12.5 percent of the amount of deferred taxes will be waived. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date of deferral. No penalties will be assessed.

(e) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection, per request.

(412) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project is liable for the full amount of any unpaid, defer-

red taxes under the same terms and conditions as the original recipient.

(413) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.) Effective April 1, 2004, all information collected in annual surveys, except the amount of tax deferral taken, is confidential and not subject to disclosure. Information on the amount of tax deferral taken in annual surveys is not confidential and may be disclosed to the public upon request.

PART V
Applications from July 1, 1992, to June 30, 1994

(501) **Definitions.** For the purposes of this part, the following definitions apply for applications made after July 1, 1992, but before July 1, 1994:

(a) "Acquisition of equipment or machinery" means the equipment and machinery is under the dominion and control of the recipient.

(b) "Applicant" means a person applying for a tax deferral under chapter 82.60 RCW.

(c) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(d) "Computer-related services" means services that are connected or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. This includes the manufacture of hardware such as chips, keyboards, monitors, any other hardware, and the components of these items. It includes creating operating systems and software that will be copied and sold as canned software. "Computer-related services" does not include information services. The activities performed by the manufacturer to test, correct, revise, and upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services in this instance.

(e) "Department" means the department of revenue.

(f) "Eligible area" means:

(i) Unemployment county. A county in which the average level of unemployment for the three calendar years preceding the year in which an application is filed exceeds the average state unemployment for those years by ((~~twenty~~)) 20 percent. The department may compare the county's average unemployment rate in the prior three years to ((~~one hundred twenty~~)) 120 percent of the state's average unemployment rate based on official unemployment figures published by the department of employment security;

(ii) MSA. A metropolitan statistical area, as defined by the Office of Federal Statistical Policy and Standards, United States Department of Commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under chapter 82.60 RCW exceeds the average state unemployment for such calendar year by ((~~twenty~~)) 20 percent; or

(iii) CEZ. Beginning July 1, 1993, a designated community empowerment zone approved under RCW 43.63A.700.

(g)(i) "Eligible investment project" means that portion of an investment project which:

(A) Is directly utilized to create at least one new full-time qualified employment position for each ((~~three hundred thousand dollars~~)) $300,000 of investment on which a deferral is requested; and

(B) Either initiates a new operation, or expands or diversifies a current operation by expanding, or renovating an existing building

with costs in excess of ((~~twenty-five~~)) 25 percent of the true and fair value of the plant complex prior to improvement. "Improvement" means the physical alteration by significant expansion, modernization, or renovation of an existing plant complex, excluding land, where the cost of such expansion, etc., exceeds ((~~twenty-five~~)) 25 percent of the true and fair value of the existing plant complex prior to the initiation of the expansion or renovation. The term "improvement" is further defined to include those portions of an existing building which do not increase the usable floor space, but is limited to the renovation, modernization, or any other form of alteration or addition and the equipment and machinery installed therein during the course of construction. The ((~~twenty-five~~)) 25 percent test may be satisfied by considering the value of both the building and machinery and equipment; however, at least ((~~forty~~)) 40 percent of the total renovation costs must be attributable to the physical renovation of the building structure alone. "True and fair value" means the value listed on the assessment rolls as determined by the county assessor for the land, buildings, or equipment for ad valorem property tax purposes at the time of application; or

(C) Acquires machinery and equipment to be used for either manufacturing or research and development. The lessor/owner of the structure is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person.

(ii) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010 or investment projects that have already received deferrals under chapter 82.60 RCW.

(h) "Industrial fixture" means an item attached to a building or to land. Fixtures become part of the real estate to which they are attached and upon attachment are classified as real property, not personal property. Examples of "industrial fixtures" are fuel oil lines, boilers, craneways, and certain concrete slabs.

(i) "Initiation of construction," in regards to the construction of new buildings, means the commencement of on-site construction work.

(j) "Initiation of construction," in regards to the construction of expanding or renovating existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development, means the commencement of new construction by renovation, modernization, or expansion, by physical alteration.

(k) "Investment project" means an investment in qualified buildings and qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(l) "Manufacturing" has the meaning given in RCW 82.04.120. Manufacturing, for purposes of the distressed area deferral program, also includes computer programming, the production of computer software, and other computer-related services, but only when the computer programming, production of computer software, or other computer-related services are performed by a manufacturer as defined in RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

(m) "Operationally complete" means the project is capable of being used for its intended purpose as described in the application.

(n) "Person" has the meaning given in RCW 82.04.030. "Person" does not include the state of Washington or its institutions. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the same site, if they comply with the other requirements of this chapter. The lessor/owner of the structure is not eligible for deferral unless the underlying ownership of the buildings, machinery, or equipment vests in the lessor/owner.

(o) "Qualified buildings" are limited to structures used for manufacturing and research and development activities. "Qualified buildings" include plant offices and warehouses if such facilities are essential or an integral part of a factory, mill, plant, or laboratory. "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building, its use must be essential or integral to the manufacturing or research and development operation. Office space that is used by supervisors and their staff, by technicians, by payroll staff, by the safety officer, and by the training staff are examples of qualifying office space. "Warehouse" means facilities used for the storage of raw materials or finished goods.

(p) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The "entire tax year" means the full-time position is filled for a period of ((~~twelve~~)) 12 consecutive months. "Full time" means at least 35 hours a week, 455 hours a quarter, or 1,820 hours a year.

(q) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation or research and development operation. "Qualified machinery and equipment" includes: Computers, software, data processing equipment, laboratory equipment; manufacturing components such as belts, pulleys, shafts and moving parts; molds, tools and dies; operating structures; and all equipment used to control or operate machinery. It also includes machinery and equipment acquired under the terms of a long- or short-term lease by the recipient. "New" as used in this subsection means either new to the taxing jurisdiction of the state or new to the certificate holder.

(r) "Recipient" means a person receiving a tax deferral under this program.

(s) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed ((~~one million dollars~~)) $1,000,000.

(502) **Issuance of deferral certificate.** The department will issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for an eligible investment project. The department will state on the certificate the amount of tax deferral for which the recipient is eligible. Recipients must keep track of how much deferral is taken.

(503) **Eligible investment amount.** Recipients are eligible for a deferral on investment used to create employment positions.

(a) Total qualifying project costs must be examined to determine the number of positions associated with the project. Total qualifying project costs are divided by ((~~three hundred thousand~~)) 300,000, the result being the qualified employment positions. This is the number of

positions used as the hiring benchmark at the end of year three. The qualified employment positions are reviewed in the third year, following December 31st of the year the project is operationally complete. If the recipient has failed to create the requisite number of positions, the department will issue an assessment under subsection (511) of this rule. Buildings that will be used partly for manufacturing or research and development and partly for other purposes are eligible for a deferral on a proportionate basis. Subsection (504) of this rule explains the procedure for apportionment.

(b) Qualified employment positions does not include those persons hired in excess of the ratio of one employee per required dollar of investment for which a deferral is granted. In the event an employee is either voluntarily or involuntarily separated from employment, the employment position will be considered filled if the employer is either training or actively recruiting a replacement employee so long as the position is not actually vacant for any period in excess of ((~~thirty~~)) 30 consecutive days.

(504) **Apportionment of costs between qualifying and nonqualifying investments.** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of existing buildings directly used in manufacturing, research and development, or commercial testing laboratories.

(a) Where a building(s) is used partly for manufacturing or research and development, or commercial testing and partly for purposes, which do not qualify for deferral under this rule, the deferral will be determined by apportionment of the total project costs. The applicable tax deferral will be determined by apportionment according to the ratio of the square footage of that portion of the building(s) directly used for manufacturing or research and development purposes bears to the square footage of the total building(s).

Apportionment formula:

$$\frac{\text{Eligible square feet of building(s)}}{\text{Total square feet of building(s)}} = \text{Percent Eligible}$$

Percent Eligible x Total Project Costs = Eligible Costs.

"Total Project Costs" means cost of multipurpose buildings and other improvement costs associated with the deferral project. Machinery and equipment are not included in this calculation. Common areas, such as hallways and bathrooms, are not included in the square feet figure for either the numerator or the denominator. The cost of the common areas is multiplied by the percent eligible to determine the portion of the common area that is eligible for deferral.

Eligible Tax Deferred = Eligible Cost x Tax Rate.

(b) Qualified machinery and equipment is not subject to apportionment.

(505) **Leased equipment.** The amount of tax deferral allowable for leased equipment is the amount of the consideration paid by the recipient to the lessor over the initial term of the lease, excluding any period of extension or option to renew, up to the last date for repayment of the deferred taxes. After that date the recipient must pay the appropriate sales taxes to the lessor for the remaining term of the lease.

(506) **Application procedure and review process.** An application for sales and use tax deferral under this program must be made prior

to the initiation of construction and the acquisition of equipment or machinery. Persons who apply after construction is initiated or finished or after acquisition of machinery and equipment are not eligible for the program.

(a) Application forms ((~~will be supplied to the applicant by the department upon request. The completed application may be sent by fax to 360-586-2163 or mailed to the following address:~~

~~Washington State Department of Revenue~~
~~Special Programs~~
~~P.O. Box 47477~~
~~Olympia, WA 98504-7477~~)) may be obtained from the department's website at dor.wa.gov, or by contacting the department at 360-705-6705.

(b) The department will verify the information contained in the application and either approve or disapprove the application within ((~~sixty~~)) 60 days. If approved, the department will issue a tax deferral certificate. If disapproved, the department will notify the applicant as to the reason(s) for disapproval. The U.S. Post Office postmark or fax date will be used as the date of application.

(c) The applicant may seek administrative review of the department's refusal to issue a certificate pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews), within ((~~thirty~~)) 30 days from the date of notice of the department's refusal, or within any extension of such time granted by the department. The filing of a petition for review with the department starts a review of departmental action.

(507) **Unemployment criteria.** For purposes of making application for tax deferral and of approving such applications, the statewide and county unemployment statistics last published by the department will be used to determine eligible areas. The department will update the list of eligible areas by county, on an annual basis.

(508) **Use of the certificate.** A tax deferral certificate issued under this program is for the use of the recipient for deferral of sales and use taxes due on each eligible investment project. Deferral is limited only to investment in qualified buildings or qualified machinery and equipment as defined in subsection (501) of this rule. Thus, sales and use taxes cannot be deferred on items that do not become part of the qualified buildings, machinery, or equipment.

The tax deferral certificate is to be used in a manner similar to that of a resale certificate as set forth in WAC 458-20-102, Resale certificates. The certificate holder must provide a copy of the tax deferral certificate to the seller at the time goods or services are purchased. The seller will be relieved of the responsibility for collection of the sales or use tax upon presentation of the certificate. The seller must retain a copy of the certificate as part of its permanent records for a period of at least five years. A blanket certificate may be provided by the certificate holder and accepted by the seller covering all such purchases relative to the eligible project. The seller is liable for business and occupation tax on all tax deferral sales. The deferral certificate is to defer the taxes of the recipient. For example, the deferral is not to be used to defer the taxes of the persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

(509) **Project operationally complete.** An applicant must provide the department with the estimated cost of the investment project at the time the application is made. Following approval of the applica-

tion and issuance of a tax deferral certificate, a certificate holder must notify the department, in writing, when the value of the investment project reaches the estimated cost as stated on the tax deferral certificate.

(a) If a certificate holder has reached its level of estimated costs and the project is not operationally complete, the certificate holder may request an amended certificate stating a revised amount upon which the deferral of sales and use taxes is requested. Requests must be mailed or faxed to the department.

(b) The certificate holder must notify the department in writing when the construction project is operationally complete. The department will certify the date on which the project was operationally complete. The recipient of the deferral must maintain the manufacturing or research and development activity for eight years from this date.

(c) The recipient will be notified in writing of the total amount of deferred taxes, the date(s) upon which the deferred taxes must be paid, and any reports required to be submitted in the subsequent years. If the department disallows all or any portion of the amount of sales and use taxes requested for deferral, the recipient may seek administrative review of the department's action pursuant to the provisions of WAC 458-20-100, within ((~~thirty~~)) 30 days from the date of the notice of disallowance.

(510) **Reporting and monitoring procedure.** Requirement to submit annual reports. Each recipient of a sales and use tax deferral must submit a report to the department on December 31st of each year during the repayment period until the tax deferral is repaid. The report must be made to the department in a form and manner prescribed by the department. The report must contain information regarding the actual employment related to the project and any other information required by the department. If the recipient fails to submit a report or submits an inadequate or falsified report, the department may declare the amount of deferred taxes outstanding to be immediately assessed and payable. An inadequate or falsified report is one that contains material omissions or contains knowingly false statements and information.

(511) **Repayment of deferred taxes.** The recipient must begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project has been operationally completed.

(a) The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years, with amounts of payment scheduled as follows:

Repayment Year		Percentage of Deferred Tax Repaid
1	(Year certified operationally complete)	0%
2		0%
3		0%
4		10%
5		15%
6		20%
7		25%
8		30%

(b) The department may authorize an accelerated repayment schedule upon request of the recipient. Interest will not be charged on any

taxes deferred under this part during the period of deferral, although other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for any delinquent payments during the repayment period pursuant to chapter 82.32 RCW.

(c) Taxes deferred on the sale or use of labor directly applied in the construction of an investment project for which deferral has been granted need not be repaid, provided eligibility for the granted tax deferral has been perfected by meeting all of the eligibility requirements, based upon the recipient's annual December 31st reports and any other information available to the department. The recipient must establish, by clear and convincing evidence, the value of all construction and installation labor for which repayment of sales tax is sought to be excused. Such evidence must include, but is not limited to: A written, signed, and dated itemized billing from construction/installation contractors or independent third party labor providers which states the value of labor charged separately from the value of materials. This information must be maintained in the recipient's permanent records for the department's review and verification. In the absence of such itemized billings in its permanent records, no recipient may be excused from repayment of sales tax on the value of labor in an amount exceeding ((~~thirty~~)) 30 percent of its gross construction or installation contract charges. The value of labor for which an excuse from repayment of sales or use tax may be received will not exceed the value which is subject to such taxes under the general provisions of chapters 82.08 and 82.12 RCW.

(d) **Failure of investment project to satisfy general conditions.** If, on the basis of the recipient's annual report or other information, including that submitted by the department of employment security, the department finds that an investment project is not eligible for tax deferral for reasons other than failure to create the required number of qualified employment positions, the department will declare the amount of deferred taxes outstanding to be immediately due. For example, a reason for disqualification would be the facility is not used for a manufacturing or research and development operation.

(e) **Failure of investment project to satisfy required employment positions.** If, on the basis of the recipient's annual report or other information, the department finds that an investment project has been operationally complete for three years and has failed to create the required number of qualified employment positions, the department will assess interest but not penalties, on the deferred taxes for the project. The department will assess interest at the rate provided for delinquent excise taxes under RCW 82.32.050, retroactively to the date of the date of deferral. No penalties will be assessed.

(f) The department of employment security makes and certifies to the department all determinations of employment and wages required under this subsection, per request.

(g) Any action taken by the department to assess interest or disqualify a recipient for tax deferral will be subject to administrative review pursuant to the provisions of WAC 458-20-100 (Informal administrative reviews). The filing of a petition for review with the department starts a review of departmental action.

(512) **Debt not extinguished because of insolvency or sale.** Insolvency or other failure of the recipient does not extinguish the debt for deferred taxes nor will the sale, exchange, or other disposition of the recipient's business extinguish the debt for the deferred taxes. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility

requirements of this chapter, for the remaining periods of the deferral. Any person who becomes a successor (see WAC 458-20-216) to such investment project will be liable for the full amount of any unpaid, deferred taxes under the same terms and conditions as the original recipient.

(513) **Disclosure of information.** Applications and reports received by the department under chapter 82.60 RCW are not confidential and are subject to disclosure. (RCW 82.60.100.)

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-12-075, § 458-20-24001A, filed 5/27/16, effective 6/27/16; WSR 10-21-052, § 458-20-24001A, filed 10/14/10, effective 11/14/10; WSR 06-17-007, § 458-20-24001A, filed 8/3/06, effective 9/3/06; WSR 04-01-127, § 458-20-24001A, filed 12/18/03, effective 1/18/04. Statutory Authority: RCW 82.32.300. WSR 01-12-041, § 458-20-24001A, filed 5/30/01, effective 6/30/01.]

AMENDATORY SECTION (Amending WSR 18-13-094, filed 6/19/18, effective 7/20/18)

WAC 458-20-24003 Tax incentives for high technology businesses. (1) **Introduction.** This rule explains the tax incentives, contained in chapter 82.63 RCW and RCW 82.04.4452, which apply to businesses engaged in research and development or pilot scale manufacturing in Washington in five high technology areas: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology. Eligibility for high technology or research and development tax incentives offered by the federal government or any other jurisdiction does not establish eligibility for Washington's programs.

This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results in all situations must be determined after a review of all facts and circumstances. Assume all the examples below occur on or after June 10, 2004, unless otherwise indicated.

(2) **Organization of the rule.** The information provided in this rule is divided into three parts.

(a) Part I provides information on the sales and use tax deferral program under chapter 82.63 RCW.

(b) Part II provides information on the sales and use tax exemption available for persons engaged in certain construction activities for the federal government under RCW 82.04.190(6).

(c) Part III provides information on the business and occupation tax credit on research and developing spending under RCW 82.04.4452.

PART I

SALES AND USE TAX DEFERRAL PROGRAM

(3) **Who is eligible for the sales and use tax deferral program?** A person engaged in qualified research and development or pilot scale manufacturing in Washington in the five high technologies areas is eligible for this deferral program for its eligible investment project.

(a) **What does the term "person" mean for purposes of this deferral program?** "Person" has the meaning given in RCW 82.04.030. Effective June 10, 2004, "person" also includes state universities as defined in RCW 28B.10.016. "Person" can be either a lessee or a lessor, who can apply separately for individual investment projects at the

same site, if they comply with the other requirements of chapter 82.63 RCW.

(i) Effective June 10, 2004, the lessor or owner of the qualified building is not eligible for a deferral unless:

(A) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(B) All of the following conditions are met:

(I) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(II) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.63.020(2);

(III) The lessee must receive an economic benefit from the lessor no less than the amount of tax deferred by the lessor; and

(IV) Upon request, the lessor must provide the department with written documentation to support the eligibility of the deferral, including any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

For example, economic benefit of the deferral is passed through to the lessee when evidenced by written documentation that the amounts paid to the lessor for construction of tenant improvements are reduced by the amount of the sales tax deferred, or that the lessee receives more tenant improvements through a credit for tenant improvements or other mechanism in the lease equal to the amount of the sales tax deferred.

(ii) Prior to June 10, 2004, the lessor or owner of the qualified building is not eligible for a deferral unless the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments.

(iii) The lessor of the qualified building who receives a letter of intent from a qualifying lessee may be eligible for deferral, assuming that all other requirements of chapter 82.63 RCW are met. At the time of application, the lessor must provide to the department a letter of intent by the lessee to lease the qualified building and any other information to prove that the lessee will engage in qualified research and development or pilot scale manufacturing once the building construction is complete. After the investment project is certified as operationally complete, the lessee must actually occupy the building as a lessee and engage in qualified research and development or pilot scale manufacturing. Otherwise, deferred taxes will be immediately due to the lessor, and interest will be assessed retroactively from the date of deferral.

(b) **What is "qualified research and development" for purposes of this rule?** "Qualified research and development" means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(c) **What is "research and development" for purposes of this rule?** "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software.

The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licens-

ing by the Federal Food and Drug Administration under chapter 21 C.F.R., as amended.

The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(i) A person need not both discover technological information and translate technological information into new or improved products, processes, techniques, formulas, inventions, or software in order to engage in research and development. A person may perform either activity alone and be engaged in research and development.

(ii) To discover technological information means to gain knowledge of technological information through purposeful investigation. The knowledge sought must be of something not previously known or, if known, only known by persons who have not made the knowledge available to the public.

(iii) Technological information is information related to the application of science, especially with respect to industrial and commercial objectives. Industrial and commercial objectives include both sale and internal use (other than internal use software). The translation of technological information into new or improved products, processes, techniques, formulas, inventions, or software does not require the use of newly discovered technological information to qualify as research and development.

(iv) The translation of technological information requires both technical and nonroutine activities.

(A) An activity is technical if it involves the application of scientific, engineering, or computer science methods or principles.

(B) An activity is nonroutine if it:

(I) Is undertaken to achieve a new or improved function, performance, reliability, or quality; and

(II) Is performed by engineers, scientists, or other similarly qualified professionals or technicians; and

(III) Involves a process of experimentation designed to evaluate alternatives where the capability or the method of achieving the new or improved function, performance, reliability, or quality, or the appropriate design of the desired improvement, is uncertain at the beginning of the taxpayer's research activities. A process of experimentation must seek to resolve specific uncertainties that are essential to attaining the desired improvement.

(v) A product is substantially improved when it functions fundamentally differently because of the application of technological information. This fundamental difference must be objectively measured. Examples of objective measures include increased value, faster operation, greater reliability, and more efficient performance. It is not necessary for the improvement to be successful for the research to qualify.

(vi) Computer software development may qualify as research and development involving both technical and nonroutine activities concerned with translating technological information into new or improved software, when it includes the following processes: Software concept, software design, software design implementation, conceptual freeze, alpha testing, beta testing, international product localization process, and other processes designed to eliminate uncertainties prior to

the release of the software to the market for sale. Research and development ceases when the software is released to the market for sale.

Postrelease software development may meet the definition of research and development under RCW 82.63.010(16), but only if it involves both technical and nonroutine activities concerned with translating technological information into improved software. All facts and circumstances are considered in determining whether postrelease software development meets the definition of research and development.

(vii) Computer software is developed for internal use if it is to be used only by the person by whom it is developed. If it is to be available for sale, lease, or license, it is not developed for internal use, even though it may have some internal applications. If it is to be available for use by persons, other than the person by whom it is developed, who access or download it remotely, such as through the internet, it is not usually deemed to be developed for internal use. However, remotely accessed software is deemed to be developed for internal use if its purpose is to assist users in obtaining goods, services, or information provided by or through the person by whom the software is developed. For example, software is developed for internal use if it enables or makes easier the ordering of goods from or through the person by whom the software is developed. On the other hand, a search engine used to search the world wide web is an example of software that is not developed for internal use because the search engine itself is the service sought.

(viii) Research and development is complete when the product, process, technique, formula, invention, or software can be reliably reproduced for sale or commercial use. However, the improvement of an existing product, process, technique, formula, invention, or software may qualify as research and development.

(d) **What is "pilot scale manufacturing" for purposes of this rule?** "Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of biotechnology, advanced computing, electronic device technology, advanced materials, and environmental technology other than for commercial sale. "Commercial sale" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed ((~~one million dollars~~)) $1,000,000.

(e) **What are the five high technology areas?** The five high technology areas are as follows:

(i) **Advanced computing.** "Advanced computing" means technologies used in the designing and developing of computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to super computers, and peripheral equipment.

(ii) **Advanced materials.** "Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

(iii) **Biotechnology.** "Biotechnology" means the application of technologies, such as recombinant DNA techniques, biochemistry, molecular and cellular biology, genetics, including genomics, gene expression and genetic engineering, cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms, to produce or modify products, to improve plants or animals, to develop microorganisms for specific uses, to identify targets for small molecule pharma-

ceutical development, or to transform biological systems into useful processes and products or to develop microorganisms for specific uses.

(iv) **Electronic device technology.** "Electronic device technology" means technologies involving microelectronics; semiconductors; electronic equipment and instrumentation; radio frequency, microwave, and millimeter electronics; optical and optic-electrical devices; and data and digital communications and imaging devices.

(v) **Environmental technology.** "Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, and the development of alternative energy sources.

(A) The assessment and prevention of threats or damage to human health or the environment concerns assessing and preventing potential or actual releases of pollutants into the environment that are damaging to human health or the environment. It also concerns assessing and preventing other physical alterations of the environment that are damaging to human health or the environment.

For example, a research project related to salmon habitat restoration involving assessment and prevention of threats or damages to the environment may qualify as environmental technology, if such project is concerned with assessing and preventing potential or actual releases of water pollutants and reducing human-made degradation of the environment.

(I) Pollutants include waste materials or by-products from manufacturing or other activities.

(II) Environmental technology includes technology to reduce emissions of harmful pollutants. Reducing emissions of harmful pollutants can be demonstrated by showing the technology is developed to meet governmental emission standards. Environmental technology also includes technology to increase fuel economy, only if the taxpayer can demonstrate that a significant purpose of the project is to increase fuel economy and that such increased fuel economy does in fact significantly reduce harmful emissions. If the project is intended to increase fuel economy only minimally or reduce emissions only minimally, the project does not qualify as environmental technology. A qualifying research project must focus on the individual components that increase fuel economy of the product, not the testing of the entire product when everything is combined, unless the taxpayer can separate out and identify the specific costs associated with such testing.

(III) Environmental technology does not include technology for preventive health measures for, or medical treatment of, human beings.

(IV) Environmental technology does not include technology aimed to reduce impact of natural disasters such as floods and earthquakes.

(V) Environmental technology does not include technology for improving safety of a product.

(B) Environmental cleanup is corrective or remedial action to protect human health or the environment from releases of pollutants into the environment.

(C) Alternative energy sources are those other than traditional energy sources such as fossil fuels, nuclear power, and hydroelectricity. However, when traditional energy sources are used in conjunction with the development of alternative energy sources, all the development will be considered the development of alternative energy sources.

(4) **What is eligible for the sales and use tax deferral program?** This deferral program applies to an eligible investment project for sales and use taxes imposed on the construction, expansion, or renova-

tion of qualified buildings and acquisition of qualified machinery and equipment.

(a) **What is an "eligible investment project" for purposes of this rule?** "Eligible investment project" means an investment project which either initiates a new operation, or expands or diversifies a current operation by expanding, renovating, or equipping an existing facility.

(b) **What is an "investment project" for purposes of this rule?** "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction or improvement of the project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify.

(c) **What is "qualified buildings" for purposes of this rule?** "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for pilot scale manufacturing or qualified research and development.

(i) "Qualified buildings" is limited to structures used for pilot scale manufacturing or qualified research and development. "Qualified buildings" includes plant offices and other facilities that are an essential or an integral part of a structure used for pilot scale manufacturing or qualified research and development.

(A) "Office" means space used by professional, clerical, or administrative staff. For plant office space to be a qualified building, its use must be essential or integral to pilot scale manufacturing or qualified research and development. An office may be located in a separate building from the building used for pilot scale manufacturing or qualified research and development, but the office must be located at the same site as the qualified building in order to qualify. Each individual office may only qualify or disqualify in its entirety.

(B) A site is one or more immediately adjacent parcels of real property. Adjacent parcels of real property separated only by a public road comprise a single site.

(ii) "Qualified buildings" does not include construction of landscaping or most other work outside the building itself, even though the landscaping or other work outside the building may be required by the city or county government in order for the city or county to issue a permit for the construction of a building.

However, "qualified buildings" includes construction of specialized sewerage pipes connected to a qualified building that are specifically designed and used exclusively for pilot scale manufacturing or qualified research and development.

Also, "qualified buildings" includes construction of parking lots connected to or adjacent to the building if the parking lots are for the use of workers performing pilot scale manufacturing or qualified research and development in the building. Parking lots may be apportioned based upon its qualifying use.

(d) **What is "multiple qualified buildings" for purposes of this rule?** "Multiple qualified buildings" means "qualified buildings" leased to the same person when such structures:

(i) Are located within a five-mile radius; and

(ii) The initiation of construction of each building begins within a ((~~sixty~~)) 60-month period.

(e) **When is apportionment of qualified buildings appropriate?** The deferral is allowable only in respect to investment in the construction of a new building or the expansion or renovation of an existing

building used in pilot scale manufacturing or qualified research and development. Where a building(s) is used partly for pilot scale manufacturing or qualified research and development and partly for purposes that do not qualify for deferral under this rule, apportionment is necessary.

(f) **What is the apportionment method?** The applicable tax deferral will be determined as follows:

(i) Tax on the cost of construction of areas devoted solely to pilot scale manufacturing or qualified research and development may be deferred.

(ii) Tax on the cost of construction of areas not used at all for pilot scale manufacturing or qualified research and development may not be deferred.

(iii) Tax on the cost of construction of areas used in common for pilot scale manufacturing or qualified research and development and for other purposes, such as hallways, bathrooms, and conference rooms, may be deferred by apportioning the costs of construction on a square footage basis. The apportioned costs of construction eligible for deferral are established by using the ratio, expressed as a percentage, of the square feet of the construction, expansion, or renovation devoted to pilot scale manufacturing or qualified research and development, excluding areas used in common to the total square feet of the construction, expansion, or renovation, excluding areas used in common. That percentage is applied to the cost of construction of the common areas to determine the costs of construction eligible for tax deferral. Expressed as a formula, apportionment of the cost of the common areas is determined by:

$$\frac{\text{Square feet devoted to research and development or pilot scale manufacturing, excluding square feet of common areas}}{\text{Total square feet, excluding square feet of common areas}} = \text{Percentage of total cost of construction of common areas eligible for deferral}$$

(iv) The apportionment method described in (f)(i), (ii), and (iii) of this subsection must be used unless the applicant or recipient can demonstrate that another method better represents a reasonable apportionment of costs, considering all the facts and circumstances. An example is to use the number of employees in a qualified building that is engaged in pilot scale manufacturing or qualified research and development as the basis for apportionment, if this method is not easily manipulated to reflect a desired outcome, and it otherwise represents a reasonable apportionment of costs under all the facts and circumstances. This method may take into account qualified research and development or pilot scale manufacturing activities that are shifted within a building or from one building to another building. If assistance is needed to a tax-related question specific to your business under this subsection, you may request a tax ruling. To make a tax ruling request contact the department((~~'s taxpayer information and education division at:~~

~~Washington State Department of Revenue~~
~~Taxpayer Information and Education~~
~~P.O. Box 47478~~
~~Olympia, WA 98504-7478~~
~~fax 360-586-2463~~)) at 360-705-6705 or go to the department's website at dor.wa.gov.

(v) Example. A building to be constructed will be partially devoted to research and development and partially devoted to marketing, a nonqualifying purpose. The total area of the building is 100,000 square feet. Sixty thousand square feet are used only for research and development, 20,000 square feet are used only for marketing, and the remaining 20,000 square feet are used in common by research and development employees and marketing employees. Tax on the cost of constructing the 60,000 square feet used only for research and development may be deferred. Tax on the cost of constructing the 20,000 square feet used only for marketing may not be deferred. Tax on 75% of the cost of constructing the common areas may be deferred. (Sixty thousand square feet devoted solely to research and development divided by 80,000 square feet devoted solely to research and development and marketing results in a ratio expressed as 75%.)

(g) **What is "qualified machinery and equipment" for purposes of this rule?** "Qualified machinery and equipment" means fixtures, equipment, and support facilities that are an integral and necessary part of a pilot scale manufacturing or qualified research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, invention, or similar property; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; vats, tanks, and fermenters; operating structures; and all other equipment used to control, monitor, or operate the machinery. For purposes of this rule, qualified machinery and equipment must be either new to the taxing jurisdiction of the state or new to the certificate holder, except that used machinery and equipment may be treated as qualified machinery and equipment if the certificate holder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.

(i) **What are "integral" and "necessary"?** Machinery and equipment is an integral and necessary part of pilot scale manufacturing or qualified research and development if the pilot scale manufacturing or qualified research and development cannot be accomplished without it. For example, a laboratory table is integral and necessary to qualified research and development. Likewise, telephones, computer hardware (e.g., cables, scanners, printers, etc.), and computer software (e.g., Word, Excel, Windows, Adobe, etc.) used in a typical workstation for an R&D personnel are integral and necessary to qualified research and development. Decorative artwork, on the other hand, is not integral and necessary to qualified research and development.

(ii) **Must qualified machinery and equipment be used exclusively for qualifying purposes in order to qualify?** Qualified machinery and equipment must be used exclusively for pilot scale manufacturing or qualified research and development to qualify for the deferral. Operating system software shared by accounting personnel, for example, is not used exclusively for qualified research and development. However, *de minimis* nonqualifying use will not cause the loss of the deferral. An example of *de minimis* use is the occasional use of a computer for personal email.

(iii) **Is qualified machinery and equipment subject to apportionment?** Unlike buildings, if machinery and equipment is used for both qualifying and nonqualifying purposes, the costs cannot be apportioned. Sales or use tax cannot be deferred on the purchase or use of

machinery and equipment used for both qualifying and nonqualifying purposes.

(iv) **To what extent is leased equipment eligible for the deferral?** In cases of leases of qualifying machinery and equipment, deferral of tax is allowed on payments made during the initial term of the lease, but not for extensions or renewals of the lease. Deferral of tax is not allowed for lease payments for any period after the seventh calendar year following the calendar year for which the project is certified as operationally complete.

(5) **What are the application and review processes?** Applicants must apply for deferral to the department of revenue before the initiation of construction of, or acquisition of equipment or machinery for the investment project. When an application for sales and use tax deferral is timely submitted, costs incurred before the application date are allowable, if they otherwise qualify. In the case of an investment project consisting of "multiple qualified buildings," applications must be made for, and before the initiation of construction of, each qualified building.

(a) **What is "initiation of construction" for purposes of this rule?**

(i) Initiation of construction means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(A) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(B) Construction of the qualified building, if a lessor passes the economic benefits of the deferral to a lessee as provided in RCW 82.63.010(7); or

(C) Tenant improvements for a qualified building, if a lessor passes the economic benefits of the deferral to a lessee as provided in RCW 82.63.010(7).

(ii) Initiation of construction does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(iii) If the investment project is a phased project, initiation of construction must apply separately to each building. For purposes of this rule, a "phased project" means construction of multiple buildings in different phases over the life of a project. A taxpayer may file a separate application for each qualified building, or the taxpayer may file one application for all qualified buildings. If a taxpayer files one application for all qualified buildings, initiation of construction must apply separately to each building.

(b) **What is "acquisition of machinery and equipment" for purposes of this rule?** "Acquisition of machinery and equipment" means the machinery and equipment is under the dominion and control of the recipient or its agent.

(c) **Lessor and lessee examples.**

(i) Prior to the initiation of construction, Owner/Lessor A enters into an agreement with Lessee B, a company engaged in qualified research and development. Under the agreement, A will build a building to house B's research and development activities, will apply for a tax deferral on construction of the building, will lease the building to B, and will pass on the entire value of the deferral to B. B agrees in writing with the department to complete annual tax performance re-

ports. A applies for the deferral before the date the building permit is issued. A is entitled to a deferral on building construction costs.

(ii) After construction has begun, Lessee C asks that certain tenant improvements be added to the building. Lessor D and Lessee C each agree to pay a portion of the cost of the improvements. D agrees with C in a written agreement that D will pass on the entire value of D's portion of the tax deferral to C, and C agrees in writing with the department to complete annual tax performance reports. C and D each apply for a deferral on the costs of the tenant improvements they are legally responsible for before the date the building permit is issued for such tenant improvements. Both applications will be approved. While construction of the building was initiated before the applications were submitted, tenant improvements on a building under construction are deemed to be the expansion or renovation of an existing structure. Also, lessees are entitled to the deferral only if they are legally responsible and actually pay contractors for the improvements, rather than merely reimbursing lessors for the costs.

(iii) After construction has begun but before machinery or equipment has been acquired, Lessee E applies for a deferral on machinery and equipment. The application will be approved, and E is required to complete annual tax performance reports. Even though it is too late to apply for a deferral of tax on building costs, it is not too late to apply for a deferral for the machinery and equipment.

(d) **How may a taxpayer obtain an application form?** Application forms may be obtained ((~~at department of revenue district offices, by downloading~~)) from the department's website ((~~(~~)) at dor.wa.gov((~~)~~)), or by ((~~telephoning the telephone information center (800-647-7706), or by~~)) contacting the department((~~'s special programs division at:~~

~~Washington State Department of Revenue~~
~~Special Programs Division~~
~~Post Office Box 47477~~
~~Olympia, WA 98504-7477~~
~~fax 360-586-2163~~

~~Applicants must mail or fax applications to the special programs division at the address or fax number given above.~~)) at 360-705-6705. Only those applications which are approved by the department in connection with the deferral program are not confidential and are subject to public disclosure.

For purposes of this rule, "applicant" means a person applying for a tax deferral under chapter 82.63 RCW, and "department" means the department of revenue.

(e) **What should an application form include?** The application form should include information regarding the location of the investment project, the applicant's average employment in Washington for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, and time schedules for completion and operation. The application form may also include other information relevant to the project and the applicant's eligibility for deferral.

(f) **What is the date of application?** The date of application is the earlier of the postmark date or the date of receipt by the department.

(g) **When will the department notify approval or disapproval of the deferral application?** The department must rule on an application within ((~~sixty~~)) 60 days. If an application is denied, the department must explain in writing the basis for the denial. An applicant may

seek review of a denial within ((~~thirty~~)) 30 days under WAC 458-20-100 (Informal administrative reviews).

(6) **Can a lessee leasing "multiple qualified buildings" elect to treat the "multiple qualified buildings" as a single investment project?** Yes. If a lessee will conduct qualified research and development or pilot scale manufacturing within the "multiple qualified buildings" and desires to treat the "multiple qualified buildings" as a single investment project, the lessee may do so by making both a preliminary election and a final election therefore.

(a) **When must the lessee make the preliminary election to treat the "multiple qualified buildings" as a single investment project?** The lessee must make the preliminary election before a temporary certificate of occupancy, or its equivalent, is issued for any of the buildings within the "multiple qualified buildings."

(b) **When must the lessee make the final election to treat the "multiple qualified buildings" as a single investment project?** All buildings included in the final election must have been issued a temporary certificate of occupancy or its equivalent. The lessee must then make the final election for such buildings by the date that is the earlier of:

(i) Sixty months following the date that the lessee made the preliminary election; or

(ii) Thirty days after the issuance of the temporary certificate of occupancy, or its equivalent, for the last "qualified building" to be completed that will be included in the final election.

(c) **What occurs if the final election is not made by the deadline?** When a final election is not made by the deadline in (b)(i) or (ii) of this subsection, the qualified buildings will each be treated as individual investment projects under the original applications for those buildings.

(d) **How are preliminary and final elections made?** The preliminary and final elections must be made in the form and manner prescribed by the department. For information concerning the form and manner for making these elections contact the department((~~'s special programs division at:~~

~~Washington State Department of Revenue~~
~~Special Programs Division~~
~~Post Office Box 47477~~
~~Olympia, WA 98504-7477~~
~~fax 360-586-2163~~)) 360-705-6705.

(e) **Before the final election is made, can the lessee choose to exclude one or more of the buildings included in its preliminary election?** Yes. Before the final election is made, the lessee may remove one or more of the qualified buildings included in the preliminary election from the investment project. When a qualified building under the preliminary election is, for any reason, not included in the final election, the qualified building will be treated as an individual investment project under the original application for that building.

(f) **Application.** This subsection (6) applies to deferral applications received by the department after June 30, 2007.

(7) **What happens after the department approves the deferral application?** If an application is approved, the department must issue the applicant a sales and use tax deferral certificate.

The certificate provides for deferral of state and local sales and use taxes on the eligible investment project. The certificate will state the amount of tax deferral for which the recipient is eligible.

It will also state the date by which the project will be operationally complete. The deferral is limited to investment in qualified buildings or qualified machinery and equipment. The deferral does not apply to the taxes of persons with whom the recipient does business, persons the recipient hires, or employees of the recipient.

For purposes of this rule, "recipient" means a person receiving a tax deferral under chapter 82.63 RCW.

(8) **How should a tax deferral certificate be used?** A successful applicant, hereafter referred to as a recipient, must present a copy of the certificate to sellers of goods or retail services provided in connection with the eligible investment project in order to avoid paying sales or use tax. Sellers who accept these certificates in good faith are relieved of the responsibility to collect sales or use tax on transactions covered by the certificates. Sellers must retain copies of certificates as documentation for why sales or use tax was not collected on a transaction.

The certificate cannot be used to defer tax on repairs to, or replacement parts for, qualified machinery and equipment.

(9) **May an applicant apply for new deferral at the site of an existing deferral project?**

(a) The department must not issue a certificate for an investment project that has already received a deferral under chapter 82.60, 82.61, or 82.63 RCW. For example, replacement machinery and equipment that replaces qualified machinery and equipment is not eligible for the deferral. Also, if renovation is made from an existing building that has already received a deferral under chapter 82.60, 82.61, or 82.63 RCW for the construction of the building, the renovation is not eligible for the deferral.

(b) If expansion is made from an existing building that has already received a deferral under chapter 82.60, 82.61, or 82.63 RCW for the construction of the building, the expanded portion of the building may be eligible for the deferral. Acquisition of machinery and equipment to be used for the expanded portion of the qualified building may also be eligible.

(c) An investment project for qualified research and development that has already received a deferral may also receive an additional deferral certificate for adapting the investment project for use in pilot scale manufacturing.

(d) A certificate may be amended or a certificate issued for a new investment project at an existing facility.

(10) **May an applicant or recipient amend an application or certificate?** Applicants and recipients may make written requests to the special programs division to amend an application or certificate.

(a) Grounds for requesting amendment include, but are not limited to:

(i) The project will exceed the costs originally stated;

(ii) The project will take more time to complete than originally stated;

(iii) The original application is no longer accurate because of changes in the project; and

(iv) Transfer of ownership of the project.

(b) The department must rule on the request within ((~~sixty~~)) 60 days. If the request is denied, the department must explain in writing the basis for the denial. An applicant or recipient may seek review of a denial within ((~~thirty~~)) 30 days under WAC 458-20-100 (Informal administrative reviews).

(11) **What should a recipient of a tax deferral do when its investment project is operationally complete?**

(a) When the building, machinery, or equipment is ready for use, or when a final election is made to treat "multiple qualified buildings" as single investment project, the recipient must notify the special programs division in writing that the eligible investment project is operationally complete. The department must, after appropriate investigation: Certify that the project is operationally complete; not certify the project; or certify only a portion of the project. The certification will include the year in which the project is operationally complete. If the department certifies as an operationally complete investment project consisting of "multiple qualifying buildings," the certification is deemed to have occurred in the calendar year in which the final election is made.

(b) If all or any portion of the project is not certified, the recipient must repay all or a proportional part of the deferred taxes. The department will notify the recipient of the amount due, including interest, and the due date.

(c) The department must explain in writing the basis for not certifying all or any portion of a project. The decision of the department to not certify all or a portion of a project may be reviewed under WAC 458-20-100 (Informal administrative reviews) within ((~~thirty~~)) 30 days.

(d) An investment project consisting of "multiple qualifying buildings" may not be certified as operationally complete unless the lessee furnishes the department with a bond, letter of credit, or other security acceptable to the department in an amount equal to the repayment obligation as determined by the department. The department may decrease the secured amount each year as the repayment obligation decreases under the provisions of RCW 82.63.045. If the lessee does not furnish the department with a bond, letter of credit, or other acceptable security equal to the amount of deferred tax, the qualified buildings will each be treated as individual investment projects under the original applications for those buildings.

(12) **Is a recipient of a tax deferral required to submit annual tax performance reports?** Each recipient of a tax deferral granted under chapter 82.63 RCW must complete an annual tax performance report. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee must agree to complete the annual tax performance report and the applicant is not required to complete the annual tax performance report. See WAC 458-20-267 (Annual tax performance reports for certain tax preferences) for more information on the requirements to file annual tax performance reports.

(13) **Is a recipient of tax deferral required to repay deferred taxes?**

(a) **When is repayment required?** Deferred taxes must be repaid if an investment project is used for purposes other than qualified research and development or pilot scale manufacturing during the calendar year for which the department certifies the investment project as operationally complete or at any time during any of the succeeding seven calendar years. Taxes are immediately due according to the following schedule:

Year in which nonqualifying use occurs	% of deferred taxes due
1	100%
2	87.5%

Year in which nonqualifying use occurs	% of deferred taxes due
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

Interest on the taxes, but not penalties, must be paid retroactively to the date of deferral. For purposes of this rule, the date of deferral is the date tax-deferred items are purchased.

The lessee of an investment project consisting of "multiple qualified buildings" is solely liable for payment of any deferred tax determined to be due and payable beginning on the date the department certifies the product as operationally complete. This does not relieve any lessor of its obligation under RCW 82.63.010(7) and subsection (3)(a) of this rule to pass the economic benefit of the deferral to the lessee.

(b) **When is repayment not required?**

(i) Deferred taxes need not be repaid if the investment project is used only for qualified research and development or pilot scale manufacturing during the calendar year for which the department certifies the investment project as operationally complete and during the succeeding seven calendar years.

(ii) Deferred taxes need not be repaid on particular items if the purchase or use of the item would have qualified for the machinery and equipment sales and use tax exemptions provided by RCW 82.08.02565 and 82.12.02565 (discussed in WAC 458-20-13601) at the time of purchase or first use.

(iii) Deferred taxes need not be repaid if qualified machinery and equipment on which the taxes were deferred is destroyed, becomes inoperable and cannot be reasonably repaired, wears out, or becomes obsolete and is no longer practical for use in the project. The use of machinery and equipment which becomes obsolete for purposes of the project and is used outside the project is subject to use tax at the time of such use.

(14) **When will the tax deferral program expire?** The authority of the department to issue deferral certificates expires January 1, 2015.

(15) **Is debt extinguishable because of insolvency or sale?** The debt for deferred taxes will not be extinguished by the insolvency or other failure of the recipient.

(16) **Does transfer of ownership terminate tax deferral?** Transfer of ownership does not terminate the deferral. The deferral may be transferred to the new owner if the new owner meets all eligibility requirements for the remaining periods of the deferral. The new owner must apply for an amendment to the deferral certificate. If the deferral is transferred, the new owner is liable for repayment of deferred taxes under the same terms as the original owner. If the new owner is a successor to the previous owner under the terms of WAC 458-20-216 (Successors, quitting business) and the deferral is not transferred, the new owner's liability for deferred taxes is limited to those that are due for payment at the time ownership is transferred.

PART II

SALES AND USE TAX EXEMPTION FOR PERSONS ENGAGED IN CERTAIN CONSTRUCTION ACTIVITIES FOR THE FEDERAL GOVERNMENT

(17) **Persons engaged in construction activities for the federal government.** Effective June 10, 2004, persons engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, are not liable for sales and use tax on tangible personal property incorporated into, installed in, or attached to such building or other structure, if the investment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity. RCW 82.04.190(6).

PART III

BUSINESS AND OCCUPATION TAX CREDIT FOR RESEARCH AND DEVELOPMENT SPENDING

(18) **Who is eligible for the business and occupation tax credit?** RCW 82.04.4452 provides for a business and occupation tax credit for persons engaging in research and development in Washington in five areas of high technology: Advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

A person is eligible for the credit if its research and development spending in the calendar year for which credit is claimed exceeds 0.92 percent of the person's taxable amount for the same calendar year.

(a) **What does the term "person" mean for purposes of this credit?** "Person" has the meaning given in RCW 82.04.030.

(b) **What is "research and development spending" for purposes of this rule?** "Research and development spending" means qualified research and development expenditures plus ((~~eighty~~)) 80 percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

(c) **What is "taxable amount" for purposes of this rule?** "Taxable amount" means the taxable amount subject to business and occupation tax required to be reported on the person's combined excise tax returns for the year for which the credit is claimed, less any taxable amount for which a multiple activities tax credit is allowed under RCW 82.04.440. See WAC 458-20-19301 (Multiple activities tax credits) for information on the multiple activities tax credit.

(d) **What are "qualified research and development expenditures" for purposes of this rule?** "Qualified research and development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the business and occupation tax credit provided by RCW 82.04.4452. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(i) In order for an operating expense to be a qualified research and development expenditure, it must be directly incurred in qualified research and development. If an employee performs qualified research and development activities and also performs other activities, only the wages and benefits proportionate to the time spent on qualified research and development activities are qualified research and devel-

opment expenditures under this rule. The wages of employees who supervise or are supervised by persons performing qualified research and development are qualified research and development expenditures to the extent the work of those supervising or being supervised involves qualified research and development.

(ii) 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 are the compensation.

(iii) Depreciable property is any property with a useful life of at least a year. Expenses for depreciable property will not constitute qualified research and development expenditures even if such property may be fully deductible for federal income tax purposes in the year of acquisition.

(iv) Computer expenses do not include the purchase, lease, rental, maintenance, repair or upgrade of computer hardware or software. They do include internet subscriber fees, run time on a mainframe computer, and outside processing.

(v) Training expenses for employees are qualified research and development expenditures if the training is directly related to the research and development being performed. Training expenses include registration fees, materials, and travel expenses. Although the research and development must occur in Washington, training may take place outside of Washington.

(vi) Qualified research and development expenditures include the cost of clinical trials for drugs and certification by Underwriters Laboratories.

(vii) Qualified research and development expenditures do not include legal expenses, patent fees, or any other expense not incurred directly for qualified research and development.

(viii) Stock options granted as compensation to employees performing qualified research and development are qualified research and development expenditures 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.

(ix) Preemployment expenses related to employees who perform qualified research and development are qualified research and development expenditures. These expenses include recruiting and relocation expenses and employee placement fees.

(e) **What does it mean to "conduct" qualified research and development for purposes of this rule?** A person is conducting qualified research and development when:

(i) The person is in charge of a project or a phase of the project; and

(ii) The activities performed by that person in the project or the phase of the project constitute qualified research and development.

(iii) Examples.

(A) Company C is conducting qualified research and development. It enters into a contract with Company D requiring D to provide workers to perform activities under the direction of C. D is not entitled to the credit because D is not conducting qualified research and development. Its employees work under the direction of C. C is entitled to the credit if all other requirements of the credit are met.

(B) Company F enters into a contract with Company G requiring G to perform qualified research and development on a phase of its project. The phase of the project constitutes qualified research and development. F is not entitled to the credit because F is not conducting qualified research and development on that phase of the project. G, however, is entitled to the credit if all other requirements of the credit are met.

(f) **What is "qualified research and development" for purposes of this rule?** "Qualified research and development" means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(g) **What is "research and development" for purposes of this rule?** See subsection (3)(c) of this rule for more information on the definition of research and development.

(i) Example. A company that engages in environmental cleanup contracted to clean up a site. It had never faced exactly the same situation before, but guaranteed at the outset that it could do the job. It used a variety of existing technologies to accomplish the task in a combination it had never used before. The company was not engaged in qualified research and development in performing this contract. While the company applied existing technologies in a unique manner, there was no uncertainty to attain the desired or necessary specifications, and therefore the outcome of the project was certain.

(ii) Example. Same facts as (g)(i) of this subsection, except that the company performed research on a technology that had been applied in other contexts but never in the context where the company was attempting to use it, and it was uncertain at the outset whether the technology could achieve the desired outcome in the new context. If the company failed, it would have to apply an existing technology that is much more costly in its cleanup effort. The company was engaged in qualified research and development with respect to the research performed in developing the technology.

(iii) Example. Company A is engaged in research and development in biotechnology and needs to perform standard blood tests as part of its development of a drug. It contracts with a lab, B, to perform the tests. The costs of the tests are qualified research and development expenditures for A, the company engaged in the research and development. Although the tests themselves are routine, they are only a part of what A is doing in the course of developing the drug. B, the lab contracted to perform the testing, is not engaged in research and development with respect to the drug being developed. B is neither discovering technological information nor translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. B is not entitled to a credit on account of the compensation it receives for conducting the tests.

(h) **What are the five high technology areas?** See subsection (3)(e) of this rule for more information.

(19) **How is the business and occupation tax credit calculated?**

(a) **On or after July 1, 2004.** The amount of the credit is calculated as follows:

(i) A person must first determine the greater of:

The person's qualified research and development expenditures;

or

Eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development.

(ii) Then the person subtracts, from the amount determined under (a)(i) of this subsection, 0.92 percent of its taxable amount. If 0.92 percent of the taxable amount exceeds the amount determined under (a)(i) of this subsection, the person is not eligible for the credit.

(iii) The credit is calculated by multiplying the amount determined under (a)(ii) of this subsection by the following:

(A) For the periods of July 1, 2004, to December 31, 2006, the person's average tax rate for the calendar year for which the credit is claimed;

(B) For the periods of January 1, 2007, to December 31, 2007, the greater of the person's average tax rate for the calendar year or 0.75 percent;

(C) For the periods of January 1, 2008, to December 31, 2008, the greater of the person's average tax rate for the calendar year or 1.0 percent;

(D) For the periods of January 1, 2009, to December 31, 2009, the greater of the person's average tax rate for the calendar year or 1.25 percent; and

(E) For the periods after December 31, 2009, 1.50 percent.

(iv) For the purposes of this rule, "average tax rate" means a person's total business and occupation tax liability for the calendar year for which the credit is claimed, divided by the person's total taxable amount for the calendar year for which the credit is claimed.

(v) For purposes of calculating the credit, if a person's reporting period is less than annual, the person may use an estimated average tax rate for the calendar year for which the credit is claimed, by using the person's average tax rate for each reporting period. When the person files its last return for the calendar year, the person must make an adjustment to the total credit claimed for the calendar year using the person's actual average tax rate for the calendar year.

(vi) Examples.

(A) A business engaging in qualified research and development has a taxable amount of $10,000,000 in a year. It pays $80,000 in that year in wages and benefits to employees directly engaged in qualified research and development. The business has no other qualified research and development expenditures. Its qualified research and development expenditures of $80,000 are less than $92,000 (0.92 percent of its taxable amount of $10,000,000). If a business's qualified research and development expenditures (or ((~~eighty~~)) 80 percent of amounts received for the conduct of qualified research and development) are less than 0.92 percent of its taxable amount, it is not eligible for the credit.

(B) A business engaging in qualified research and development has a taxable amount of $10,000,000 in 2005. Seven million dollars of this amount is taxable at the rate of 0.015 under the B&O tax classification for services and $3,000,000 is taxable at the rate of 0.00484 under the B&O tax classification for royalties. The business pays $119,520 in B&O tax for this reporting period. It pays $200,000 in that year to employees directly engaged in qualified research and development. The business has no other qualified research and development expenditures.

In order to determine the amount of its credit, the business subtracts $92,000 (0.92 percent of its taxable amount of $10,000,000) from $200,000, its qualified research and development expenditures.

The resulting amount of $108,000 multiplied by the business's average tax rate equals the amount of the credit.

The business's average tax rate in 2005 is determined by dividing its B&O tax of $119,520 by its taxable amount of $10,000,000. The result, 0.01195, is multiplied by $108,000 to determine the amount of the credit. The credit is $1,291 ($1,290.60 rounded to the nearest whole dollar).

(b) **From July 1, 1998 to June 30, 2004.** The amount of the credit is equal to the greater of:

The person's qualified research and development expenditures;

or

Eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development

multiplied by 0.00484 in the case of a nonprofit corporation or association; and

multiplied by 0.015 in the case of all other persons.

(c) **Prior to July 1, 1998.** The amount of the credit is equal to the greater of:

The person's qualified research and development expenditures;

or

Eighty percent of amounts received by a person other than a public educational or research institution as compensation for conducting qualified research and development

multiplied by 0.00515 in the case of a nonprofit corporation or association; and

multiplied by 0.025 in the case of all other persons.

(d) The credit for any calendar year may not exceed the lesser of ((~~two million dollars~~)) $2,000,000 or the amount of business and occupation tax otherwise due for the calendar year.

(e) Credits may not be carried forward or carried back to other calendar years.

(20) **Is the person claiming the business and occupation tax credit required to submit annual tax performance reports?** Each person claiming the credit granted under RCW 82.04.4452 must complete an annual tax performance report. See WAC 458-20-267 (Annual tax performance reports for certain tax preferences) for more information on the requirements to file annual tax performance reports.

(21) **Is the business and occupation tax credit assignable?** A person entitled to the credit because of qualified research and development conducted under contract for another person may assign all or a portion of the credit to the person who contracted for the performance of the qualified research and development.

(a) Both the assignor and the assignee must be eligible for the credit for the assignment to be valid.

(b) The total of the credit claimed and the credit assigned by a person assigning credit may not exceed the lesser of ((~~two million dollars~~)) $2,000,000 or the amount of business and occupation tax otherwise due from the assignor in any calendar year.

(c) The total of the credit claimed, including credit received by assignment, may not exceed the lesser of ((~~two million dollars~~)) $2,000,000 or the amount of business and occupation tax otherwise due from the assignee in any calendar year.

(22) **What happens if a person has claimed the business and occupation tax credit earlier but is later found ineligible?** If a person

has claimed the credit earlier but is later found ineligible for the credit, then the department will declare the taxes against which the credit was claimed to be immediately due and payable. Interest on the taxes, but not penalties, must be paid retroactively to the date the credit was claimed.

(23) **When will the business and occupation tax credit program expire?** The business and occupation tax credit program for high technology businesses expires January 1, 2015.

(24) **Do staffing companies qualify for the business and occupation tax credit program?** A staffing company may be eligible for the credit if its research and development spending in the calendar year for which credit is claimed exceeds 0.92 percent of the person's taxable amount for the same calendar year.

(a) **Qualifications of the credit.** In order to qualify for the credit, a staffing company must meet the following criteria:

(i) It must conduct qualified research and development through its employees;

(ii) Its employees must perform qualified research and development activities in a project or a phase of the project, without considering any activity performed:

(A) By the person contracting with the staffing company for such performance; or

(B) By any other person;

(iii) It must complete an annual tax performance report by March 31st following any year in which the credit was taken; and

(iv) It must document any claim of the B&O tax credit.

(b) Examples.

(i) Company M, a staffing company, furnishes three employees to Company N for assisting a research project in electronic device technology. N has a manager and five employees working on the same project. The work of M's employees and N's employees combined as a whole constitutes qualified research and development. M's employees do not perform sufficient activities themselves to be considered performing qualified research and development. M does not qualify for the credit.

(ii) Company V, a staffing company, furnishes three employees to Company W for performing a phase of a research project in advanced materials. W has a manager and five employees working on other phases of the same project. V's employees are in charge of a phase of the project that results in discovery of technological information. The work of V's employees alone constitutes qualified research and development. V qualifies for the credit if all other requirements of the credit are met.

(iii) Same as (b)(ii) of this subsection, except that the phase of the research project involves development of computer software for W's internal use. The work of V's employees alone constitutes qualified research and development. V qualifies for the credit if all other requirements of the credit are met.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.534, 82.32.585, 82.32.590, 82.32.600, 82.32.605, 82.32.607, 82.32.710, 82.32.790, 82.32.808, 82.04.240, 82.04.2404, 82.04.260, 82.04.2909, 82.04.426, 82.04.4277, 82.04.4461, 82.04.4463, 82.04.448, 82.04.4481, 82.04.4483, 82.04.449, 82.08.805, 82.08.965, 82.08.9651, 82.08.970, 82.08.980, 82.08.986, 82.12.022, 82.12.025651, 82.12.805, 82.12.965, 82.12.9651, 82.12.970, 82.12.980, 82.16.0421, 82.29A.137, 82.60.070, 82.63.020, 82.63.045, 82.74.040, 82.74.050, 82.75.040, 82.75.070,

82.82.020, 82.82.040, 84.36.645, and 84.36.655. WSR 18-13-094, § 458-20-24003, filed 6/19/18, effective 7/20/18. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-12-075, § 458-20-24003, filed 5/27/16, effective 6/27/16; WSR 10-21-044, § 458-20-24003, filed 10/13/10, effective 11/13/10; WSR 10-07-136, § 458-20-24003, filed 3/23/10, effective 4/23/10; WSR 06-18-059, § 458-20-24003, filed 8/31/06, effective 10/1/06. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.63.010. WSR 03-12-053, § 458-20-24003, filed 5/30/03, effective 6/30/03.]

AMENDATORY SECTION (Amending WSR 10-23-035, filed 11/9/10, effective 12/10/10)

WAC 458-20-240A Manufacturer's new employee tax credits—Applications filed prior to July 1, 2010. (1) **Introduction.** Chapter 82.62 RCW provides business and occupation (B&O) tax credits to certain persons engaged in manufacturing and research and development activities. These credits are intended to stimulate the economy by creating employment opportunities in specific rural counties and community empowerment zones of this state. The credits are as much as $4,000 per qualified employment position. This rule explains the eligibility requirements and application procedures for this program. It is important to note that an application for the tax credits must be submitted to the department of revenue before the actual hiring of qualified employment positions. See subsection (6) of this rule for additional information regarding this application requirement. This tax credit program is a companion to the tax deferral program under chapter 82.60 RCW; however, the eligible geographic areas in the two programs are not identical.

The department of employment security and the department of commerce administer programs for rural counties and job training. These agencies should be contacted directly for information concerning those programs.

(2) **Who is eligible for these tax credits?** Subject to certain qualifications, an applicant (person applying for a tax credit under chapter 82.62 RCW) who is engaged in an eligible business project is entitled to the tax credits provided by chapter 82.62 RCW.

(a) **What is an eligible business project?** An "eligible business project" means manufacturing, commercial testing, or research and development activities conducted by an applicant in an eligible area at a specific facility, subject to the restriction noted in the following paragraph. An "eligible business project" does not include any portion of a business project undertaken by a light and power business or any portion of a business project creating employment positions outside an eligible area.

To be considered an "eligible business project," the applicant's number of average full-time qualified employment positions at the specific facility must be at least ((~~fifteen~~)) 15 percent greater in the calendar year for which credit is being sought than the number of positions at the same facility in the immediately preceding calendar year. Subsection (4) of this rule explains how to determine whether this threshold is satisfied.

(b) **What is an eligible area?** As noted above, the facility must be located in an eligible area to be considered an eligible business project. An "eligible area" is:

(i) A rural county, which is a county with fewer than ((~~one hundred~~)) 100 persons per square mile or, on and after April 1, 2004, a county smaller than ((~~two hundred twenty-five~~)) 225 square miles, as determined annually by the office of financial management and published by the department of revenue effective for the period of July 1st through June 30th (see RCW 82.62.010(3)); or

(ii) A community empowerment zone (CEZ). CEZ means an area meeting the requirements of RCW 43.31C.020 and officially designated by the director of the department of commerce.

(iii) **How to determine whether an area is an eligible area.** Rural county designation information can be obtained from the office of financial management internet website at www.ofm.wa.gov/popden/rural.htm. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet website at www.dor.wa.gov.

(c) **What are manufacturing and research and development activities?** Manufacturing or research and development activities must be conducted at the facility to be considered an eligible business project.

(i) **Manufacturing.** "Manufacturing" has the meaning given in RCW 82.04.120. In addition, for the purposes of chapter 82.62 RCW "manufacturing" also includes computer programming, the production of computer software, other computer-related services, but only when the computer-related services are performed by a manufacturer as defined under RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

(ii) **Research and development.** "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. "Commercial sales" does not include sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed ((~~one million dollars~~)) $1,000,000.

(iii) **Computer-related services.** "Computer-related services" for the purposes of chapter 82.62 RCW, the definition of "manufacturing" means services that are connected with or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. "Computer-related services" includes the manufacture of hardware such as chips, keyboards, monitors, and any other hardware, and the components of these items. "Computer-related services" also includes creating operating systems and software that will be copied and sold as canned software. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services. "Computer-related services" does not include services such as information services.

(3) **What are the hiring requirements?** The average full-time qualified employment positions at the specific facility during the calendar year for which credits are claimed must be at least ((~~fif-~~

~~teen~~)) 15 percent greater than the average full-time qualified employment positions at the same facility for the preceding calendar year.

(a) **What is a qualified employment position?** A "qualified employment position" means a position filled by a permanent full-time employee employed at an eligible business project for ((~~twelve~~)) 12 consecutive months. Once a full-time position is established and filled it will continue to qualify for ((~~twelve~~)) 12 consecutive periods so long as any person fills the position. The position is considered "filled" even during periods of vacancy, provided these periods do not exceed ((~~thirty~~)) 30 consecutive days and the employer is training or actively recruiting a replacement employee.

(b) **What is a "permanent full-time employee"?** A "permanent full-time employee" is a position that is filled by an employee who satisfies any one of the following minimum thresholds:

(i) Works ((~~thirty-five~~)) 35 hours per week for ((~~fifty-two~~)) 52 consecutive weeks;

(ii) Works ((~~four hundred fifty-five~~)) 455 hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works ((~~one thousand eight hundred twenty~~)) 1,820 hours, excluding overtime, during a period of ((~~twelve~~)) 12 consecutive months.

(c) **"Permanent full-time employee" - Seasonal operations.** For applicants that regularly operate on a seasonal basis only and that employ more than ((~~fifty~~)) 50 percent of their employees for less than a full ((~~twelve~~)) 12 month continuous period, a "permanent full-time employee" is a permanent full-time employee as described above or an equivalent in full-time equivalent (FTE) work hours.

(4) **How to determine if the ((~~fifteen~~)) 15 percent employment increase requirement is met.** Qualification for tax credits depends upon whether the applicant hires enough new positions to meet the ((~~fifteen~~)) 15 percent average increase requirement.

(a) **Determining the ((~~fifteen~~)) 15 percent increase.** To determine the projected number of permanent full-time qualified employment positions necessary to satisfy the ((~~fifteen~~)) 15 percent employment increase requirement:

(i) Determine the average number of permanent full-time qualified employment positions that existed at the facility during the calendar year prior to the year in which tax credit is being claimed.

(ii) Multiply the average number of full-time positions from subsection (i) by .15 or ((~~fifteen~~)) 15 percent. The resulting number equals the number of positions that must be filled to meet the ((~~fifteen~~)) 15 percent increase. Numbers are rounded up to the nearest whole number at point five (.5).

(b) **When does hiring have to occur?** All hiring increases must occur during the calendar year for which credits are being sought for purposes of meeting the ((~~fifteen~~)) 15 percent threshold test. Positions hired in a calendar year prior to making an application are not eligible for a credit but the positions are used to calculate whether the ((~~fifteen~~)) 15 percent threshold has been met.

(c) **The department will assist applicants to determine their hiring requirements.** Accompanying the tax credit application is a worksheet to assist the applicant in determining if the ((~~fifteen~~)) 15 percent qualified employment threshold is satisfied. Based upon the information provided in the application, the department will advise applicants of their minimum number of hiring needs for which credits are being sought.

(d) **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 status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Company anticipates increasing employment during the 2001 calendar year at a manufacturing facility by an average of 15 full-time qualified employment positions for a total of 113 positions. The average number of full-time qualified employment positions during the 2000 calendar year was 98. To qualify for the tax credit program the minimum average number of full-time qualified employment positions required for the 2001 calendar year is 98 x .15 = 14.7 (rounding up to 15 positions). Therefore, ABC Company's plan to hire 15 full-time qualified employment positions for 2001 meets the 15% employment increase requirement.

(ii) ABC anticipates increasing employment at this same manufacturing facility by an average of 15 additional full-time qualified employment positions during the 2002 calendar year to a total of 128 positions. To qualify for the tax credit program the minimum average number of full-time qualified employment positions required for the 2002 calendar year is 17 (113 x .15 = 16.95, rounding up to 17). Therefore, ABC Company's plan to hire 15 full-time qualified employment positions for 2002 does not meet the 15% employment increase requirement.

(5) **Restriction against displacing existing jobs within Washington.** The law provides that no recipient may use tax credits approved under this program to decertify a union or to displace existing jobs in any community of the state. Thus, the average expected increase of employment positions at the specific facility for which application is made must reflect a gross increase in the applicant's employment of persons at all locations in this state. Transfers of personnel from existing positions outside of an eligible area to new positions at the specific facility within an eligible area will not be allowed for purposes of approving tax credits. Also, layoffs or terminations of employment by the recipient at other locations in Washington but outside an eligible area for the purpose of hiring new positions within an eligible area will result in the withdrawal of any credits taken or approved.

(6) **Application procedures.** A taxpayer must file an application with and obtain approval from the department of revenue to receive tax credits under this program. A separate application must be submitted for each calendar year for which credits are claimed. RCW 82.62.020 requires that application for the tax credits be made prior to the actual hiring of qualified employment positions. Applications failing to satisfy this statutory requirement will be disapproved.

(a) **How to obtain and file applications.** ((~~Application forms will be provided by the department upon request either by calling 360-902-7175 or via~~)) Rural Area Application for New Employee B&O Tax Credit form is available at the department's internet website ((~~at www.dor.wa.gov under forms~~)), dor.wa.gov. The completed application may be sent by fax ((~~to 360-586-0527 or mailed to the following address:~~

~~State of Washington~~
~~Department of Revenue~~
~~Taxpayer Account Administration~~
~~P.O. Box 47476~~

~~Olympia, WA 98504-7476~~)) or mail to the address provided in the application.

The U.S. Post Office postmark or fax date will be used as the date of application. For questions and assistance with the application, call 360-705-6214.

(b) **Confidentiality.** Applications, reports, or any other information received by the department in connection with this tax credit program, except applications not approved by the department, are not confidential and are subject to disclosure. All other taxpayer information is subject to the confidentiality provisions in RCW 82.32.330.

(c) **Department to act upon application within ((~~sixty~~)) 60 days.** The department will determine if the applicant qualifies for tax credits on the basis of the information provided in the application and will approve or disapprove the application within ((~~sixty~~)) 60 days. If approved, the department will issue a credit approval notice containing the dollar amount of tax credits available for use and the procedures for taking the credit. If disapproved, the department will notify the applicant in writing of the specific reasons for disapproval. The applicant may seek administrative review of the department's disapproval of an application by filing a petition for review with the department. The petition must be filed within ((~~thirty~~)) 30 days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements.

(d) **No adjustment of credit after approval.** After an application is approved and tax credits are granted, no upward adjustment or amendments of the application will be made for that calendar year.

(7) **How much is the tax credit?** The amount of tax credit is based on the number of and the wages and benefits paid to qualified employment positions created.

(a) **How much tax credit may I claim for each qualified employment position?** The amount of tax credit that may be claimed for each position created is as follows:

(i) Two thousand dollars for each qualified employment position that pays ((~~forty thousand dollars~~)) $40,000 or less in wages and benefits annually and is employed in an eligible business project; and

(ii) Four thousand dollars for each qualified employment position that pays more than ((~~forty thousand dollars~~)) $40,000 in wages and benefits annually and is employed in an eligible business project.

(b) **What qualifies as wages and benefits?** For the purposes of chapter 82.62 RCW, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise. "Benefits" means compensation not paid as wages and includes Social Security, retirement, health care, life insurance, industrial insurance, unemployment compensation, vacation, holiday, sick leave, military leave, and jury duty. "Benefits" does not include any amount reported as wages.

(8) **How to claim approved credits.** The recipients must take the tax credits approved under this program on their regular combined excise tax return for their regular assigned tax reporting period. These tax credits may not exceed the B&O tax liability. The amount of credit taken should be entered into the "credit" section of the return form, with a copy of the credit approval notice issued to the recipient attached to the return.

(a) **When can credits be used?** The credits may be used as soon as hiring of the projected qualified employment positions begins or may accrue until they are most beneficial for the recipient's use. For example, if a recipient has been approved for $12,000 of tax credits

based upon projections to hire five new positions, that recipient may use $2,000 or $4,000 of tax credit at the time it hires each new employee, depending on the wage/benefit level of the position filled.

(b) **No refunds for unused credits.** No tax refunds will be made for any tax credits which exceed tax liability during the life of this program. If tax credits derived from qualified hiring exceed the recipients' business and occupation tax liability in any one calendar year under this program, they may be carried forward to the next calendar year(s), until used.

(9) **Annual report to be filed by recipient.** A recipient of tax credits under this program must complete and submit an annual report of employment activities to substantiate that he or she has complied with the hiring and retention requirements for approved credits. RCW 82.62.050. This report must be filed with the department by January 31st of the year following the calendar year for which credit was approved by the department. Based upon this report the department will verify that the recipient is entitled to the tax credits approved by the department when the application was reviewed. Rural Area Annual Report for New Employee B&O Tax Credit form is provided by the department at the department's website, dor.wa.gov. The completed annual report may be sent by fax ((~~to 360-586-0527 or mailed to the following address:~~

~~State of Washington~~
~~Department of Revenue~~
~~Taxpayer Account Administration~~
~~P.O. Box 47476~~
~~Olympia, WA 98504-7476~~)) or mail to the address provided in the report form.

The U.S. Post Office postmark or fax date will be used as the date of filing. For questions or assistance with filing the annual report, call 360-705-6214.

(a) **Verification of annual report.** The department will use the same report the recipient provides to the department of employment security, which is known as the quarterly employment security report, to verify the recipient's eligibility for tax credits. The recipient must maintain copies of the quarterly employment report for the year prior to the year for which credits are claimed, the year credits are claimed, and for the four quarters following the hiring of persons to fill the qualified employment positions. (The recipient does not have to forward copies of the quarterly employment report to the department each quarter.) The department may use other wage information provided to the department by the department of employment security. The taxpayer must provide additional information to the department, as the department finds necessary to calculate and verify wage eligibility.

(b) **Failure to file report.** The law provides that if any recipient fails to submit a report or submits an inadequate report, the department may declare the amount of taxes for which credit has been used to be immediately due and payable. An inadequate report is one which fails to provide information necessary to confirm that the requisite number of employment positions has been created and maintained for ((~~twelve~~)) 12 consecutive months.

(10) **What if the required number of positions is not created?** The law provides that if the department finds that a recipient is not eligible for tax credits for any reason, other than failure to create the required number of qualified employment positions, the amount of taxes for which any credit has been used will be immediately due. No inter-

est or penalty will be assessed in such cases. However, if the department finds that a recipient has failed to create the specified number of qualified employment positions, the department will assess interest, but not penalties, on the taxes against which the credit has been used. This interest on the assessment is mandatory and will be assessed at the statutory rate under RCW 82.32.050, retroactively to the date the tax credit was used. The interest will accrue until the taxes for which the credit was used are fully repaid. RCW 82.32.050. The interest rates under RCW 82.32.050 can be obtained from the department's internet website at www.dor.wa.gov or by calling the department's information center at ((~~1-800-647-7706~~)) 360-705-6705.

(11) **Program thresholds.** The department cannot approve any credits that will cause the total credits approved to exceed ((~~seven million five hundred thousand dollars~~)) $7,500,000 in any fiscal year. RCW 82.62.030. A "fiscal year" is the ((~~twelve~~)) 12-month period of July 1st through June 30th. If all or part of an application for credit is disallowed due to cap limitations, the disallowed portion will be carried over for approval the next fiscal year. However, the applicant's carryover into the next fiscal year is only permitted if the total credits approved for the next fiscal year does not exceed the cap for that fiscal year as of the date on which the department has disallowed the application.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.08.0293, and 82.12.0293. WSR 10-23-035, § 458-20-240A, filed 11/9/10, effective 12/10/10.]

AMENDATORY SECTION (Amending WSR 18-13-094, filed 6/19/18, effective 7/20/18)

WAC 458-20-267A Annual reports for certain tax preferences. (1) **Introduction.** Effective for calendar years in which a taxpayer claims a tax preference beginning January 1, 2018, Washington changed its annual reporting requirements. This rule addresses how taxpayers taking certain tax preferences must file an annual report with the department of revenue (department) providing information about their business for tax periods through December 31, 2017, only. See WAC 458-20-267 Annual tax performance reports for certain tax preferences for the proper way to report tax preferences for periods beginning January 1, 2018.

(a) **Definitions.** For purposes of this rule the following definitions apply:

(i) **Person.** "Person" has the meaning under RCW 82.04.030 and also includes the state and its departments and institutions.

(ii) **Tax preference.** As defined under RCW 43.136.021, "tax preference" means:

(A) An exemption, exclusion, or deduction from the base of a state tax; a credit against a state tax; a deferral of a state tax; or a preferential state tax rate; and

(B) Includes only the tax preferences requiring a report under RCW 82.32.534.

(b) **Annual survey.** Taxpayers taking certain tax preferences may be required to complete both an annual report and an annual survey. For information on the annual survey requirements, refer to RCW 82.32.585 and WAC 458-20-268.

(c) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The department will evaluate each case on its particular facts and circumstances.

(2) **Tax preferences requiring an annual report.** Taxpayers may refer to the department's website at dor.wa.gov for the "Annual Tax Incentive Report for Preferential Tax Rates/Credits/Exemptions/Deferrals Worksheet." This worksheet lists tax preferences that require an annual report. Taxpayers may also contact the telephone information center at ((~~800-647-7706~~)) 360-705-6705 to determine whether they must file an annual report.

(3) **How to file annual reports.**

(a) **Electronic filing.** Reports must be filed electronically unless the department waives this requirement upon a showing of good cause. A report is filed electronically when the department receives the report in an electronic format. A person accesses electronic filing through their department "My Account" at dor.wa.gov.

(b) **Required paper form.** If the department waives the electronic filing requirement for a person who shows good cause, that person must use the annual report form developed by the department unless that person obtains prior written approval from the department to file an annual report 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 report may obtain the annual report form from the department's website at dor.wa.gov. It may also be obtained by calling the telephone information center at ((~~800-647-7706~~)) 360-705-6705, or by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(d) **Special requirement for persons who did not file an annual report during the previous calendar year.** If a person is a first-time filer or otherwise did not file an annual report with the department during the previous calendar year, the report must include information on employment, wages, and employer-provided health and retirement benefits for the two calendar years immediately preceding the due date of the report.

(e) **Due date of annual report.** Every person claiming a tax preference that requires a report under RCW 82.32.534 must file the report annually with the department in the year following the calendar year in which the person becomes eligible to claim the tax preference. The due date for filing the report is as follows:

(i) April 30th for reports due prior to 2017.

(ii) May 31st for reports due in or after 2017.

(f) **Due date extensions.** The department may extend the due date for filing annual reports as provided in subsection (18) of this rule.

(g) **Example 1.** An aerospace firm first claimed the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts on April 1, 2015. By April 30, 2016, the aerospace firm must submit an annual report covering calendar years 2014 and 2015. If the aerospace firm continues to claim the B&O tax rate provided by RCW 82.04.260(11) during calendar

year 2016, an annual report is due by May 31, 2017, covering calendar year 2016.

(h) **Example 2.** An aluminum smelter first claimed the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters on July 31, 2015. By April 30, 2016, the aluminum smelter must provide an annual report covering calendar years 2014 and 2015. If the aluminum smelter continues to claim the B&O tax rate provided by RCW 82.04.2909 during calendar year 2016, an annual report is due by May 31, 2017, covering calendar year 2016.

(4) **What employment positions are included in the annual report?**

(a) **General rule.** Except as provided in (b) of this subsection, the report must include information detailing employment positions in the state of Washington.

(b) **Alternative method.** Persons engaged in manufacturing commercial airplanes or their components may report employment positions per job at the manufacturing site.

(i) **What is a "manufacturing site"?** For purposes of the annual report, a "manufacturing site" is one or more immediately adjacent parcels of real property located in Washington state on which manufacturing occurs that support activities qualifying for a tax preference. Adjacent parcels of real property separated only by a public road comprise a single site. A manufacturing site may include real property that supports the qualifying activity, such as administration offices, test facilities, warehouses, design facilities, and shipping and receiving facilities. It may also include portions of the manufacturing site that support nonqualifying activities.

(ii) **If the person files per job at the manufacturing site, which manufacturing site is included in the annual report for the aerospace manufacturing industry tax preferences?** The location(s) where a person is manufacturing commercial airplanes or components of such airplanes within this state is the manufacturing site(s) included in the annual report. A "commercial airplane" has its ordinary meaning, which is an airplane certified by the Federal Aviation Administration (FAA) for transporting persons or property, and any military derivative of such an airplane. A "component" means a part or system certified by the FAA for installation or assembly into a commercial airplane.

(iii) **Are there alternative methods for reporting separately for each manufacturing site?** For purposes of completing the annual report, the department may agree to allow a person whose manufacturing sites are within close geographic proximity to consolidate its manufacturing sites onto a single annual report provided that the jobs located at the manufacturing sites have equivalent employment positions, wages, and employer-provided health and retirement benefits. A person may request written approval to consolidate manufacturing sites by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(c) **Example 3.** ABC Airplanes, a company manufacturing FAA certified airplane landing gear, conducts activities at three locations in Washington state. ABC Airplanes is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. In Seattle, WA, ABC Airplanes maintains its corporate headquarters and administrative

offices. In Spokane, WA, ABC Airplanes manufactures the brake systems for the landing gear. In Vancouver, WA, ABC Airplanes assembles the landing gear using the components manufactured in Spokane, WA. If filing per manufacturing site, ABC Airplanes must file separate annual reports for employment positions at its manufacturing sites in Spokane and Vancouver because these are the Washington state locations in which manufacturing occurs that supports activities qualifying for a tax preference.

(d) **Example 4.** Acme Engines, a company manufacturing engine parts, conducts manufacturing in five locations in Washington state. Acme Engines is reporting tax under the B&O tax rate provided by RCW 82.04.260 (11) for manufacturers and processors for hire of commercial airplanes and component parts. It manufactures FAA certified engine parts at its Puyallup, WA location. Acme Engines' four other locations manufacture non-FAA certified engine parts. If filing per manufacturing site, Acme Engines must file an annual report for employment positions at its manufacturing site in Puyallup because it is the only location in Washington state in which manufacturing occurs that supports activities qualifying for a tax preference.

(e) **Example 5.** Tacoma Rivets, with one in-state manufacturing site located in Tacoma, WA, manufactures rivets used in manufacturing airplanes. Half of the rivets Tacoma Rivets manufactures are FAA certified to be used on commercial airplanes. The remaining rivets Tacoma Rivets manufactures are not FAA certified and are used on military airplanes. Tacoma Rivets is reporting tax on its sales of FAA certified rivets under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Tacoma Rivets must file an annual report for employment positions at its manufacturing site in Tacoma because it is the location in Washington state in which manufacturing occurs that supports activities qualifying for a tax preference.

(f) **Example 6.** Dynamic Aerospace Composites is a company that manufactures only FAA certified airplane fuselage materials. Dynamic Aerospace Composites conducts activities at three separate locations within Kent, WA. Dynamic Aerospace Composites is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. If filing per manufacturing site, Dynamic Aerospace Composites must file separate annual reports for each of its three manufacturing sites.

(g) **Example 7.** Worldwide Aerospace, an aerospace company, manufactures wing systems for commercial airplanes in ((~~twenty~~)) 20 locations around the world, but none located in Washington state. Worldwide Aerospace manufactures wing surfaces in San Diego, CA. Worldwide Aerospace sells the wing systems to an airplane manufacturer located in Moses Lake, WA and is reporting tax on these sales under the B&O tax rate provided by RCW 82.04.260(11) for sales, at retail or wholesale, of commercial airplanes, or components of such airplanes, manufactured by that person. Worldwide Aerospace is required to complete the annual report for any employment positions in Washington that are directly related to the qualifying activity.

(5) **What jobs are included in the annual report?** The annual report covers all full-time, part-time, and temporary jobs in this state or, for persons filing as provided in subsection (4)(b) of this rule, at the manufacturing site as of December 31st of the calendar year for which an applicable tax preference is claimed. Jobs that support nonqualifying activities or support both nonqualifying and qualifying ac-

tivities for a tax preference are included in the report if the job is located in Washington state or, for persons filing as provided in subsection (4)(b) of this rule, at the manufacturing site.

(a) **Example 8.** XYZ Aluminum, an aluminum smelter company, manufactures aluminum in Tacoma, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.2909 for aluminum smelters. XYZ Aluminum's annual report for its Tacoma, WA location will include all of its employment positions in this state, including its nonmanufacturing employment positions.

(b) **Example 9.** AAA Tire Company manufactures tires at one manufacturing site located in Centralia, WA. The company is reporting tax under the B&O tax rate provided by RCW 82.04.260(11) for manufacturers and processors for hire of commercial airplanes and component parts. FAA certified tires comprise only 20% of the products it manufactures and are manufactured in a separate building at the manufacturing site. If filing under the method described in subsection (4)(b) of this rule, AAA Tire Company must report all jobs at the manufacturing site, including the jobs engaged in the nonqualifying activities of manufacturing non-FAA certified tires.

(6) **How is employment detailed in the annual report?** The annual report is organized by employee occupational groups, consistent with the United States Department of Labor's Standard Occupation Codes (SOC) System. The SOC System is a universal occupational classification system used by government agencies and private industries to produce comparable occupational data. The SOC classifies occupations at four levels of aggregation:

(a) Major group;
(b) Minor group;
(c) Broad occupation; and
(d) Detailed occupation.

All occupations are clustered into one of ((~~twenty-three~~)) 23 major groups. The annual report uses the SOC major groups to detail the levels of employment, wages, and employer-provided health and retirement benefits at the manufacturing site. A detailed description of the SOC System is available by consulting the United States Department of Labor, Bureau of Labor Statistics online at www.bls.gov/soc. The annual report does not require names of employees.

(7) **What is total employment?** The annual report must state the total number of employees for each SOC major group that are currently employed on December 31st of the calendar year for which an applicable tax preference is taken. Total employment includes employees who are on authorized leaves of absences such as sick leave, vacation, disability leave, jury duty, military leave, regardless of whether those employees are receiving wages. Leaves of absences do not include separations of employment such as layoffs or reductions in force. Vacant positions are not included in total employment.

(8) **What are full-time, part-time, and temporary employment positions?** An employer must provide information on the number of employees, as a percentage of total employment in the SOC major group, that are employed in full-time, part-time, or temporary employment positions on December 31st of the calendar year for which an applicable tax preference is claimed. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(a) **Full-time and part-time employment positions.** For a position to be treated as full time or part time, the employer must intend for the position to be filled for at least ((~~fifty-two~~)) 52 consecutive

weeks or ((~~twelve~~)) 12 consecutive months. A full-time position is a position that satisfies any one of the following minimum thresholds:

(i) Works ((~~thirty-five~~)) 35 hours per week for ((~~fifty-two~~)) 52 consecutive weeks;

(ii) Works ((~~four hundred fifty-five~~)) 455 hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works ((~~one thousand eight hundred twenty~~)) 1,820 hours, excluding overtime, during a period of ((~~twelve~~)) 12 consecutive months.

A part-time position is a position in which the employee works less than the hours required for a full-time position. 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, but receives wages equivalent to a full-time job. 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 full-time wages, the position should be reported as a full-time employment position.

(b) **Temporary positions.** A temporary position is a position that is intended to be filled for period of less than ((~~twelve~~)) 12 consecutive months. Positions in seasonal employment are temporary positions. Temporary positions include workers furnished by staffing companies regardless of the duration of the placement with the person required to file the annual report.

(c) **The following facts apply to the examples in (c) of this subsection.** National Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. National Airplane Inc. is claiming all the tax preferences available for manufacturers and processors for hire of commercial airplanes and component parts. National Airplane Inc. employs ((~~one hundred~~)) 100 people. Seventy-five of the employees work directly in the manufacturing operation and are classified as SOC Production Occupations. Five employees work in the engineering and design division and are classified as SOC Architect and Engineering Occupations. Five employees are sales representatives and are classified as SOC Sales and Related Occupations. Five employees are service technicians and are classified as SOC Installation, Maintenance, and Repair Occupations. Five employees are administrative assistants and are classified as SOC Office and Administrative Support. Five executives are classified as SOC Management Occupations.

(i) **Example 10.** Through a college work-study program, National Airplane Inc. employs six interns from September through June in its engineering department. The interns work ((~~twenty~~)) 20 hours a week. The six interns are reported as temporary employees, and not as part-time employees, because the intern positions are intended to be filled for a period of less than ((~~twelve~~)) 12 consecutive months. Assuming the five employees classified as SOC Architect and Engineering Occupations are full-time employees, National Airplane Inc. will report a total of ((~~eleven~~)) 11 employment positions in SOC Architect and Engineering Occupations with 45% in full-time employment positions and 55% in temporary employment positions.

(ii) **Example 11.** National Airplane Inc. manufactures navigation systems in two shifts of production. The first shift works eight hours from 8:00 a.m. to 5:00 p.m. Monday thru Friday. The second shift works six hours from 6:00 p.m. to midnight Monday thru Friday. The second shift works fewer hours per week (((~~thirty~~)) 30 hours) than the first

shift (((~~forty~~)) 40 hours) as a pay differential for working in the evening. If a second shift employee transferred to the first shift, the employee would be required to work ((~~forty~~)) 40 hours with no overall increase in wages. The second shift employees should be reported as full-time employment positions, rather than part-time employment positions.

(iii) **Example 12.** On December 1st, ((~~ten~~)) 10 National Airplane Inc. full-time employees classified as SOC Production Occupations take family and medical leave for ((~~twelve~~)) 12 weeks. National Airplane Inc. hires five people to perform the work of the employees on leave. Because the ((~~ten~~)) 10 employees classified as SOC Production Occupations are on authorized leave, National Airplane Inc. will include those employees in the annual report as full-time employment positions. The five people hired to replace the absent employees classified as SOC Production Occupations will be included in the report as temporary employees. National Airplane Inc. will report a total of ((~~eighty~~)) 80 employment positions in SOC Production Occupations with 93.8% in full-time employment positions and 6.2% in temporary employment positions.

(iv) **Example 13.** On December 1st, one full-time employee classified as SOC Sales and Related Occupations resigns from her position. National Airplane Inc. contracts with Jane Smith d/b/a Creative Enterprises, Inc. to finish an advertising project assigned to the employee who resigned. Because Jane Smith is an independent contractor, National Airplane Inc. will not include her employment in the annual report. Because the resignation has resulted in a vacant position, the total number of employment positions National Airplane Inc. will report in SOC Sales and Related Occupations is reduced to four employment positions.

(v) **Example 14.** All National Airplane Inc. employees classified as SOC Office and Administrative Support Occupations work ((~~forty~~)) 40 hours a week, ((~~fifty-two~~)) 52 weeks a year. On November 1st, one employee must limit the number of hours worked to ((~~thirty~~)) 30 hours each week to accommodate a disability. The employee receives wages based on the actual hours worked each week. Because the employee works less than ((~~thirty-five~~)) 35 hours a week and is not paid a wage equivalent to a full-time position, the employee's position is a part-time employment position. National Airplane Inc. will report a total of five employment positions in SOC Office and Administrative Support Occupations with 80% in full-time employment positions and 20% in part-time employment positions.

(9) **What are wages?** For the purposes of the annual report, "wages" means the base compensation paid to an individual for personal services rendered to an employer, whether denominated as wages, salary, commission, or otherwise. Compensation in the form of overtime, tips, bonuses, benefits (insurance, paid leave, meals, etc.), stock options, and severance pay are not "wages." For employees that earn an annual salary, hourly wages are determined by dividing annual salary by 2080. If an employee is paid by commission, hourly wages are determined by dividing the total amount of commissions paid during the calendar year by 2080.

(10) **How are wages detailed for the annual report?**

(a) An employer must provide information on the number of employees, as a percentage of the total employment in the SOC major group, paid a wage within the following five hourly wage bands:

Up to $10.00 an hour;

$10.01 an hour to $15.00 an hour;
$15.01 an hour to $20.00 an hour;
$20.01 an hour to $30.00 an hour; and
$30.01 an hour or more.

Percentages should be rounded to the nearest 1/10th of 1% (XX.X%). For purposes of the annual report, wages are measured on December 31st of the calendar year for which an applicable tax preference is claimed.

(b) **The following facts apply to the examples in (b) of this subsection.** Washington Airplane Inc. manufactures FAA certified navigation systems at a manufacturing site located in Tacoma, WA. Washington Airplane Inc. is claiming all the tax preferences available for manufacturers and processors for hire of commercial airplanes and component parts. Washington Airplane Inc. employs ((~~five hundred~~)) 500 people at the manufacturing site, which constitutes its entire work force in this state. Four hundred employees engage in activities that are classified as SOC Production Occupations. Fifty employees engage in activities that are classified as SOC Architect and Engineer Occupations. Twenty-five employees are engaged in activities classified as SOC Management Occupations. Twenty employees are engaged in activities classified as SOC Office and Administrative Support Occupations. Five employees are engaged in activities classified as SOC Sales and Related Occupations.

(i) **Example 15.** One hundred employees classified as SOC Production Occupations are paid $12.00 an hour. Two hundred employees classified as SOC Production Occupations are paid $17.00 an hour. One hundred employees classified as SOC Production Occupations are paid $25.00 an hour. For SOC Production Occupations, Washington Airplane Inc. will report 25% of employment positions are paid $10.01 an hour to $15.00 an hour; 50% are paid $15.01 an hour to $20.00 an hour; and 25% are paid $20.01 an hour to $30.00 an hour.

(ii) **Example 16.** Ten employees classified as SOC Architect and Engineering Occupations are paid an annual salary of $42,000; another ((~~ten~~)) 10 employees are paid $50,000 annually; and the remaining employees are all paid over $70,000 annually. To report wages, the annual salaries must be converted to hourly amounts by dividing the annual salary by 2080 hours. For SOC Architect and Engineering Occupations, Washington Airplane Inc. will report 40% of employment positions are paid $20.01 an hour to $30.00 an hour and 60% are paid $30.00 an hour or more.

(iii) **Example 17.** All the employees classified as SOC Sales and Related Occupations are sales representatives that are paid on commission. They receive $10.00 commission for each navigation system sold. Three sales representatives sell 2,500 navigation systems during the calendar year. Two sales representatives sell 3,500 navigation systems during the calendar year and receive a $10,000 bonus for exceeding company's sales goals. To report wages, the employee's commissions must be converted to hourly amounts by dividing the total commissions by 2080 hours. Washington Airplane Inc. will report that 60% of employment positions classified as SOC Sales and Related Occupations are paid $10.01 an hour to $15.00 an hour. Because bonuses are not included in wages, Washington Airplane Inc. will report 40% of employment positions classified as SOC Sales and Related Occupations are paid $15.01 an hour to $20.00 an hour.

(iv) **Example 18.** Ten of the employees classified as SOC Office and Administrative Support Occupations earn $9.50 an hour. The remaining ((~~ten~~)) 10 employees classified as SOC Office and Administrative

Support Occupations earn wages between $10.01 an hour to $15.00 an hour. On December 1st, Washington Airplane Inc. announces that effective December 15th, all employees classified as SOC Office and Administrative Support Occupations will earn wages of at least $10.50 an hour, but no more than $15.00 an hour. Because wages are measured on December 31st, Washington Airplane Inc. will report 100% of employment positions classified as SOC Office and Administrative Support Occupations Sales and Related Occupations are paid $10.01 an hour to $15.00 an hour.

(11) **Reporting workers furnished by staffing companies.** For temporary positions filled by workers that are furnished by staffing companies, the person filling out the annual report must provide the following 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.

(12) **What are employer-provided health benefits?** For purposes of the annual report, "health benefits" means compensation, not paid as wages, in the form of a health plan offered by an employer to its employees. A health plan that is equally available to employees and the general public is not an "employer-provided" health benefit.

(a) "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.

(b) "Dental care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' dental care services.

(c) "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 care and dental care services. Health plans include any "employee welfare benefit plan" as defined by the Employee Retirement Income Security Act (ERISA), any "health plan" or "health benefit plan" as defined in RCW 48.43.005, any self-funded multiple employer welfare arrangement as defined in RCW 48.125.010, any "qualified health insurance" as defined in Section 35 of the Internal Revenue Code, an "Archer MSA" as defined in Section 220 of the Internal Revenue Code, a "health savings plan" as defined in Section 223 of the Internal Revenue Code, any "health plan" qualifying under Section 213 of the Internal Revenue Code, governmental plans, and church plans.

(d) "Medical 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.

(e) "Medical care plan" means a health plan for the purpose of providing for its employees or their beneficiaries' medical care services.

(13) **How are employer-provided health benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of health plan offered to or with enrolled employees on December 31st of the calendar year for which an applicable tax preference is claimed.

(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided medi-

cal care plan. An employee is "eligible" if the employee can currently participate in a medical care plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, preexisting conditions, and other limitations may prevent an employee from being eligible for coverage in an employer's medical care plan. If an employer provides multiple medical care plans, an employee is "eligible" if the employee can currently participate in one of the medical care plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(i) **Example 19.** On December 31st, Acme Engines has ((~~one hundred~~)) 100 employees classified as SOC Production Occupations. It offers these employees two medical care plans. Plan A is available to all employees at the time of hire. Plan B is available to employees after working ((~~ninety~~)) 90 days. For SOC Production Occupations, Acme Engines will report 100% of its employees are eligible for employer-provided medical benefits because all of its employees are eligible for at least one medical care plan offered by Acme Engines.

(ii) **Example 20.** Apex Aluminum has ((~~fifty~~)) 50 employees classified as SOC Transportation and Material Moving Occupations, all of whom have worked for Apex Aluminum for over five years. Apex Aluminum offers one medical care plan to its employees. Employees must work for Apex Aluminum for six months to participate in the medical care plan. On October 1st, Apex Aluminum hires ((~~ten~~)) 10 new employees classified as SOC Transportation and Material Moving Occupations. For SOC Transportation and Material Moving Occupations, Apex Aluminum will report 83.3% of its employees are eligible for employer-provided medical benefits.

(b) **Detail by type of health plan.** The report also requires detailed information about the types of health plans the employer provides. If an employer has more than one type of health plan, it must report each health plan separately. If a person offers more than one of the same type of health plan as described in (b)(i) of this subsection, the person may consolidate the detail required in (b) through (d) of this subsection by using ranges to describe the information. The details include:

(i) A description of the type of plan in general terms such as self-insured, fee for service, preferred provider organization, health maintenance organization, health savings account, or other general description. The report does not require a person to disclose the name(s) of their health insurance carrier(s).

(ii) The number of employees eligible to participate in the health plan, as a percentage of total employment at the manufacturing site or as otherwise reported. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the health plan, as a percentage of employees eligible to participate in the health plan at the manufacturing site or as otherwise reported. An employee is "enrolled" if the employee is currently covered by or participating in an employer-provided health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The average percentage of premium paid by employees enrolled in the health plan. "Premium" means the cost incurred by the employer to provide a health plan or the continuance of a health plan, such as amounts paid to health carriers or costs incurred by employers to self-insure. Employers are generally legally responsible for payment of the entire cost of the premium for enrolled employees, but may require enrolled employees to share in the cost of the premium to obtain

coverage. State the amount of premium, as a percentage, employees must pay to maintain enrollment under the health plan. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(v) If necessary, the average monthly contribution to enrolled employees. In some instances, employers may make contributions to an employee health plan, but may not be aware of the percentage of premium cost borne by the employee. For example, employers may contribute to a health plan sponsored by an employee organization, or may sponsor a medical savings account or health savings account. Under those circumstances in which the employee's contribution to the health plan is unknown, an employer must report its average monthly contribution to the health plan by dividing the employer's total monthly costs for the health plan by the total number of employees enrolled in the health plan.

(vi) Whether legal spouses, state registered domestic partners, and unmarried dependent children can obtain coverage under the health plan and if there is an additional premium for such coverage.

(vii) Whether part-time employees are eligible to participate in the health plan.

(c) **Medical care plans.** In addition to the detailed information required for each health plan, report the amount of enrolled employee point of service cost-sharing for hospital services, prescription drug benefits, and primary care physician services for each medical care plan. If differences exist within a medical care plan, the lowest cost option to the enrolled employee must be stated in the report. For example, if employee point of service cost-sharing is less if an enrolled employee uses a network of preferred providers, report the amount of point of service cost-sharing using a preferred provider. Employee point of service cost-sharing is generally stated as a percentage of cost, a specific dollar amount, or both.

(i) "Employee point of service cost-sharing" means amounts paid to health carriers directly providing medical care services, health care providers, or health care facilities by enrolled employees in the form of copayments, co-insurance, or deductibles. Copayments and co-insurance mean an amount specified in a medical care plan that is an obligation of enrolled employees for a specific medical care service which is not fully prepaid. A deductible means the amount an enrolled employee is responsible to pay before the medical care plan begins to pay the costs associated with treatment.

(ii) "Hospital services" means covered in-patient medical care services performed in a hospital licensed under chapter 70.41 RCW.

(iii) "Prescription drug benefit" means coverage to purchase a ((~~thirty~~)) 30-day or less supply of generic prescription drugs from a retail pharmacy.

(iv) "Primary care provider services" means nonemergency medical care services provided in an office setting by the employee's primary care provider.

(d) **Dental care plans.** In addition to the health plan information required for each dental care plan, the annual maximum benefit for each dental care plan must be stated in the report. Most dental care plans have an annual dollar maximum benefit. This is the maximum dollar amount a dental care plan will pay toward the cost of dental care services within a specific benefit period, generally one year. The enrolled employee is personally responsible for paying costs above the annual maximum.

(e) **The following facts apply to the examples in (e) of this subsection.** Mosaic Aerospace employs ((~~one hundred~~)) 100 employees and

offers two medical care plans as health benefits to employees at the time of hire. Plan A is a managed care plan (HMO). Plan B is a fee for service medical care plan.

(i) **Example 21.** Forty Mosaic Aerospace employees are enrolled in Plan A. It costs Mosaic Aerospace $750 a month for each employee covered by Plan A. Enrolled employees must pay $150 each month to participate in Plan A. If an enrolled employee uses its network of physicians, Plan A will cover 100% of the cost of primary care provider services with employees paying a $10.00 copayment per visit. If an enrolled employee uses its network of hospitals, Plan A will cover 100% of the cost of hospital services with employees paying a $200 deductible. If an enrolled employee does not use a network provider, Plan A will cover only 50% of the cost of any service with a $500 employee deductible. An enrolled employee must use a network of retail pharmacies to receive any prescription drug benefit. Plan A will cover the cost of prescription drugs with enrolled employees paying a $10.00 copayment. If an enrolled employee uses the mail-order pharmacy option offered by Plan A, copayment for prescription drug benefits is not required.

Mosaic Aerospace will report Plan A separately as a managed care plan. One hundred percent of its employees are eligible to participate in Plan A. The percentage of eligible employees enrolled in Plan A is 40%. The percentage of premium paid by an employee is 20%. Mosaic Aerospace will also report that employees have a $10.00 copayment for primary care provider services and a $200 deductible for hospital services because this is the lowest cost option within Plan A. Mosaic Aerospace will report that employees have a $10.00 copayment for prescription drug benefit. Mosaic Aerospace cannot report that employees do not have a prescription drug benefit copayment because "prescription drug benefit" is defined as coverage to purchase a ((~~thirty~~)) 30-day or less supply of generic prescription drugs from a retail pharmacy, not a mail-order pharmacy.

(ii) **Example 22.** Fifty Mosaic Aerospace employees are enrolled in Plan B. It costs Mosaic Aerospace $1,000 a month for each employee covered by Plan B. Enrolled employees must pay $300 a month to participate in Plan B. Plan B covers 100% of the cost of primary care provider services and 100% of the cost of prescription drugs with employees paying a $200 annual deductible for each covered service. Plan B covers 80% of the cost of hospital services with employees paying a $250 annual deductible.

Mosaic Aerospace will report Plan B separately as a fee for service medical care plan. One hundred percent of its employees are eligible to participate in Plan B. The percentage of eligible employees enrolled in Plan B is 50%. The percentage of premium paid by an employee is 30%. Mosaic Aerospace will also report that employees have a $200 annual deductible for both primary care provider services and prescription drug benefits. Hospital services have a $250 annual deductible and 20% co-insurance obligation.

(iii) **Example 23.** On December 1st, Mosaic Aerospace acquires General Aircraft Inc., a company claiming all the tax preferences available for manufacturers and processors for hire of commercial airplanes and component parts. General Aircraft Inc. had ((~~fifty~~)) 50 employees, all of whom were retained by Mosaic Aerospace. At General Aircraft Inc., employees were offered one managed care plan (HMO) as a benefit. The former General Aircraft Inc. employees will retain their current managed care plan until the following June when employees would be offered Mosaic Aerospace benefits. On December 31st, Mosaic Aerospace is

offering employees two managed care plans. Mosaic Aerospace may report each managed care plan separately or may consolidate the detail required in (b) through (d) of this subsection for this type of medical care plan by using ranges to report the information.

(iv) **Example 24.** Aero Turbines employs ((~~one hundred~~)) 100 employees. It offers employees health savings accounts as a benefit to employees who have worked for the company for six months. Aero Turbines established the employee health savings accounts with a local bank and makes available to employees a high deductible medical care plan to be used in conjunction with the account. Aero Turbines deposits $500 a month into each employee's health savings account. Employees deposit a portion of their pretax earnings into a health savings account to cover the cost of primary care provider services, prescription drug purchases, and the high deductible medical care plan for hospital services. The high deductible medical care plan has an annual deductible of $2,000 and covers 75% of the cost of hospital services. Sixty-six employees open health savings accounts. Four employees have not worked for Aero Turbines for six months.

Aero Turbines will report the medical care plan as a health savings account. Ninety-six percent of employees are eligible to participate in health savings accounts. The percentage of eligible employees enrolled in health savings accounts is 68.8%. Because the amount of employee deposits into their health savings accounts will vary, Aero Turbines will report the average monthly contribution of $500 rather than the percentage of premium paid by enrolled employees. Because employees are responsible for covering their primary care provider services and prescription drugs costs, Aero Turbines will report that this health plan does not include these services. Because the high deductible medical care plan covers the costs of hospital services, Aero Turbines will report that the medical care plan has an annual deductible of $2,000 and employees have 25% co-insurance obligation.

(14) **What are employer-provided retirement benefits?** For purposes of the annual report, "retirement benefits" mean compensation, not paid as wages, in the form of a retirement plan offered by an employer to its employees. 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 extending to the termination of employment or beyond. Retirement plans include 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. A retirement plan that is equally available to employees and the general public is not an "employer-provided" retirement benefit.

(15) **How are employer-provided retirement benefits detailed in the annual report?** The annual report is organized by SOC major group and by type of retirement plans offered to employees or with enrolled employees on December 31st of the calendar year for which an applicable tax preference is claimed. Inactive or terminated retirement plans are excluded from the annual report. An inactive retirement plan is a plan that is not offered to new employees, but has enrolled employees, and neither enrolled employees nor the employer are making contributions to the retirement plan.

(a) **Detail by SOC major group.** For each SOC major group, report the number of employees, as a percentage of total employment in the SOC major group, eligible to participate in an employer-provided retirement plan. An employee is "eligible" if the employee can currently participate in a retirement plan provided by the employer. Waiting periods, tenure requirements, minimum work hour requirements, and other limitations may prevent an employee from being eligible for coverage in an employer's retirement plan. If an employer provides multiple retirement plans, an employee is "eligible" if the employee can currently participate in one of the retirement plans. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(i) **Example 25.** Lincoln Airplane has ((~~one hundred~~)) 100 employees classified as SOC Production Occupations. Fifty employees were enrolled in defined benefit pension at the time of hire. All employees are eligible to participate in a 401(k) Plan. For SOC Production Occupations, Lincoln Airplane will report 100% of its employees are eligible for employer-provided retirement benefits because all of its employees are eligible for at least one retirement plan offered by Lincoln Airplane.

(ii) **Example 26.** Fly-Rite Airplanes has ((~~fifty~~)) 50 employees classified in SOC Computer and Mathematical Occupations. Fly-Rite Airplane offers a SIMPLE IRA to its employees after working for the company one year. Forty-five employees classified in SOC Computer and Mathematical Occupations have worked for the company more than one year. For SOC Computer and Mathematical Occupations, Fly-Rite Airplanes will report 90% of its employees are eligible for retirement benefits.

(b) **Detail by retirement plan.** The report also requires detailed information about the types of retirement plans an employer offers employees. If an employer offers multiple retirement plans, it must report each type of retirement plan separately. If an employer offers more than one of the same type of retirement plan, but with different levels of employer contributions, it may consolidate the detail required in (i) through (iv) of this subsection by using ranges to describe the information. The report includes:

(i) The type of plan in general terms such as 401(k) Plan, SEP IRA, SIMPLE IRA, cash balance pension, or defined benefit plan.

(ii) The number of employees eligible to participate in the retirement plan, as a percentage of total employment at the manufacturing site, or as otherwise reported. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iii) The number of employees enrolled in the retirement plan, as a percentage of employees eligible to participate in the retirement plan at the manufacturing site. An employee is "enrolled" if the employee currently participates in an employer-provided retirement plan, regardless of whether the employee has a vested benefit. Percentages should be rounded to the nearest 1/10th of 1% (XX.X%).

(iv) The maximum benefit the employer will contribute into the retirement plan for enrolled employees. The maximum benefit an employer will contribute is generally stated as a percentage of salary, specific dollar amount, or both. This information is not required for a defined benefit plan meeting the qualification requirements of Employee Retirement Income Security Act (ERISA) that provides benefits according to a flat benefit, career-average, or final pay formula.

(A) **Example 27.** General Airspace is a manufacturer of airplane components located in Centralia, WA. General Airspace employs ((~~one hundred~~)) 100 employees. Fifty employees are eligible for and enrolled

in a defined benefit pension with a flat benefit at the time of retirement. Twenty-five employees are eligible for and enrolled in a cash balance pension with General Airspace contributing 7% of an employee's annual compensation with a maximum annual contribution of $10,000. All General Airspace employees can participate in a 401(k) Plan. Sixty-five employees are participating in the 401(k) Plan. General Airspace does not make any contributions into the 401(k) Plan. Five employees are former employees of United Skyways, a company General Airspace acquired. United Skyways employees were enrolled in a cash balance pension at the time of hire. When General Airspace acquired United Skyways, it did not terminate or liquidate the United Skyways cash balance plan. Rather, General Airspace maintains cash balance plan only for former United Skyways employees, allowing only interest to accrue to the plan.

(I) General Airspace will report that it offers three retirement plans - A defined benefit pension, a cash-balance pension, and a 401(k) Plan. General Airspace will not report the inactive cash balance pension it maintains for former United Skyways employees.

(II) For the defined benefit pension, General Airspace will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

(III) For the cash-balance pension, General Airspace will report 25% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled. General Airspace will report a maximum contribution of $10,000 or 7% of an employee's annual compensation.

(IV) For the 401(k) Plan, General Airspace will report 100% of its total employment positions are eligible to participate in the retirement plan. Of the employment positions eligible to participate, 65% are enrolled. General Airspace will report that it does not make any contributions into the 401(k) Plan.

(B) **Example 28.** Washington Alloys is an aluminum smelter located in Grandview, WA. Washington Alloys employs ((~~two hundred~~)) 200 employees. Washington Alloys offers a 401(k) Plan to its employees after one year of hire. One hundred seventy-five employees have worked for Washington Alloys for one year or more. Of that amount, ((~~seventy-five~~)) 75 have worked more than five years. Washington Alloys will match employee contributions up to a maximum 3% of annual compensation. If an employee has worked for Washington Alloys for more than five years, Washington Alloys will contribute 5% of annual compensation regardless of the employee's contribution. One hundred employees receive a 3% matching contribution from Washington Alloys. Fifty employees receive a contribution of 5% of annual compensation.

(I) Washington Alloys may report each 401(k) Plan separately - A 401(k) Plan with a maximum employer contribution of 3% of annual compensation and a 401(k) Plan with a maximum employer contribution to 5% of annual compensation. Alternatively, Washington Alloys may report that it offers a 401(k) Plan with a maximum employer contribution ranging from 3% to 5% of annual compensation.

(II) If Washington Alloys reports each 401(k) Plan separately, for the 401(k) Plan with a maximum employer contribution of 3% of annual compensation, Washington Alloys will report 50% of its total employment positions are eligible to participate. Of the employment positions eligible to participate, 100% are enrolled.

For the 401(k) Plan with a maximum employer contribution of 5% of annual compensation, Washington Alloys will report 37.5% of its total

employment positions are eligible to participate. Of the employment positions eligible to participate, 66.6% are enrolled.

(III) If Washington Alloys consolidates its detailed information about its 401(k) Plans, it will report that 87.5% of its total employment positions are eligible to participate in 401(k) Plans. Of the employment positions eligible to participate in the 401(k) Plans, 85.7% are enrolled.

(16) **Additional reporting for aluminum smelters and electrolytic processing businesses.** For an aluminum smelter or electrolytic processing business, the annual report must indicate the quantity of product produced in this state during the time period covered by the report.

(17) **Are annual reports confidential?** Except for the additional information that the department may request which it deems necessary to measure the results of, or to determine eligibility for the tax preference, annual reports are not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(18) **What are the consequences for failing to file a complete annual report?**

(a) **What is a "complete annual report"?** An annual report is complete if:

(i) The annual report is filed on the form required by this rule or in an electronic format as required by law; and

(ii) The person makes a good faith effort to substantially respond to all report questions required by this rule.

Responses such as "varied," "various," or "please contact for information" are not considered good faith responses to a question.

(b) **Amounts due for late filing.** Except as otherwise provided by law, if a person claims a tax preference that requires an annual report under this rule, but fails to submit a complete report by the due dates described in subsection (3)(e) of this section, or any extension under RCW 82.32.590, the following amounts are immediately due and payable:

(i) For reports due prior to July 1, 2017, ((~~one hundred~~)) 100 percent of the amount of the tax preference claimed for the previous calendar year. Interest, but not penalties, will be assessed on the amounts due at the rate provided for under RCW 82.32.050, retroactively to the date the tax preference was claimed, and accruing until the taxes for which the tax preference was claimed are repaid.

(ii) For reports due on or after July 1, 2017:

(A) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year; and

(B) An additional ((~~fifteen~~)) 15 percent of the amount of the tax preference claimed for the previous calendar year if the person has previously been assessed under (b)(ii) of this subsection for failure to timely submit a report for the same tax preference.

(c) **Interest and penalties.** The department may not assess interest or penalties on amounts due under (b)(ii) of this subsection.

(d) **Extension for circumstances beyond the control of the taxpayer.** If the department finds the failure of a taxpayer to file an annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department will extend the time for filing the report. The extension will be for a period of ((~~thirty~~)) 30 days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this rule. The

department may grant additional extensions as it deems proper under RCW 82.32.590.

In determining whether the failure of a taxpayer to file an annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department will apply the provisions in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(e) **One-time only extension.** A taxpayer who fails to file an annual report, as required under this rule, by the due date of the report 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) The extension is for ((~~ninety~~)) 90 days from the original due date of the annual report.

(iii) No taxpayer may be granted more than one ((~~ninety~~)) 90-day extension.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.534, 82.32.585, 82.32.590, 82.32.600, 82.32.605, 82.32.607, 82.32.710, 82.32.790, 82.32.808, 82.04.240, 82.04.2404, 82.04.260, 82.04.2909, 82.04.426, 82.04.4277, 82.04.4461, 82.04.4463, 82.04.448, 82.04.4481, 82.04.4483, 82.04.449, 82.08.805, 82.08.965, 82.08.9651, 82.08.970, 82.08.980, 82.08.986, 82.12.022, 82.12.025651, 82.12.805, 82.12.965, 82.12.9651, 82.12.970, 82.12.980, 82.16.0421, 82.29A.137, 82.60.070, 82.63.020, 82.63.045, 82.74.040, 82.74.050, 82.75.040, 82.75.070, 82.82.020, 82.82.040, 84.36.645, and 84.36.655. WSR 18-13-094, § 458-20-267A, filed 6/19/18, effective 7/20/18.]

AMENDATORY SECTION (Amending WSR 18-13-094, filed 6/19/18, effective 7/20/18)

WAC 458-20-268 Annual surveys for certain tax preferences. (1) **Introduction.** Effective for calendar years in which a taxpayer claims a tax preference beginning January 1, 2018, Washington changed its annual reporting requirements. This rule addresses how taxpayers taking certain tax preferences must file an annual survey as provided under RCW 82.32.585 with the department of revenue (department) providing information about their business for tax periods through December 31, 2017, only. See WAC 458-20-267 Annual tax performance reports for certain tax preferences for the proper way to report tax preferences for periods beginning January 1, 2018.

(a) **Definitions.** For purposes of this rule the following definitions apply:

(i) **Person.** "Person" has the meaning under RCW 82.04.030 and also includes the state and its departments and institutions.

(ii) **Tax preference.** As defined under RCW 43.136.021, "tax preference" means:

(A) An exemption, exclusion, or deduction from the base of a state tax; a credit against a state tax; a deferral of a state tax; or a preferential state tax rate; and

(B) Includes only the tax preferences requiring a survey under RCW 82.32.585.

(b) **Annual reports.** Taxpayers taking certain tax preferences may be required to complete both an annual report and an annual survey. For information on the annual report requirements, refer to RCW 82.32.534 and WAC 458-20-267.

(c) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The department will evaluate each case on its particular facts and circumstances.

(2) **Tax preferences requiring an annual survey.** Taxpayers may refer to the department's website at dor.wa.gov for the "Annual Tax Incentive Survey for Preferential Tax Rates/Credits/Exemptions/Deferrals Worksheet." This worksheet lists tax preferences that require an annual survey. Taxpayers may also contact the telephone information center ((~~800-647-7706~~)) 360-705-6705 to determine whether they must file an annual survey.

(3) **How to file annual surveys.**

(a) **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 their department "My Account" at dor.wa.gov.

(b) **Required paper form.** If the department waives the electronic filing requirement for a person that shows good cause, that person must use the annual survey form 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 annual survey form from the department's website at dor.wa.gov. It may also be obtained by calling the telephone information center at ((~~800-647-7706~~)) 360-705-6705, or by contacting the department at:

Attn: Tax Incentive Team
Taxpayer Account Administration
Department of Revenue
Post Office Box 47476
Olympia, WA 98504-7476

(d) **Special requirement for persons who did not file an annual survey during the previous calendar year.** If a person is a first-time filer or otherwise did not file an annual survey with the department during the previous calendar year, the survey must include information on employment, wages, and employer-provided health and retirement benefits for the two calendar years immediately preceding the due date of the survey.

(e) **Due date of annual survey.** Every person claiming a tax preference that requires a survey under RCW 82.32.585 must file the survey annually with the department in the year following the calendar year in which the person becomes eligible to claim the tax preference. The due date for filing the survey is as follows:

(i) April 30th for surveys due prior to 2017.

(ii) May 31st for surveys due in 2017 or 2018.

(iii) If the tax preference is a deferral of tax, the first survey must be filed by April 30th (if prior to 2017) or by May 31st (if in 2017) of the calendar year following the calendar year in which the

investment project is certified by the department as operationally complete. Thereafter, a survey must also be filed for each of the seven succeeding calendar years by April 30th (if prior to 2017) or by May 31st (if in 2017), or a tax performance report for tax preferences claimed in tax reporting periods in 2018 and after.

(f) **Due date extensions.** The department may extend the due date for filing annual surveys as provided in subsection (11) of this rule.

(g) **Example 1.** Advanced Computing, Inc. qualified for the B&O tax credit provided by RCW 82.04.4452 and applied it against taxes due in calendar year 2014. Advanced Computing filed an annual survey in March 2014 for credit claimed under RCW 82.04.4452 in 2013. Advanced Computing must electronically file an annual survey with the department by April 30, 2015, for credits taken in calendar year 2014. The tax preference in this example expired January 1, 2015.

(h) **Example 2.** In 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 investment project was operationally complete in 2012. Biotechnology filed an annual survey on April 30, 2013, for the sales and use tax deferral under chapter 82.63 RCW. Surveys are due from Biotechnology by April 30th each year through 2016 and by May 31st in 2017 and 2018, with tax performance reports due in 2019 through May 31, 2020.

(i) **Example 3.** Advanced Materials, Inc., a new business in 2014, has been conducting manufacturing activities in a building leased from Property Management Services. Property Management Services is a recipient of a deferral under chapter 82.60 RCW, and the department certified the building as operationally complete in 2014. To pass on the entire economic benefit of the deferral, Property Management Services charges Advanced Materials $5,000 less in rent each year. Advanced Materials is a first-time filer of annual surveys. Advanced Materials must file its annual survey with the department covering the 2014 calendar year by April 30, 2015. Surveys are due from Advanced Materials by April 30th for 2016 and by May 31st for 2017, with annual tax performance reports due in 2018 through May 31, 2022.

(j) **Example 4.** Fruit Canning, Inc. claims the B&O tax exemption provided in RCW 82.04.4266 for the canning of fruit in 2015. Fruit Canning is a first-time filer of annual surveys. Fruit Canning must file an annual survey with the department by April 30, 2016, covering calendar years 2014 and 2015. If Fruit Canning claims the B&O tax exemption during subsequent years, it must file an annual survey by May 31st in 2017 and 2018, and an annual tax performance report by May 31st in 2019 and each subsequent year.

(4) **What information does the annual survey require?** The annual survey requires 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 taxpayers 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 taxpayers 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.

The credit provided under RCW 82.04.4452 expired January 1, 2015.

(d) The following information for employment positions in Washington state:

(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 rule 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 preferences.

(i) Prior to its repeal effective January 1, 2018, RCW 82.32.585 requires the department to report to the legislature summary descriptive statistics by category and the effectiveness of certain tax preferences, 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 taxpayer's use of the sales and use tax exemption for machinery and equipment used in manufacturing provided in RCW 82.08.025651 and 82.12.025651; 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) **Employment as of December 31st.** 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 separations from employment such as layoffs and reductions in force. Vacant positions are not included in total employment.

(b) **The following facts apply to the examples in (b)(i) through (iv) of this subsection.** National Construction Equipment (NCE) manufactures bulldozers, cranes, and other earth-moving equipment in Ridgefield 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.

(i) **Example 5.** NCE employs ((~~two hundred~~)) 200 workers in Ridgefield manufacturing construction cranes. NCE employs ((~~two hundred fifty~~)) 250 workers in Kennewick manufacturing bulldozers and other earth-moving equipment. Although NCE's facility in Ridgefield does not qualify for any tax preferences, NCE's annual survey must report a total of ((~~four hundred fifty~~)) 450 employment positions. The annual survey includes all Washington state employment positions, which includes employment positions engaged in activities that do not qualify for tax preferences.

(ii) **Example 6.** On November 20th, NCE lays off ((~~seventy-five~~)) 75 workers. NCE notifies ((~~ten~~)) 10 of the laid off workers on December 20th that they will be rehired and begin work on January 2nd. The ((~~seventy-five~~)) 75 employment positions are excluded from NCE's annual survey, because a separation of employment has occurred. Although NCE intends to rehire ((~~ten~~)) 10 employees, those employment positions are vacant on December 31st.

(iii) **Example 7.** On December 31st, NCE has ((~~one hundred~~)) 100 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) **Example 8.** 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 intern employed on December 31st.

(6) **When is an employment position located in Washington state?** The annual survey seeks information only about Washington employment positions. 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 controlled in this state, but the employee's individual residence is in this state.

(f) **The following facts apply to the examples in (f)(i) through (iv) of this subsection.** Acme Computer, Inc. develops computer software and receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high unemployment county. Acme Computer, headquartered in California, has employees working at four locations in Washington state. Acme Computer also has offices in Oregon and Texas.

(i) **Example 9.** 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 positions 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 the state.

(ii) **Example 10.** 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 positions 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) **Example 11.** 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 should not be included in the number of total employment positions 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) **Example 12.** 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 positions in Washington state that Acme Computer reports on the annual survey. Although Roberta performs services both within and without the state and the service is not directed or controlled in this state, 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~~)) 52 consecutive weeks or ((~~twelve~~)) 12 consecutive months, excluding any leaves of absence.

(i) **Full-time positions.** A full-time position is a position that requires the employee to work, excluding overtime hours, ((~~thirty-five~~)) 35 hours per week for ((~~fifty-two~~)) 52 consecutive weeks, ((~~four hundred fifty-five~~)) 455 hours a quarter for four consecutive quarters, or ((~~one thousand eight hundred twenty~~)) 1,820 hours during a period of ((~~twelve~~)) 12 consecutive months.

(ii) **Part-time positions.** A part-time position is a position in which the employee may work less than the hours required for a full-time position.

(iii) **Exceptions for full-time positions.** 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 re-

ceive 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~~)) 52 consecutive weeks or ((~~twelve~~)) 12 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 rule.

(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 rule. 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) **The following facts apply to the examples in (c)(i) through (vi) of this subsection.** Worldwide Materials, Inc. is a developer of materials used in manufacturing electronic devices. Worldwide Materials receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high unemployment county. Worldwide Materials has ((~~one hundred~~)) 100 employees.

(i) **Example 13.** On December 31st, Worldwide Materials has five employees on workers' compensation leave. At the time of the work-related injuries, the employees worked ((~~forty~~)) 40 hours a week and were expected to work for ((~~fifty-two~~)) 52 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~~)) 52 consecutive weeks.

(ii) **Example 14.** 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~~)) 12 consecutive months, Worldwide Materials must report these positions as full-time positions.

(iii) **Example 15.** 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~~)) 52 weeks a year. Because the employees work less than ((~~thirty-five~~)) 35 hours a week, the employment positions are reported as part-time positions.

(iv) **Example 16.** On November 1st, a Worldwide Materials engineer begins ((~~twelve~~)) 12 weeks of family and medical leave. The engineer was expected to work ((~~forty~~)) 40 hours a week for ((~~fifty-two~~)) 52 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) **Example 17.** 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~~)) 12 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~~)) 40 hours a week. Although the three research employees may work fewer hours, they are receiving comparable wages as other research employees working ((~~forty~~)) 40 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) **Example 18.** Worldwide Materials has a large order to fulfill and hires ((~~ten~~)) 10 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 rule.

(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) **The following facts apply to the examples in (d)(i) through (v) of this subsection.** Medical Resource, Inc. is a pharmaceutical manufacturer that receives a deferral of taxes under chapter 82.60 RCW for sales and use taxes on an eligible investment project in a high unemployment county. It employs ((~~two hundred~~)) 200 full-time employees and ((~~fifty~~)) 50 part-time employees. Medical Resource also hires a staffing company to furnish ((~~seventy-five~~)) 75 workers.

(i) **Example 19.** Medical Resource 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~~)) 30 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 must report ((~~two hundred~~)) 200 employees as having employer-provided

medical benefits, because that is the number of employees enrolled in the health plans it offers.

(ii) **Example 20.** Medical Resource does not offer medical benefits to the employees of the staffing company. However, ((~~twenty-five~~)) 25 of these workers have enrolled in a health plan through the staffing company. Medical Resource must report these ((~~twenty-five~~)) 25 employment positions as having employer-provided medical benefits.

(iii) **Example 21.** Medical Resource 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. Medical Resource employment is the sole requirement 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 must report ((~~two hundred and fifty~~)) 250 employment positions as having dental benefits, because that is the number of employees enrolled in this dental plan.

(iv) **Example 22.** Medical Resource offers a 401(k) Plan to its full-time and part-time employees after six months of employment. Medical Resource makes matching contributions to an employee's 401(k) Plan after two years of employment. On December 31st, ((~~two hundred and twenty-five~~)) 225 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 must report ((~~two hundred~~)) 200 employment positions as having employer-provided retirement benefits, because that is the number of employees enrolled in the 401(k) Plan.

(v) **Example 23.** Medical Resource 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 cannot report that these ((~~fifty~~)) 50 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'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 preference taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public, except as provided in (c) of this subsection.

(a) **Failure to timely file a complete annual survey subject to disclosure.** If a taxpayer fails to timely file a complete annual survey, then 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.

(b) **Amount reported in annual survey is different from the amount claimed or allowed.** If a taxpayer reports a tax preference 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 preference is less than ((~~ten thousand dollars~~)) $10,000.** If the tax preference is less than ((~~ten thousand dollars~~)) $10,000 during the period covered by the annual survey, the taxpayer may request that the department treat the amount of the tax preference as confidential under RCW 82.32.330.

(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 rule 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 rule.

Responses such as "varied," "various," or "please contact for information" are not considered good faith responses to a question.

(b) **Amounts due for late filing.** Unless the tax preference is a deferral of tax, as described in (c) of this subsection, or as otherwise provided by law, if a person claims a tax preference that requires an annual survey under this rule, but fails to submit a complete survey by the due dates described in subsection (3)(e) of this rule, or any extension under RCW 82.32.590, the following amounts are immediately due and payable:

(i) For surveys due prior to July 1, 2017, ((~~one hundred~~)) 100 percent of the amount of the tax preference claimed for the previous calendar year. Interest, but not penalties, will be assessed on the amounts due at the rate provided for under RCW 82.32.050, retroactively to the date the tax preference was claimed, and accruing until the taxes for which the tax preference was claimed are repaid.

(ii) For surveys due on or after July 1, 2017:

(A) Thirty-five percent of the amount of the tax preference claimed for the previous calendar year; and

(B) An additional ((~~fifteen~~)) 15 percent of the amount of the tax preference claimed for the previous calendar year if the person has previously been assessed under (b)(ii) of this subsection for failure to timely submit a survey for the same tax preference.

(c) **Tax deferrals.** If the tax preference is a deferral of tax, ((~~twelve and one-half~~)) 12.5 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.

(d) **Interest and penalties.** The department may not assess interest or penalties on amounts due under (b)(ii) and (c) of this subsection.

(e) **Extension for circumstances beyond the control of the taxpayer.** If the department finds 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~~)) 30 days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this rule. The department may grant additional extensions as it deems proper under RCW 82.32.590.

In 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 in WAC 458-20-228 for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer.

(f) **One-time only extension.** A taxpayer who fails to file an annual survey, as required under this rule, by the due date of the survey is entitled to an extension of the due date. A request for an ex-

tension 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) The extension is for ((~~ninety~~)) 90 days from the original due date of the annual survey.

(iii) No taxpayer may be granted more than one ((~~ninety~~)) 90-day extension.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.534, 82.32.585, 82.32.590, 82.32.600, 82.32.605, 82.32.607, 82.32.710, 82.32.790, 82.32.808, 82.04.240, 82.04.2404, 82.04.260, 82.04.2909, 82.04.426, 82.04.4277, 82.04.4461, 82.04.4463, 82.04.448, 82.04.4481, 82.04.4483, 82.04.449, 82.08.805, 82.08.965, 82.08.9651, 82.08.970, 82.08.980, 82.08.986, 82.12.022, 82.12.025651, 82.12.805, 82.12.965, 82.12.9651, 82.12.970, 82.12.980, 82.16.0421, 82.29A.137, 82.60.070, 82.63.020, 82.63.045, 82.74.040, 82.74.050, 82.75.040, 82.75.070, 82.82.020, 82.82.040, 84.36.645, and 84.36.655. WSR 18-13-094, § 458-20-268, filed 6/19/18, effective 7/20/18. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 17-09-086, § 458-20-268, filed 4/19/17, effective 5/20/17; WSR 16-12-072, § 458-20-268, filed 5/27/16, effective 6/27/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.585, 82.32.605, 82.32.607, 82.32.808, 43.136.057, 43.136.058, 82.04.2404, 82.04.294, 82.08.025651, 82.08.956, 82.08.9651, 82.12.025651, 82.12.956, and 82.12.9651. WSR 15-04-002, § 458-20-268, filed 1/21/15, effective 2/21/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.32.600 and 82.32.585. WSR 14-14-033, § 458-20-268, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 10-22-087, § 458-20-268, filed 11/1/10, effective 12/2/10; WSR 10-10-038, § 458-20-268, filed 4/27/10, effective 5/28/10; WSR 07-02-074, § 458-20-268, filed 12/29/06, effective 1/29/07.]

AMENDATORY SECTION (Amending WSR 15-15-157, filed 7/21/15, effective 8/21/15)

WAC 458-20-278 Returned goods, defective goods—Motor vehicle lemon law. (1) **Introduction.** This rule explains how sellers should report business and occupation (B&O) tax and retail sales tax when goods are returned and refunds or credits are granted.

(a) **Contract of sale.** Generally, when a contract of sale is made subject to cancellation at the option of one of the parties or to revision in the event the goods sold are defective, the gross proceeds actually derived from the contract and the selling price are determined by the transaction as finally completed.

(b) **Examples.** The examples in this rule 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.

(2) **Returned goods.** When sales are made either upon approval or upon a sale or return basis, and the buyer returns the property purchased and the entire selling price is refunded or credited to the

buyer, the seller may deduct an amount equal to the selling price from gross proceeds of sales in computing tax liability. A deduction is available under the retail sales tax classification only if the amount of sales tax previously collected from the buyer has been refunded by the seller to the buyer. If the property purchased is not returned within the guaranty period as established by contract, or if the full selling price is not refunded or credited to the buyer, a presumption is raised, subject to rebuttal by a preponderance of the evidence, that the property returned is not a returned good but is an exchange or a repurchase by the seller.

(a) **Example 1.** Stan sells an article for $60.00 and credits his sales account with the sale. The buyer returns the article purchased within the guaranty period and the purchase price and the sales tax previously paid by the buyer is refunded or credited to the buyer. If the sale has not been reported to the department of revenue, Stan may deduct $60.00 for the returned article from his gross sales amount. If Stan has already reported the sale on his excise tax return, he may take a deduction for $60.00 for the returned article on his next filed excise tax return.

(b) **Restocking fees charged on returned goods.** A "restocking fee" is a fee intended to cover the cost, by the seller, of restoring returned items to saleable condition and returning them to inventory. The restocking fee is the same regardless of when a purchased item is returned to the seller by the buyer.

If all the conditions of this subsection are met for returned merchandise with the exception of a restocking fee, the transaction will be viewed as a sale return and not as a repurchase. When a sale return occurs, a deduction may be taken under the appropriate tax classification used in reporting the original sale. However, the restocking fee is considered income and taxable under the service and other business activities B&O tax classification.

(i) **Example 2.** Ace Auto Parts (Ace) sells a catalytic converter to Stan for $400.00 plus tax. The receipt that Ace gives Stan states that returns must be made within 30 days and a $35.00 restocking fee will apply to returns. Stan realizes after he gets the part home that it is the wrong one for his car. When Stan returns the part, he finds that Ace does not have the catalytic converter that he needs for his car. Ace computes Stan's refund of $400.00 plus sales tax minus the $35.00 restocking fee. Ace may reduce its gross retail sales by $400.00, but must report the $35.00 restocking fee under the service and other business activities B&O tax classification.

(ii) **Example 3.** Breen's Department Store (Breen's) accepts returned items, in new condition, but may discount the original purchase price based on the time elapsed since purchase.

Return within	Amount of credit
0 – 30 days from receipt	100% of original purchase price
31 – 60 days from receipt	75% of original purchase price
61 + days from receipt	50% of original purchase price

For example, Jill purchases a dress from Breen's and returns the dress 45 days after purchase. Breen's refunds or provides a credit to her of 75 percent of the cost of the dress. The amount retained by Breen's is not considered a restocking fee. This is considered a re-

purchase by Breen's, and thus no deductions are allowed under the retailing B&O tax or retail sales tax classifications on Breen's excise tax return.

(3) **Defective goods.** This subsection does not apply to new motor vehicles under an original manufacturer's warranty. See subsection (4) of this rule regarding new motor vehicles under an original manufacturer's warranty.

When bona fide refunds, credits, or allowances are given within the guaranty period by a seller to a buyer on account of defects in goods sold, the seller may deduct the amount of such refunds, credits, or allowances in computing its tax liability, if the seller has refunded the proportionate amount of the sales tax it previously collected from the buyer.

Example 4. On April 5th, Stan sells an item to Bob for $60.00. Stan records the sale as gross income. The item is later found to be defective by Bob.

(a) Bob returns the item prior to Stan reporting the sale on his excise tax return, and remitting B&O tax and the collected retail sales tax. Stan refunds Bob the purchase price including the retail sales tax. Stan may subtract $60.00 from his gross income when completing his excise tax return.

(b) Bob returns the defective article and Stan allows him a full credit of $60.00 towards another article. The new article's price is $80.00. Bob pays, in cash, the additional $20.00 plus retail sales tax on the $20.00. Stan records the $20.00 as gross sales. The allowance for the defective article ($60.00) is already included in Stan's gross sales, thus only the $20.00 ($60.00 credit and $20.00 cash = $80.00 purchase price) should be added to the gross sales amount.

(c) Bob waits a month to return the defective item for a refund. Stan refunds Bob the full purchase price of $60.00 plus the retail sales tax. As Stan has already reported the sale on his excise tax return, he may deduct $60.00 under "Returns" for both the retailing B&O tax and retail sales tax classifications on his next excise tax return.

(d) Bob is willing to keep the defective item but requests a partial refund to offset repair costs. Stan refunds Bob $25.00 of the purchase price, plus the applicable retail sales tax. As Stan has already reported the sale on his excise tax return, he may take a deduction for $25.00 under both the retailing B&O tax and retail sales tax classifications on his next excise tax return.

(4) **Motor vehicle warranties - Lemon law.** A manufacturer that replaces or repurchases a new motor vehicle under warranty because of a defective condition is required to refund to the consumer the "collateral charges" (RCW 19.118.021(2)) which include retail sales tax. The refund will be made to the consumer by the manufacturer or by the dealer for the manufacturer. The department of revenue will then verify calculations and credit or refund the correct amount of the tax so refunded. For information on the lemon law, other than retail sales tax, contact the attorney general's office.

(a) **What documentation is needed for credit or refund?** To receive a credit or refund, the manufacturer or dealer must provide the following information to the department of revenue establishing that the dealer collected the retail sales tax and that it was refunded to the consumer:

(i) A complete copy of the new motor vehicle arbitration board decision including the owner signed acceptance/denied page; or

(ii) The Lemon Law Refund Request Verification Form completed in nonarbitrated situations; and

(iii) A statement signed and dated by the consumer accepting the arbitration board decision or the manufacturer's nonarbitrated repurchase offer. The statement must include the consumer's name, repurchase offer date, total repurchase amount, sales tax amount refunded, the name of the manufacturer issuing the refund and any other supporting documents needed to substantiate the claim; and

(iv) A copy of the dealer invoice (purchase order) or lease agreement, signed by the consumer, that shows the amount of retail sales tax paid; and

(v) A copy of the manufacturer's refund check(s) for repurchase drawn payable to the consumer and/or lien holder; and

(vi) For the calculation of reasonable offset for mileage provide all supporting documentation necessary to verify the calculation used and documentation (e.g., all dealer repair records or service records) to verify the attempted repairs to the vehicle did comply with RCW 19.118.041.

(b) **Where can I obtain the Lemon Law Refund Request Verification Form?** The "Lemon Law Refund Request Verification Form" is available on the department's website at dor.wa.gov, or by calling the department's telephone information center at ((~~1-800-647-7706~~)) 360-705-6705, or writing to:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

(c) **Where should documentation be sent?** All documentation from manufacturers for credit or refund on lemon law refunds should be sent to:

Audit Division/Lemon Law Refund Section
Department of Revenue
P.O. Box 47474
Olympia, WA 98504-7474

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 15-15-157, § 458-20-278, filed 7/21/15, effective 8/21/15.]

WSR 23-14-003
PERMANENT RULES
BELLEVUE COLLEGE
[Filed June 21, 2023, 2:34 p.m., effective July 22, 2023]

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

Purpose: Bellevue College plans to repeal WAC 132H-121-020 Hazing rules. This change is proposed as updates regarding hazing have been made to chapter 132H-126 WAC, Student conduct code of Bellevue College, to be in compliance with Sam's Law (HB [2SHB] 1751).

Citation of Rules Affected by this Order: Repealing [WAC 132H-121-020].

Statutory Authority for Adoption: RCW 28B.50.140(13); chapter 34.05 RCW.

Adopted under notice filed as WSR 23-07-106 on March 20, 2023.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 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 21, 2023.

Loreen M. Keller
Associate Director
Policies and Special Projects

OTS-4452.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132H-121-020 Hazing rules.

WSR 23-14-010
PERMANENT RULES
EASTERN WASHINGTON UNIVERSITY
[Filed June 22, 2023, 10:35 a.m., effective July 23, 2023]

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

Purpose: Updates Eastern Washington University's parking rules to clarify requirements for parking overnight and charging vehicles.

Citation of Rules Affected by this Order: Amending WAC 172-100-120.

Statutory Authority for Adoption: RCW 28B.35.120(12).

Adopted under notice filed as WSR 23-08-055 on April 3, 2023.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 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 22, 2023.

Annika Scharosch
Associate Vice President for Civil Rights
Compliance and Enterprise Risk Management

OTS-4481.1

AMENDATORY SECTION (Amending WSR 20-12-060, filed 5/29/20, effective 6/29/20)

WAC 172-100-120 Parking rules. (1) Emergency access areas: Parking is prohibited in:

(a) Emergency access areas;

(b) Fire lanes;

(c) Within ((~~fifteen~~)) 15 feet of a fire hydrant.

(2) No parking/restricted parking areas: Parking is prohibited in any area that is not specifically designated for parking, unless explicitly authorized by parking services or university police. No parking and restricted parking areas include, but are not limited to:

(a) Yellow curb areas;

(b) Bus zones;

(c) Driveways;

(d) Sidewalks; and

(e) Any grassy area.

(3) Loading zones: Parking is permitted in loading zones according to the restrictions and time limits posted for the zone. If no restrictions are posted, users shall:

(a) Display a department permit issued under WAC 172-100-230; or

(b) Obtain and display a permit from parking services.

(4) Service drives/areas: Driving or parking in a service drive without displaying a department or service permit is prohibited.

(5) Visitor spaces: Campus visitors may park in any visitor parking space on campus subject to any posted restrictions.

(6) Reserved spaces: Parking in a reserved parking space, without proper authorization, is prohibited.

(7) Permit-required lots: Except as provided herein, parking is prohibited in any campus parking lot that requires a parking permit unless the vehicle has a valid parking permit for that lot. The university uses license plate recognition technology to manage parking on its campus. Owners purchase parking permits for particular lots on campus and are required to provide the license plate numbers for any vehicles they are requesting a permit for. To be considered valid, parking permits must be issued by the university's parking services office, be current, and be for the license plate associated with the vehicle parked in a parking lot.

(a) All permit-required lots have designated days and times during which a permit is required.

(b) Motorcycles parked in a permit-required lot must have a valid parking permit.

(8) Disabled parking spaces: Any vehicle that is parked in a disabled parking space in a university owned or leased parking lot must register with parking services and provide evidence of a valid, state-issued disabled parking permit, license plate, or year tab. The vehicle must also have a valid EWU disabled parking permit if parking in a permit-required parking lot during the designated days and times that a permit is required for parking.

(9) Metered/mobile payment parking: A person who parks a vehicle in a metered or mobile payment parking space must pay for time used during posted times of operation.

(10) Vehicle size limits: Vehicles longer than ((~~twenty~~)) 20 feet, campers, trailers, buses, and pickup trucks with a camper may not be parked on university property without prior authorization from parking services.

(11) Bicycles: Bicycles must be parked in bicycle racks.

(12) Parking space violation: Vehicles may only occupy one parking space or stall as designated within a parking area.

(13) Disabled, and inoperative vehicles: A disabled or inoperative vehicle may not be parked on the university campus for more than ((~~twenty-four~~)) 24 hours without prior authorization from parking services.

(14) Overnight parking: Vehicles cannot be parked overnight in university parking lots or surrounding service drives owned by the university unless approved in advance by parking services for the purpose of special events or if the lot is designated for overnight use for students residing on campus.

(15) Electrical outlets: Vehicles may not be plugged into electrical outlets on campus unless the specific parking space has been designated as an electric vehicle charging space by parking services.

[Statutory Authority: RCW 28B.35.120(12). WSR 20-12-060, § 172-100-120, filed 5/29/20, effective 6/29/20; WSR 13-24-119, § 172-100-120, filed 12/4/13, effective 1/4/14.]

WSR 23-14-011
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed June 22, 2023, 3:01 p.m., effective July 1, 2023]

Effective Date of Rule: July 1, 2023.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The updated definition of "thinning" for timber excise tax in WAC 458-40-610 is for use as of the effective date. RCW 84.33.091 requires the stumpage values in WAC 458-40-660 to be updated on or before June 30 for use the following July 1 through December 31.

Purpose: WAC 458-40-610 contains definitions of specific terms for timber excise tax purposes, including the term "thinning." This rule is being revised to provide an updated definition of thinning to include stumpage value areas 6 and 7, which are used in determining the stumpage values used by harvesters of timber to calculate the timber excise. This revised rule is effective as of July 1, 2023. WAC 458-40-660 contains the stumpage values used by timber harvesters to calculate the timber excise tax. This rule is being revised to provide updated stumpage values for the period from July 1, 2023, through December 31, 2023.

Citation of Rules Affected by this Order: Amending WAC 458-40-610 Timber excise tax—Definitions and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2) and 84.33.096.

Other Authority: RCW 84.33.091.

Adopted under notice filed as WSR 23-10-061 on May 1, 2023.

A final cost-benefit analysis is available by contacting Tiffany Do, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1558, email TiffanyD@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 the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: June 22, 2023.

Atif Aziz
Rules Coordinator

OTS-4556.1

AMENDATORY SECTION (Amending WSR 19-02-068, filed 12/28/18, effective 1/1/19)

WAC 458-40-610 Timber excise tax—Definitions. (1) **Introduction.** The purpose of WAC 458-40-610 through 458-40-680 is to prescribe the policies and procedures for the taxation of timber harvested from public and private forest lands as required by RCW 84.33.010 through 84.33.096.

Unless the context clearly requires otherwise, the definitions in this rule apply to WAC 458-40-610 through 458-40-680. In addition to the definitions found in this rule, definitions of technical forestry terms may be found in *The Dictionary of Forestry*, 1998, edited by John A. Helms, and published by the Society of American Foresters.

(2) **Codominant trees.** Trees whose crowns form the general level of the main canopy and receive full light from above, but comparatively little light from the sides.

(3) **Competitive sales.** The offering for sale of timber which is advertised to the general public for sale at public auction under terms wherein all qualified potential buyers have an equal opportunity to bid on the sale, and the sale is awarded to the highest qualified bidder. The term "competitive sales" includes making available to the general public permits for the removal of forest products.

(4) **Cord measurement.** A measure of wood with dimensions of 4 feet by 4 feet by 8 feet (128 cubic feet).

(5) **Damaged timber.** Timber where the stumpage values have been materially reduced from the values shown in the applicable stumpage value tables due to damage resulting from fire, blow down, ice storm, flood, or other sudden unforeseen causes.

(6) **Dominant trees.** Trees whose crowns are higher than the general level of the main canopy and which receive full light from the sides as well as from above.

(7) **Firewood.** Commercially traded firewood is considered scaled utility log grade as defined in subsection (14) of this section.

(8) **Forest-derived biomass.** Forest-derived biomass consists of tree limbs, tops, needles, leaves, and other woody debris that are residues from such activities as timber harvesting, forest thinning, fire suppression, or forest health. Forest-derived biomass does not include scalable timber products or firewood (defined in WAC 458-40-650).

(9) **Harvest unit.** An area of timber harvest, defined and mapped by the harvester before harvest, having the same stumpage value area, harvest adjustments, harvester, and harvest identification. The harvest identification may be a department of natural resources forest practice application number, public agency harvesting permit number, public sale contract number, or other unique identifier assigned to the timber harvest area prior to harvest operations. A harvest unit may include more than one section, but harvest unit may not overlap a county boundary.

(10) **Harvester.** Every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester. In cases where the identity of the harvester is in doubt, the department of revenue will consider the

owner of the land from which the timber was harvested to be the harvester and the one liable for paying the tax.

The definition above applies except when the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use. When a governmental entity described above fells, cuts, or takes timber, the harvester is the first person, other than another governmental entity as described above, acquiring title to or a possessory interest in such timber.

(11) **Harvesting and marketing costs.** Only those costs directly and exclusively associated with harvesting merchantable timber from the land and delivering it to the buyer. The term includes the costs of piling logging residue on site, and costs to abate extreme fire hazard when required by the department of natural resources. Harvesting and marketing costs do not include the costs of other consideration (for example, reforestation, permanent road construction), treatment to timber or land that is not a necessary part of a commercial harvest (for example, precommercial thinning, brush clearing, land grading, stump removal), costs associated with maintaining the option of land conversion (for example, county fees, attorney fees, specialized site assessment or evaluation fees), or any other costs not directly and exclusively associated with the harvesting and marketing of merchantable timber. The actual harvesting and marketing costs must be used in all instances where documented records are available. When the taxpayer is unable to provide documented proof of such costs, or when harvesting and marketing costs cannot be separated from other costs, the deduction for harvesting and marketing costs is ((~~thirty-five~~)) 35 percent of the gross receipts from the sale of the logs.

(12) **Legal description.** A description of an area of land using government lots and standard general land office subdivision procedures. If the boundary of the area is irregular, the physical boundary must be described by metes and bounds or by other means that will clearly identify the property.

(13) **Log grade.** Those grades listed in the "*Official Log Scaling and Grading Rules*" developed and authored by the Northwest Log Rules Advisory Group (Advisory Group). "Utility grade" means logs that do not meet the minimum requirements of peeler or sawmill grades as defined in the "*Official Log Scaling and Grading Rules*" published by the Advisory Group but are suitable for the production of firm useable chips to an amount of not less than ((~~fifty~~)) 50 percent of the gross scale; and meeting the following minimum requirements:

(a) Minimum gross diameter - Two inches.

(b) Minimum gross length - ((~~twelve~~)) 12 feet.

(c) Minimum volume - ((~~ten~~)) 10 board feet net scale.

(d) Minimum recovery requirements - ((~~one hundred~~)) 100 percent of adjusted gross scale in firm useable chips.

(14) **Lump sum sale.** Also known as a cash sale or an installment sale, it is a sale of timber where all the volume offered is sold to the highest bidder.

(15) **MBF.** One thousand board feet measured in Scribner Decimal C Log Scale Rule.

(16) **Noncompetitive sales.** Sales of timber in which the purchaser has a preferential right to purchase the timber or a right of first refusal.

(17) **Other consideration.** Value given in lieu of cash as payment for stumpage, such as improvements to the land that are of a permanent

nature. Some examples of permanent improvements are as follows: Construction of permanent roads; installation of permanent bridges; stockpiling of rock intended to be used for construction or reconstruction of permanent roads; installation of gates, cattle guards, or fencing; and clearing and reforestation of property.

(18) **Permanent road.** A road built as part of the harvesting operation which is to have a useful life subsequent to the completion of the harvest.

(19) **Private timber.** All timber harvested from privately owned lands.

(20) **Public timber.** Timber harvested from federal, state, county, municipal, or other government owned lands.

(21) **Remote island.** An area of land which is totally surrounded by water at normal high tide and which has no bridge or causeway connecting it to the mainland.

(22) **Scale sale.** A sale of timber in which the amount paid for timber in cash and/or other consideration is the arithmetic product of the actual volume harvested and the unit price at the time of harvest.

(23) **Small harvester.** A harvester who harvests timber from privately or publicly owned forest land in an amount not exceeding ((~~two million~~)) 2,000,000 board feet in a calendar year. See RCW 84.33.035.

(24) **Species.** A grouping of timber based on biological or physical characteristics. In addition to the designations of species or subclassifications defined in Agriculture Handbook No. 451 Checklist of United States Trees (native and naturalized) found in the state of Washington, the following are considered separate species for the purpose of harvest classification used in the stumpage value tables:

(a) **Other conifer.** All conifers not separately designated in the stumpage value tables. See WAC 458-40-660.

(b) **Other hardwood.** All hardwoods not separately designated in the stumpage value tables. See WAC 458-40-660.

(c) **Special forest products.** The following are considered to be separate species of special forest products: Christmas trees (various species), posts (various species), western redcedar flatsawn and shingle blocks, western redcedar shake blocks and boards.

(d) **Chipwood.** All timber processed to produce chips or chip products delivered to an approved chipwood destination that has been approved in accordance with the provisions of WAC 458-40-670 or otherwise reportable in accordance with the provisions of WAC 458-40-670.

(e) **Small logs.** All conifer logs excluding redcedar harvested in stumpage value area 6 or 7 generally measuring seven inches or less in scaling diameter, purchased by weight measure at designated small log destinations that have been approved in accordance with the provisions of WAC 458-40-670. Log diameter and length is measured in accordance with the Eastside Log Scaling Rules developed and authored by the Northwest Log Rules Advisory Group, with length not to exceed ((~~twenty~~)) 20 feet.

(f) **Sawlog.** For purposes of timber harvest in stumpage value area 6, a sawlog is a log having a net scale of not less than 33 1/3% of gross scale, nor less than ((~~ten~~)) 10 board feet and meeting the following minimum characteristics: Gross scaling diameter of five inches and a gross scaling length of eight feet.

(g) **Piles.** All logs sold for use or processing as piles that meet the specifications described in the most recently published edition of the *Standard Specification for Round Timber Piles* (*Designation*: *D 25*) of the American Society for Testing and Materials.

(h) **Poles.** All logs sold for use or processing as poles that meet the specifications described in the most recently published edition of the *National Standard for Wood Poles—Specifications and Dimensions* (*ANSI 05.1*) of the American National Standards Institute.

(25) **Stumpage.** Timber, having commercial value, as it exists before logging.

(26) **Stumpage value.** The true and fair market value of stumpage for purposes of immediate harvest.

(27) **Stumpage value area (SVA).** An area with specified boundaries which contains timber having similar growing, harvesting and marketing conditions.

(28) **Taxable stumpage value.** The value of timber as defined in RCW 84.33.035(7), and this chapter. Except as provided below for small harvesters and public timber, the taxable stumpage value is the appropriate value for the species of timber harvested as set forth in the stumpage value tables adopted under this chapter.

(a) **Small harvester option.** Small harvesters may elect to calculate the excise tax in the manner provided by RCW 84.33.073 and 84.33.074. The taxable stumpage value must be determined by one of the following methods as appropriate:

(i) **Sale of logs.** Timber which has been severed from the stump, bucked into various lengths and sold in the form of logs has a taxable stumpage value equal to the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber.

(ii) **Sale of stumpage.** When standing timber is sold and harvested within ((~~twenty-four~~)) 24 months of the date of sale, its taxable stumpage value is the actual purchase price in cash and/or other consideration for the stumpage for the most recent sale prior to harvest. If a person purchases stumpage, harvests the timber more than ((~~twenty-four~~)) 24 months after purchase of the stumpage, and chooses to report under the small harvester option, the taxable stumpage value is the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber. See WAC 458-40-626 for timing of tax liability.

(b) **Public timber.** The taxable stumpage value for public timber sales is determined as follows:

(i) **Competitive sales.** The taxable stumpage value is the actual purchase price in cash and/or other consideration. The value of other consideration is the fair market value of the other consideration; provided that if the other consideration is permanent roads, the value is the appraised value as appraised by the seller. If the seller does not provide an appraised value for roads, the value is the actual costs incurred by the purchaser for constructing or improving the roads. Other consideration includes additional services required from the stumpage purchaser for the benefit of the seller when these services are not necessary for the harvesting or marketing of the timber. For example, under a single stumpage sale's contract, when the seller requires road abandonment (as defined in WAC 222-24-052(3)) of constructed or reconstructed roads which are necessary for harvesting and marketing the timber, the construction and abandonment costs are not taxable. Abandonment activity on roads that exist prior to a stumpage sale is not necessary for harvesting and marketing the purchased timber and those costs are taxable.

(ii) **Noncompetitive sales.** The taxable stumpage value is determined using the department of revenue's stumpage value tables as set

forth in this chapter. Qualified harvesters may use the small harvester option.

(iii) **Sale of logs.** The taxable stumpage value for public timber sold in the form of logs is the actual purchase price for the logs in cash and/or other consideration less appropriate deductions for harvesting and marketing costs. Refer above for a definition of "harvesting and marketing costs."

(iv) **Defaulted sales and uncompleted contracts.** In the event of default on a public timber sale contract, wherein the taxpayer has made partial payment for the timber but has not removed any timber, no tax is due. If part of the sale is logged and the purchaser fails to complete the harvesting, taxes are due on the amount the purchaser has been billed by the seller for the volume removed to date. See WAC 458-40-628 for timing of tax liability.

(29) **Thinning.** ((~~Timber removed from a harvest unit located in stumpage value area 1, 2, 3, 4, 5, or 9:~~

~~(a) When the total volume removed is less than forty percent of the total merchantable volume of the harvest unit prior to harvest; and~~

~~(b) The harvester leaves a minimum of one hundred~~)) The total timber volume removed is less than 40 percent of the total merchantable volume of the harvest unit prior to harvest; and

(a) Western Washington stumpage value areas 1, 2, 3, 4, 5, and 9: The harvester leaves a minimum of 100 undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof; or

(b) Eastern Washington stumpage value areas 6 and 7: The harvester leaves a minimum of 80 undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof.

[Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 19-02-068, § 458-40-610, filed 12/28/18, effective 1/1/19. Statutory Authority: RCW 82.32.300, 82.01.060(2), 84.33.096, and 84.33.091. WSR 12-14-065, § 458-40-610, filed 6/29/12, effective 7/1/12. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 84.33.096. WSR 10-07-040, § 458-40-610, filed 3/10/10, effective 4/10/10. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, and 84.33.091. WSR 09-14-108, § 458-40-610, filed 6/30/09, effective 7/31/09. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 84.33.096. WSR 06-17-186, § 458-40-610, filed 8/23/06, effective 9/23/06; WSR 06-02-007, § 458-40-610, filed 12/22/05, effective 1/22/06; WSR 05-08-070, § 458-40-610, filed 3/31/05, effective 5/1/05. Statutory Authority: RCW 82.32.300 and 84.33.096. WSR 02-21-005, § 458-40-610, filed 10/3/02, effective 11/3/02; WSR 00-24-068, § 458-40-610, filed 12/1/00, effective 1/1/01. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.091. WSR 96-02-054, § 458-40-610, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.330 and 84.33.096. WSR 95-18-026, § 458-40-610, filed 8/25/95, effective 8/25/95. Statutory Authority: RCW 84.33.096 and 82.32.300. WSR 90-14-033, § 458-40-610, filed 6/29/90, effective 7/30/90. Statutory Authority: Chapter 84.33 RCW. WSR 87-02-023 (Order 86-4), § 458-40-610, filed 12/31/86.]

AMENDATORY SECTION (Amending WSR 23-02-049, filed 1/2/23, effective 1/2/23)

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 1 through June 30, 2023~~)) July 1 through December 31, 2023:

Washington State Department of Revenue

WESTERN WASHINGTON STUMPAGE VALUE TABLE

((~~January 1 through June 30, 2023~~))
July 1 through December 31, 2023

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)
Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir(2)	DF	1	(($~~547~~)) $541
		2	(($~~591~~)) 530
		3	(($~~597~~)) 593
		4	(($~~627~~)) 580
		5	(($~~561~~)) 615
		9	(($~~533~~)) 527
Western Hemlock and Other Conifer(3)	WH	1	(($~~345~~)) 292
		2	(($~~458~~)) 347
		3	(($~~418~~)) 346
		4	(($~~406~~)) 355
		5	(($~~408~~)) 345
		9	(($~~331~~)) 278
Western Redcedar(4)	RC	1-5	(($~~1358~~)) 1,380
		9	(($~~1344~~)) 1,366
Ponderosa Pine(5)	PP	1-5	(($~~200~~)) 152
		9	(($~~186~~)) 138
Red Alder	RA	1-5	(($~~564~~)) 597
		9	(($~~550~~)) 583

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Black Cottonwood	BC	1-5	((~~23~~)) 4
		9	((~~9~~)) 1
Other Hardwood	OH	1-5	((~~243~~)) 232
		9	((~~229~~)) 218
Douglas-fir Poles & Piles	DFL	1-5	((~~1061~~)) 970
		9	((~~1047~~)) 956
Western Redcedar Poles	RCL	1-5	((~~1745~~)) 1,825
		9	((~~1731~~)) 1,811
Chipwood(6)	CHW	1-5	((~~8~~)) 20
		9	((~~6~~)) 18
RC Shake & Shingle Blocks(7)	RCS	1-9	588
Posts(8)	LPP	1-9	0.35
DF Christmas Trees(9)	DFX	1-9	0.25
Other Christmas Trees(9)	TFX	1-9	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, or any other conifer not listed on this page.

(4) Includes Alaska-Cedar.

(5) Includes all Pines in SVA 1-5 & 9.

(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.

Washington State Department of Revenue

EASTERN WASHINGTON STUMPAGE VALUE TABLE

((~~January 1 through June 30, 2023~~))
July 1 through December 31, 2023

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)
Starting January 1, 2019, there are no Haul Zone adjustments.

Species Name	Species Code	SVA (Stumpage Value Area)	Stumpage Values
Douglas-fir[2]	DF	6	((~~$416~~)) $402
		7	((~~430~~)) 416
Western Hemlock and Other Conifer[3]	WH	6	((~~336~~)) 274
		7	((~~350~~)) 288
Western Redcedar[4]	RC	6	((~~1662~~)) 1,200
		7	((~~1676~~)) 1,214
Ponderosa Pine[5]	PP	6	((~~186~~)) 138
		7	((~~200~~)) 152
Other Hardwood	OH	6	1
		7	9
Western Redcedar Poles	RCL	6	((~~1833~~)) 1,623
		7	((~~1847~~)) 1,637
Chipwood[6]	CHW	6	1
		7	1
Small Logs[6]	SML	6	((~~23~~)) 12
		7	((~~25~~)) 14
RC Shake & Shingle Blocks[7]	RCS	6-7	588
Posts[8]	LPP	6-7	0.35
DF Christmas Trees[9]	DFX	6-7	0.25
Other Christmas Trees[9]	TFX	6-7	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, and Lodgepole Pine in SVA 6-7, or any other conifer not listed on this table.

(4) Includes Alaska-Cedar.

(5) Includes Western White Pine in SVA 6-7.

(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 percent) 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 chipwood 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 two 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 1 through June 30, 2023~~)) July 1 through December 31, 2023:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 9
((~~January 1 through June 30, 2023~~))
July 1 through December 31, 2023

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		

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1	Ground based logging a majority of the unit using tracked or wheeled equipment or draft animals.	$0.00
Class 2	Logging a majority of the unit: Using an overhead system of winch-driven cables and/or logging on slopes greater than 45% using tracked or wheeled equipment supported by winch-driven cables.	-$85.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-$200.00
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 Areas 6 and 7
((~~January 1 through June 30, 2023~~))
July 1 through December 31, 2023

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.	-$85.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-$200.00
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
IV. Thinning		
	A limited removal of timber described in WAC 458-40-610 (28)	-$60.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	$0.00
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.

[Statutory Authority: RCW 82.01.060(2), 84.33.096, 84.33.091, and 84.33.140. WSR 23-02-049, § 458-40-660, filed 1/2/23, effective 1/2/23. Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 22-14-029, § 458-40-660, filed 6/24/22, effective 7/1/22. Statutory Authority: RCW 82.01.060(2), 84.33.096, 84.33.091, and 84.33.140. WSR 22-01-185, § 458-40-660, filed 12/20/21, effective 1/1/22. Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 21-13-100, § 458-40-660, filed 6/18/21, effective 7/1/21. Statutory Authority: RCW 82.01.060(2), 84.33.096, 84.33.091, and 84.33.140. WSR 21-02-020, § 458-40-660, filed 12/28/20, effective 1/1/21. Statutory Authority: RCW 82.01.060(2) and 84.33.096. WSR 20-14-067, § 458-40-660, filed 6/26/20, effective 7/1/20; WSR 20-02-053, § 458-40-660, filed 12/23/19, effective 1/1/20; WSR 19-14-013, § 458-40-660, filed 6/21/19, effective 7/1/19; WSR 19-02-069, § 458-40-660, filed 12/28/18, effective 1/1/19. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 84.33.096. WSR 18-14-023, § 458-40-660, filed 6/26/18, effective 7/1/18; WSR 18-02-058, § 458-40-660, filed 12/29/17, effective 1/1/18; WSR 17-14-020, § 458-40-660, filed 6/23/17, effective 7/1/17; WSR 17-02-003, § 458-40-660, filed 12/22/16, effective 1/1/17. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 16-14-035, § 458-40-660, filed 6/28/16, effective 7/1/16. Statutory Authority: RCW 82.01.060(2), 82.32.300, and 84.33.096. WSR 16-01-069, § 458-40-660, filed 12/14/15, effective 1/1/16. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096,

84.33.091, and 84.33.140. WSR 15-14-019, § 458-40-660, filed 6/22/15, effective 7/1/15; WSR 15-01-095, § 458-40-660, filed 12/17/14, effective 1/1/15. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096 and 84.33.091. WSR 14-14-079, § 458-40-660, filed 6/27/14, effective 7/1/14; WSR 14-01-097, § 458-40-660, filed 12/17/13, effective 1/1/14; WSR 13-14-056, § 458-40-660, filed 6/28/13, effective 7/1/13; WSR 13-02-034, § 458-40-660, filed 12/21/12, effective 1/1/13; WSR 12-14-065, § 458-40-660, filed 6/29/12, effective 7/1/12. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091 and 84.33.140. WSR 12-02-040, § 458-40-660, filed 12/29/11, effective 1/1/12. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096 and 84.33.091. WSR 11-14-051, § 458-40-660, filed 6/29/11, effective 7/1/11; WSR 11-02-014, § 458-40-660, filed 12/29/10, effective 1/1/11; WSR 10-14-095, § 458-40-660, filed 7/6/10, effective 7/6/10; WSR 10-02-032, § 458-40-660, filed 12/29/09, effective 1/1/10; WSR 09-14-109, § 458-40-660, filed 6/30/09, effective 7/1/09; WSR 09-02-043, § 458-40-660, filed 12/31/08, effective 1/1/09; WSR 08-14-085, § 458-40-660, filed 6/27/08, effective 7/1/08; WSR 08-02-064, § 458-40-660, filed 12/28/07, effective 1/1/08; WSR 07-14-095, § 458-40-660, filed 6/29/07, effective 7/1/07; WSR 07-02-039, § 458-40-660, filed 12/26/06, effective 1/1/07; WSR 06-14-064, § 458-40-660, filed 6/30/06, effective 7/1/06; WSR 06-02-005, § 458-40-660, filed 12/22/05, effective 1/1/06; WSR 05-14-087, § 458-40-660, filed 6/30/05, effective 7/1/05; WSR 05-02-040, § 458-40-660, filed 12/30/04, effective 1/1/05; WSR 04-14-033, § 458-40-660, filed 6/29/04, effective 7/1/04; WSR 04-01-125, § 458-40-660, filed 12/18/03, effective 1/1/04; WSR 03-14-072, § 458-40-660, filed 6/26/03, effective 7/1/03. Statutory Authority: RCW 82.01.060(2), 82.32.300, 84.33.096, 84.33.091, and 84.33.140. WSR 03-02-004, § 458-40-660, filed 12/19/02, effective 1/1/03. Statutory Authority: RCW 82.32.300, 84.33.096, and 84.33.091. WSR 02-14-019, § 458-40-660, filed 6/21/02, effective 7/1/02. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091 and 84.33.120. WSR 02-02-033, § 458-40-660, filed 12/24/01, effective 1/1/02. Statutory Authority: RCW 82.32.300, 84.33.096, and 84.33.091. WSR 01-13-105, § 458-40-660, filed 6/20/01, effective 7/1/01; WSR 01-02-020, § 458-40-660, filed 12/21/00, effective 1/1/01. Statutory Authority: RCW 82.32.300, 84.33.096, 84.33.091, 82.32.060, and 84.33.077. WSR 00-19-067, § 458-40-660, filed 9/19/00, effective 1/1/01. Statutory Authority: RCW 82.32.300, 84.33.096 and 84.33.091. WSR 00-14-011, § 458-40-660, filed 6/27/00, effective 7/1/00; WSR 00-02-019, § 458-40-660, filed 12/27/99, effective 1/1/00; WSR 99-14-055, § 458-40-660, filed 6/30/99, effective 7/1/99; WSR 99-02-032, § 458-40-660, filed 12/30/98, effective 1/1/99; WSR 98-14-083, § 458-40-660, filed 6/30/98, effective 7/1/98; WSR 98-02-015, § 458-40-660, filed 12/30/97, effective 1/1/98; WSR 97-14-068, § 458-40-660, filed 6/30/97, effective 7/1/97. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.091. WSR 97-02-069, § 458-40-660, filed 12/31/96, effective 1/1/97; WSR 96-14-063, § 458-40-660, filed 6/28/96, effective 7/1/96; WSR 96-02-057, § 458-40-660, filed 12/29/95, effective 1/1/96. Statutory Authority: RCW 82.32.330, 84.33.096 and 84.33.200. WSR 95-18-027, § 458-40-660, filed 8/25/95, effective 9/25/95. Statutory Authority: RCW 82.32.300 and 84.33.096. WSR 95-02-038, § 458-40-660, filed 12/30/94, effective 1/1/95. Statutory Authority: RCW 84.33.091, 84.32.300 [82.32.300] and 84.33.096. WSR 94-14-048, § 458-40-660, filed 6/30/94, effective 7/1/94; WSR 94-02-047, § 458-40-660, filed 12/30/93, effective 1/1/94; WSR

93-14-051, § 458-40-660, filed 6/30/93, effective 7/1/93; WSR 93-02-025, § 458-40-660, filed 12/31/92, effective 1/1/93; WSR 92-14-083, § 458-40-660, filed 6/29/92, effective 7/1/92; WSR 92-02-067, § 458-40-660, filed 12/31/91, effective 1/1/92. Statutory Authority: RCW 84.33.096 and 82.32.300. WSR 91-14-077, § 458-40-660, filed 6/28/91, effective 7/1/91; WSR 91-09-030, § 458-40-660, filed 4/12/91, effective 5/13/91; WSR 91-02-088, § 458-40-660, filed 12/31/90, effective 1/31/91; WSR 90-14-033, § 458-40-660, filed 6/29/90, effective 7/30/90; WSR 90-02-049, § 458-40-660, filed 12/29/89, effective 1/29/90. Statutory Authority: Chapter 84.33 RCW and RCW 84.33.091. WSR 89-14-051 (Order FT-89-2), § 458-40-660, filed 6/30/89; WSR 89-02-027 (Order FT-88-5), § 458-40-660, filed 12/30/88; WSR 88-14-032 (Order FT-88-2), § 458-40-660, filed 6/30/88; WSR 88-02-026 (Order FT-87-5), § 458-40-660, filed 12/31/87. Statutory Authority: Chapter 84.33 RCW. WSR 87-14-042 (Order 87-2), § 458-40-660, filed 6/30/87; WSR 87-02-023 (Order 86-4), § 458-40-660, filed 12/31/86.]

WSR 23-14-015
PERMANENT RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)
[Admin #2023-01—Filed June 23, 2023, 8:53 a.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: The purpose for adoption is to amend some of the existing rules to support the public employees benefits board (PEBB) program:

1. Make technical amendments:

- Amended WAC 182-08-197 to move language describing when the subscriber is no longer eligible for the employer contribution to a note.
- Amended WAC 182-08-199 to move notes to subsection (2) and to address employees who enroll in a consumer directed health plan with a health savings account during the annual open enrollment and have a carryover amount from a medical flexible spending arrangement.
- Amended WAC 182-08-235 to clarify employer groups with less than 500 employees, remove educational service district (ESD), and describe taxpayer identification number.
- Amended WAC 182-08-245 to remove ESD's participation requirements and added notification requirements when an employer group terminates participation in PEBB insurance coverage.
- Amended WAC 182-12-109 to update the definition of school employee.
- Amended WAC 182-12-111 regarding ESD and updated subsections.
- Amended WAC 182-12-123 and 182-12-265 to remove ESD.
- Amended WAC 182-12-128 to clarify when an employee may waive enrollment in PEBB medical.
- Amended WAC 182-12-129 to clarify when the section ceases to apply.
- Amended WAC 182-12-171 and 182-12-205 to clarify procedural requirements for enrolling or deferring PEBB retiree insurance coverage after the employee's own employer-paid coverage ends.
- Amended WAC 182-12-171 to add language when an employee or a school employee must begin receiving monthly retirement plan payment to meet the substantive eligibility requirements and to remove language related to ESDs.
- Amended WAC 182-12-205 to move language in subsection (10) regarding when the subscriber is no longer eligible for the employer contribution towards PEBB benefits to a note.
- Amended WAC 182-12-262 to add an exception when medicare advantage or medicare advantage-prescription drug plan coverage will begin.

2. Improve the administration of the PEBB program:

- Amended WAC 182-12-113 to add a new requirement that state agencies must assist an employee in determining whether or not the employee or their dependent has experienced an event that creates a special open enrollment.
- Amended WAC 182-12-146 to clarify a retired employee who loses eligibility for PEBB retiree insurance coverage because an employer group ceases participation in PEBB insurance coverage may continue PEBB medical, dental, or both on the same terms and conditions as retirees who are eligible under COBRA.

- Amended WAC 182-12-200 to clarify evidence of continuous enrollment in a health plan sponsored by an ESD may be required.

Citation of Rules Affected by this Order: Amending WAC 182-08-197, 182-08-199, 182-08-235, 182-08-245, 182-12-109, 182-12-111, 182-12-113, 182-12-123, 182-12-128, 182-12-129, 182-12-146, 182-12-171, 182-12-200, 182-12-205, 182-12-262, and 182-12-265.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-10-074 on May 2, 2023.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 15, 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 15, Repealed 0.

Date Adopted: June 23, 2023.

Wendy Barcus
Rules Coordinator

OTS-4515.3

AMENDATORY SECTION (Amending WSR 22-13-163, filed 6/21/22, effective 1/1/23)

WAC 182-08-197 When must a newly eligible employee, or an employee who regains eligibility for the employer contribution, elect public employees benefits board (PEBB) benefits and complete required forms? An employee who is newly eligible or who regains eligibility for the employer contribution toward public employees benefits board (PEBB) benefits enrolls as described in this section.

(1) When an employee is newly eligible for PEBB benefits:

(a) An employee must complete the required forms indicating their enrollment elections, including an election to waive enrollment provided the employee is eligible to waive as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency or contracted vendor. Their employing agency or contracted vendor must receive the forms no later than 31 days after the employee becomes eligible for PEBB benefits under WAC 182-12-114.

(i) An employee may enroll in supplemental life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required forms are returned to the employee's employing agency or contracted vendor as required. An employee may apply for enrollment in supplemental life insurance over the guaranteed issue coverage amount at any time during the calendar year by submitting the required form to the contracted vendor for approval. For an employee who re-

quests a change in their supplemental life insurance after the election period described in this subsection, the change begins the first day of the month following the date the contracted vendor approves the request. An employee may enroll in supplemental accidental death and dismemberment (AD&D) insurance at any time during the calendar year without evidence of insurability by submitting the required form to the contracted vendor.

(ii) Employees are enrolled in employee-paid long-term disability (LTD) insurance automatically. An employee may elect to reduce their employee-paid LTD insurance or decline their employee-paid LTD insurance by returning the form to their employing agency. An employee may apply for a change in their employee-paid LTD insurance at any time during the calendar year by submitting the required form to their employing agency or the contracted vendor. For an employee who requests a change in their employee-paid LTD insurance after the election period described in this subsection, the change begins the first day of the month following the date the employing agency receives the required form requesting to reduce or decline the employee-paid LTD insurance, or the day of the month the contracted vendor approves the required form to increase the employee-paid LTD insurance.

(iii) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116), the employee will automatically enroll in the premium payment plan upon enrollment in PEBB medical allowing medical premiums to be taken on a pretax basis. To opt out of the premium payment plan, a new employee must complete the required form and return it to their state agency. The form must be received by their state agency no later than 31 days after the employee becomes eligible for PEBB benefits.

(iv) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116), the employee may enroll in the state's medical flexible spending arrangement (FSA), limited purpose FSA, dependent care assistance program (DCAP), or both an FSA and DCAP, except as limited by subsection (4) of this section. To enroll in these PEBB benefits, the employee must return the required form to their state agency. The form must be received by the state agency no later than 31 days after the employee becomes eligible for PEBB benefits.

(b) If a newly eligible employee's employing agency, or the authority's contracted vendor in the case of life insurance and AD&D insurance, does not receive the employee's required forms indicating medical, dental, life insurance, AD&D insurance, and LTD insurance elections, and the employee's tobacco use status attestation within 31 days of the employee becoming eligible, their enrollment will be as follows for those elections not received within 31 days:

(i) A medical plan determined by the health care authority (HCA);

(ii) A dental plan determined by the HCA;

(iii) Basic life insurance;

(iv) Basic AD&D insurance;

(v) Employer-paid LTD insurance and employee-paid LTD insurance;

(vi) Dependents will not be enrolled; and

(vii) A tobacco use premium surcharge will be incurred as described in WAC 182-08-185 (1)(b).

(2) The employer contribution toward PEBB benefits ends according to WAC 182-12-131. When an employee's employment ends, participation in the salary reduction plan ends.

(3) When an employee regains eligibility for the employer contribution toward PEBB benefits, including following a period of leave de-

scribed in WAC 182-12-133(1), or after being between periods of leave as described in WAC 182-12-142 (1) and (2), or 182-12-131 (3)(e), PEBB medical and dental begin on the first day of the month the employee is in pay status eight or more hours, or the first day of the month in which the quarter or semester begins for faculty who regains eligibility as described in WAC 182-12-131 (3)(e).

Note: When an employee who is called to active duty in the uniformed services under Uniformed Services Employment and Reemployment Rights Act (USERRA) loses eligibility for the employer contribution toward PEBB benefits, they regain eligibility for the employer contribution toward PEBB benefits the day they return from active duty. Employer-paid PEBB benefits will begin the first day of the month in which they return from active duty.

(a) An employee must complete the required forms indicating their enrollment elections, including an election to waive enrollment if the employee chooses to waive enrollment as described in WAC 182-12-128. The required forms must be returned to the employee's employing agency except as described in (d) of this subsection. Forms must be received by the employing agency, life insurance contracted vendor, or AD&D contracted vendor, if required, no later than 31 days after the employee regains eligibility, except as described in (a)(i) and (b) of this subsection:

(i) An employee who self-paid for supplemental life insurance or supplemental AD&D coverage after losing eligibility will maintain that level of coverage upon return;

(ii) An employee who was eligible to continue supplemental life insurance but discontinued that supplemental coverage must submit evidence of insurability to the contracted vendor if they choose to reenroll when they regain eligibility for the employer contribution;

(iii) An employee who was eligible to continue employee-paid LTD insurance but discontinued that coverage must submit evidence of insurability for employee-paid LTD insurance to the contracted vendor when they regain eligibility for the employer contribution.

(b) An employee or faculty in any of the following circumstances does not have to return a form indicating employee-paid LTD insurance elections. Their employee-paid LTD insurance will be automatically reinstated effective the first day of the month they are in pay status eight or more hours or the first day of the month in which the quarter or semester begins for faculty who regains eligibility as described in WAC 182-12-131 (3)(e):

(i) The employee continued to self-pay for their employee-paid LTD insurance after losing eligibility for the employer contribution;

(ii) The employee was not eligible to continue employee-paid LTD insurance after losing eligibility for the employer contribution.

(c) If an employee's employing agency, or contracted vendor accepting forms directly, does not receive the required forms within 31 days of the employee regaining eligibility, the employee's enrollment for those elections not received will be as described in subsection (1)(b)(i) through (vii) of this section, except as described in (a)(i) and (b) of this subsection.

(d) If an employee is eligible to participate in the salary reduction plan (see WAC 182-12-116) the employee may enroll in the medical FSA, limited purpose FSA, DCAP, or both an FSA and DCAP, except as limited by subsection (4) of this section. To enroll in these PEBB benefits, the employee must return the required form to the contracted vendor or their state agency. The contracted vendor or employee's state agency must receive the form no later than 31 days after the employee becomes eligible for PEBB benefits.

(4) If an employee who is eligible to participate in the salary reduction plan (see WAC 182-12-116) is hired into a new position that

is eligible for PEBB benefits in the same year, the employee may not resume participation in a DCAP, a medical FSA, or a limited purpose FSA until the beginning of the next plan year, unless the time between employments is 30 days or less and within the current plan year. The employee must notify their new state agency of the transfer by providing the new state agency's personnel, payroll, or benefits office the required form no later than 31 days after the employee's first day of work with the new state agency.

(5) An employee's PEBB benefits elections remain the same when an employee transfers from one employing agency to another employing agency without a break in PEBB benefits for one month or more. This includes movement of an employee between any entities described in WAC 182-12-111 and participating in PEBB benefits. PEBB benefits elections also remain the same when an employee has a break in employment that does not interrupt their employer contribution toward PEBB benefits.

(6) When a retiree becomes eligible for the employer contribution toward PEBB benefits, PEBB retiree insurance coverage will be automatically deferred. The subscriber will be exempt from the deferral form requirement. ((~~When the subscriber is no longer eligible for the employer contribution toward PEBB benefits, they must enroll or defer PEBB retiree insurance coverage as described in WAC 182-12-171, 182-12-200, and 182-12-205.~~))

Note: When the subscriber is no longer eligible for the employer contribution toward PEBB benefits, they may enroll in PEBB retiree insurance coverage as described in WAC 182-12-171, or continue in a deferred status if they meet the requirements in WAC 182-12-200 or 182-12-205.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Policy Resolutions PEBB 2022-01 and 2022-04. WSR 22-13-163 (Admin #2022-02.01), § 182-08-197, filed 6/21/22, effective 1/1/23. Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-11 and 2021-12. WSR 21-13-103 (Admin #2021-01.03), § 182-08-197, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and PEBB policy resolution 2020-04. WSR 20-16-059 (Admin #2020-01), § 182-08-197, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-197, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-197, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-197, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-197, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-197, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-197, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-197, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-197, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-08-197, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-08-197, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-08-197, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-08-197, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-08-197, filed 10/3/07, effective 11/3/07; WSR 06-11-156 (Order 06-02), § 182-08-197, filed 5/24/06, effective 6/24/06. Statutory Authority: RCW

41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-08-197, filed 7/27/05, effective 8/27/05.]

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

WAC 182-08-199 When may an employee enroll, or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP)? An employee who is eligible to participate in the salary reduction plan as described in WAC 182-12-116 may enroll, or revoke their election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-12-114 and enrolling as described in WAC 182-08-197(1).

(2) **During annual open enrollment:** An eligible employee may elect to enroll in or opt out of participation under the premium payment plan during the annual open enrollment by submitting the required form to their employing agency. An eligible employee may elect to enroll or reenroll in the medical FSA, limited purpose FSA, DCAP, or both an FSA and DCAP during the annual open enrollment by submitting the required forms to their employing agency or applicable contracted vendor as instructed. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

(a) Employees cannot enroll in a medical FSA and a limited purpose FSA in the same year.

(b) Employees enrolled in a consumer directed health plan (CDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. Employees who elect enrollment in the CDHP with a HSA and a medical FSA will only be enrolled in a CDHP with a HSA.

(c) Employees who enroll in a CDHP with a HSA during the annual open enrollment and have a carryover amount from a medical FSA, will be enrolled in a limited purpose FSA and the carryover amount will be deposited into the limited purpose FSA.

(d) Employees who are not enrolled in a CDHP with a HSA and elect both a medical FSA and a limited purpose FSA will be enrolled in the medical FSA.

((**Notes:** ~~1. Employees cannot enroll in a medical FSA and a limited purpose FSA in the same year.~~
~~2. Employees enrolled in a consumer directed health plan (CDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. Employees who elect enrollment in the CDHP with a HSA and a medical FSA will instead be enrolled in the limited purpose FSA.~~
~~3. Employees who are not enrolled in a CDHP with a HSA and elect both a medical FSA and a limited purpose FSA will be enrolled in the medical FSA.~~))

(3) **During a special open enrollment:** An employee who is eligible to participate in the salary reduction plan may enroll or revoke their election and make a new election under the premium payment plan, medical FSA, limited purpose FSA, or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the employee must submit the required form to their employing

agency. The employing agency must receive the required form and evidence of the event that created the special open enrollment no later than 60 days after the event occurs.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the employee for tax purposes under IRC 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the state registered domestic partner otherwise qualifies as a dependent for tax purposes under IRC 26 U.S.C. Sec. 152.

(a) **Premium payment plan.** An employee may enroll or revoke their election and elect to opt out of the premium payment plan when any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or election to opt out will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a state registered domestic partnership when the dependent is a tax dependent of the employee;

• Birth, adoption, or when the employee has assumed a legal obligation for total or partial support in anticipation of adoption; or

• A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee's dependent no longer meets public employee benefits board (PEBB) eligibility criteria because:

• Employee has a change in marital status;

• Employee's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;

• An eligible dependent child turns age 26 or otherwise does not meet dependent child eligibility criteria;

• An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

• An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Employee has a change in employment status that affects the employee's eligibility for their employer contribution toward their employer-based group health plan;

(v) The employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (a)(v) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(vi) Employee or an employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB annual open enrollment;

(vii) Employee or an employee's dependent has a change in residence that affects health plan availability;

(viii) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence resulted in the dependent losing their health insurance;

(ix) A court order requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(x) Employee or an employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(xi) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB medical plan coverage from medicaid or CHIP;

(xii) Employee or an employee's dependent enrolls in coverage under medicare or the employee or an employee's dependent loses eligibility for coverage under medicare;

(xiii) Employee or an employee's dependent's current medical plan becomes unavailable because the employee or enrolled dependent is no longer eligible for a health savings account (HSA). The health care authority (HCA) requires evidence that the employee or employee's dependent is no longer eligible for an HSA;

(xiv) Employee or an employee's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the employee or the employee's dependent. The employee may not change their health plan election if the employee's or dependent's physician stops participation with the employee's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

- Active cancer treatment such as chemotherapy or radiation therapy;
- Treatment following a recent organ transplant;
- A scheduled surgery;
- Recent major surgery still within the postoperative period; or
- Treatment for a high-risk pregnancy.

(xv) Employee or employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

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

(b) **Medical FSA and limited purpose FSA.** An employee may enroll or revoke their election and make a new election under the medical FSA or limited purpose FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the employing agency. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a state registered domestic partnership if the domestic partner qualifies as a tax dependent of the employee;

• Birth, adoption, or when the employee has assumed a legal obligation for total or partial support in anticipation of adoption; or

• A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee's dependent no longer meets PEBB eligibility criteria because:

• Employee has a change in marital status;

• Employee's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;

• An eligible dependent child turns age 26 or otherwise does not meet dependent child eligibility criteria;

• An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

• An eligible dependent dies.

(iii) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the HIPAA;

(iv) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for the medical FSA or limited purpose FSA;

(v) A court order requires the employee or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) Employee or an employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) Employee or an employee's dependent enrolls in coverage under medicare.

(c) **DCAP.** An employee may enroll or revoke their election and make a new election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the employing agency. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) Employee acquires a new dependent due to:

• Marriage;

• Registering a state registered domestic partnership if the domestic partner qualifies as a tax dependent of the employee;

• Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

• A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Employee or an employee's dependent has a change in employment status that affects the employee's or a dependent's eligibility for DCAP;

(iii) Employee or an employee's dependent has a change in enrollment under an employer-based DCAP during its annual open enrollment that does not align with the PEBB annual open enrollment;

(iv) Employee changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) Employee or the employee's spouse experiences a change in the number of qualifying individuals as defined in IRC 26 U.S.C. Sec. 21 (b)(1);

(vi) Employee's dependent care provider imposes a change in the cost of dependent care; employee may make a change in the DCAP election amount to reflect the new cost if the dependent care provider is not a qualifying relative of the employee as defined in IRC 26 U.S.C. Sec. 152.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-158 (Admin #2022-01), § 182-08-199, filed 6/21/22, effective 1/1/23; WSR 20-16-062 (Admin #2020-03), § 182-08-199, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-199, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-199, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-199, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-199, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-199, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-199, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-08-199, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-199, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-199, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-08-199, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-08-199, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-08-199, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-08-199, filed 10/1/08, effective 1/1/09.]

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

WAC 182-08-235 Employer group and board of directors for school districts and educational service districts application process. This section applies to employer groups as defined in WAC 182-08-015 and board members of school districts and educational service districts. An employer group or board member of a school district or an educational service district may apply to obtain public employees benefits

board (PEBB) insurance coverage through a contract with the health care authority (HCA).

(1) Employer groups with less than 500 employees and board members of school districts and educational service districts ((~~with less than 500 employees~~)) must apply at least 60 days before the requested coverage effective date. Employer groups with 500 or more employees but with less than 5,000 employees must apply at least 90 days before the requested effective date.

Employer groups with 5,000 or more employees must apply at least 120 days before the requested coverage effective date.

To apply, employer groups must submit the documents and information described in subsection (2) of this section to the PEBB program as follows:

(a) Board members of school districts and educational service districts ((~~and educational service districts applying for their nonrepresented employees~~)) are required to provide the documents described in subsection (2)(a) through (c) of this section;

((**Exception:** ~~Educational service districts required by the superintendent of public instruction to purchase PEBB insurance coverage provided by the authority are required to submit documents and information described in subsection (2)(a)(iii), (b), and (c) of this section.~~))

(b) Counties, municipalities, political subdivisions, and tribal governments with fewer than 5,000 employees are required to provide the documents and information described in subsection (2)(a) through (f) of this section;

(c) Counties, municipalities, political subdivisions, and tribal governments with 5,000 or more employees will have their application approved or denied through the evaluation criteria described in WAC 182-08-240 and are required to provide the documents and information described in subsection (2)(a) through (d), (f), and (g) of this section; and

(d) All employee organizations representing state civil services employees and the Washington health benefit exchange, regardless of the number of employees, will have their application approved or denied through the evaluation criteria described in WAC 182-08-240 and are required to provide the documents and information described in subsection (2)(a) through (d), (f), and (g) of this section.

(2) Documents and information required with application:

(a) A letter of application that includes the information described in (a)(i) through (iv) of this subsection:

(i) A reference to the group's authorizing statute;

(ii) A description of the organizational structure of the group and a description of the employee bargaining unit or group of nonrepresented employees for which the group is applying;

(iii) ((~~Employer group or board members of school district or educational service district tax ID number (TIN)~~)) Tax identification number; and

(iv) A statement of whether the group is applying to obtain only medical or all available PEBB insurance coverages.

Note: ((~~Educational service districts applying for its nonrepresented employees must provide a statement that the group is agreeing to obtain medical, dental, life, and long-term disability insurance. Board members~~)) Boards of directors of school districts or educational service districts must provide a statement that the group is agreeing to obtain medical, dental, and life insurance.

(b) A resolution from the group's governing body authorizing the purchase of PEBB insurance coverage.

(c) A signed governmental function attestation document that attests to the fact that employees for whom the group is applying are governmental employees whose services are substantially all in the performance of essential governmental functions.

(d) A member level census file for all of the employees for whom the group is applying. The file must be provided in the format required by the authority and contain the following demographic data, by member, with each member classified as employee, spouse or state registered domestic partner, or child:

(i) Employee ID (any identifier which uniquely identifies the employee; for dependents the employee's unique identifier must be used);

(ii) Age;

(iii) Birth sex;

(iv) First three digits of the member's zip code based on residence;

(v) Indicator of whether the employee is active or retired, if the group is requesting to include retirees; and

(vi) Indicator of whether the member is enrolled in coverage.

(e) Historical claims and cost information that include the following:

(i) Large claims history for 24 months by quarter that excludes the most recent three months;

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;

(iii) Summary of historical plan costs; and

(iv) The director or the director's designee may make an exception to the claims and cost information requirements based on the size of the group, except that the current health plan does not have a case management program, then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim. If historical claims and cost information as described in (e)(i) through (iii) of this subsection are unavailable, the director or the director's designee may make an exception to allow all of the following alternative requirements:

• A letter from their carrier indicating they will not or cannot provide claims data.

• Provide information about the health plan most employees are enrolled in by completing the actuarial calculator authorized by the PEBB program.

• Current premiums for the health plan.

(f) If the application is for a subset of the group's employees (e.g., bargaining unit), the group must provide a member level census file of all employees eligible under their current health plan who are not included on the member level census file in (d) of this subsection. This includes retired employees participating under the group's current health plan. The file must include the same demographic data by member.

(g) Employer groups described in subsection (1)(c) and (d) of this section must submit to an actuarial evaluation of the group provided by an actuary designated by the PEBB program. The group must pay for the cost of the evaluation. This cost is nonrefundable. A group that is approved will not have to pay for an additional actuarial evaluation if it applies to add another bargaining unit within two years of the evaluation. Employer groups of this size must provide the following:

(i) Large claims history for 24 months, by quarter that excludes the most recent three months;

(ii) Ongoing large claims management report for the most recent quarter provided in the large claims history;

(iii) Executive summary of benefits;
(iv) Summary of benefits and certificate of coverage; and
(v) Summary of historical plan costs.

Exception: If the current health plan does not have a case management program then the primary diagnosis code designated by the authority must be reported for each large claimant. If the code indicates a condition which is expected to continue into the next quarter, the claim is counted as an ongoing large claim.

(3) The authority may automatically deny a group application if the group fails to provide the required information and documents described in this section.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-158 (Admin #2022-01), § 182-08-235, filed 6/21/22, effective 1/1/23; WSR 20-16-062 (Admin #2020-03), § 182-08-235, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-235, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-235, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-235, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-235, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-235, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-235, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-235, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-235, filed 9/25/12, effective 11/1/12.]

AMENDATORY SECTION (Amending WSR 21-13-106, filed 6/18/21, effective 1/1/22)

WAC 182-08-245 Employer group and board members of school districts and educational service districts participation requirements. This section applies to an employer group as defined in WAC 182-08-015 or board members of school districts or educational service districts that is approved to purchase insurance for its employees through a contract with the health care authority (HCA).

(1) Prior to enrollment of employees in public employees benefits board (PEBB) insurance coverage, the employer group or board members of school districts or educational service districts must:

(a) Remit to the authority the required start-up fee in the amount publicized by the PEBB program;

(b) Sign a contract with the authority;

(c) Determine employee and dependent eligibility and terms of enrollment for PEBB insurance coverage by the criteria outlined in this chapter and chapter 182-12 WAC unless otherwise approved by the authority in the employer group's contract with the authority;

(d) Determine eligibility in order to ensure the PEBB program's continued status as a governmental plan under Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA) as amended. This means the employer group may only consider employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities, wheth-

er or not those activities qualify as essential governmental functions to be eligible; and

(e) Ensure PEBB insurance coverage is the only employer-sponsored coverage available to groups of employees eligible for PEBB insurance coverage under the contract.

(2) Pay premiums under its contract with the authority ((~~based on the following premium structure:~~

~~(a) The premium rate structure for educational service districts purchasing PEBB insurance coverage for nonrepresented employees will be a composite rate equal to the rate charged to state agencies plus an amount equal to the employee premium based on health plan election and family enrollment. Educational service districts must collect an amount equal to the premium surcharges applied to an employee's account by the authority from their nonrepresented employees and include the funds in their payment to the authority.~~

Exception: ~~The authority will allow educational service districts that enrolled prior to September 1, 2002, to continue participation based on a tiered rate structure. The authority may require the district to change to a composite rate structure with ninety days advance written notice.~~

~~(b)~~)). The premium rate structure for employer groups ((~~other than educational service districts described in (a) of this subsection~~)) and board members of school districts and educational service districts will be a tiered rate based on health plan election and family enrollment. Employer groups must collect an amount equal to the premium surcharges applied to an employee's account by the authority from their employees and include the funds in their payment to the authority.

Exception: The authority will allow employer groups that enrolled prior to January 1, 1996, to continue to participate based on a composite rate structure. The authority may require the employer group to change to a tiered rate structure with ninety days advance written notice.

(3) Counties, municipalities, political subdivisions, and tribal governments must pay the monthly employer group rate surcharge in the amount invoiced by the authority.

(4) If an employer group or board member of school districts and educational service districts want to make subsequent changes to the contract, the changes must be submitted to the authority for approval.

(5) The employer group or board members of school districts and educational service districts must maintain participation in PEBB insurance coverage for at least one full year. An employer group or board members of school districts and educational service districts may only end participation at the end of a plan year unless the authority approves a mid-year termination. To end participation, an employer group or board members of school districts and educational service districts must provide written notice to the PEBB program at least ((~~sixty~~)) 60 days before the requested termination date. If an employer group terminates participation in PEBB insurance coverage, they must:

(a) Notify all their employees, dependents, or retirees who are enrolled in PEBB insurance coverage 45 days prior to the employer group's date of termination; and

(b) Provide assistance to retirees as described in RCW 41.04.208(12).

(6) Upon approval to purchase insurance through a contract with the authority, the employer group must provide a list of employees and dependents that are enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage and the remaining number of months available to them based on their qualifying event. These employees and dependents may enroll in a PEBB health plan as COBRA subscribers for the remainder of the months available to them based on their qualifying event.

(7) Enrollees in PEBB insurance coverage under one of the continuation of coverage provisions allowed under chapter 182-12 WAC or retirees included in the transfer unit as allowed under WAC 182-08-237 cease to be eligible as of the last day of the contract and may not continue enrollment beyond the end of the month in which the contract is terminated.

Exception: If an employer group((~~, other than an educational service district,~~)) ends participation, retired and disabled employees who began participation before September 15, 1991, are eligible to continue enrollment in PEBB insurance coverage if ((~~the employee~~)) they continue((s)) to meet the procedural and eligibility requirements of WAC 182-12-171. Employees who enrolled after September 15, 1991, who are enrolled in PEBB retiree insurance coverage cease to be eligible under WAC 182-12-171, but may continue health plan enrollment on the same terms and conditions as retirees who are eligible under COBRA (see WAC 182-12-146).

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-13-106 (Admin #2021-01.06), § 182-08-245, filed 6/18/21, effective 1/1/22; WSR 20-16-062 (Admin #2020-03), § 182-08-245, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-245, filed 8/20/19, effective 1/1/20; WSR 17-19-077 (Order 2017-01), § 182-08-245, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-245, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-245, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-245, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-08-245, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-245, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-245, filed 9/25/12, effective 11/1/12.]

OTS-4516.1

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

WAC 182-12-109 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates another meaning:

"Accidental death and dismemberment insurance" or "AD&D" means basic accidental death and dismemberment (AD&D) insurance paid for by the employing agency, as well as supplemental accidental death and dismemberment insurance offered to and paid for by employees for themselves and their dependents.

"Affordable Care Act" means the federal Patient Protection and Affordable Care Act, P.L. 111-148, as amended by the federal Health Care and Education Reconciliation Act of 2010, P.L. 111-152, or federal regulations or guidance issued under the Affordable Care Act.

"Annual open enrollment" means an annual event set aside for a period of time by the HCA when subscribers may make changes to their health plan enrollment and salary reduction elections for the following plan year. During the annual open enrollment, subscribers may

transfer from one health plan to another, enroll or remove dependents from coverage, enroll in coverage, or waive enrollment (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or change their election under the dependent care assistance program (DCAP), the medical flexible spending arrangement (FSA), or limited purpose FSA. They may also enroll in or opt out of the premium payment plan.

"Authority" or "HCA" means the Washington state health care authority.

"Benefits-eligible position" means any position held by an employee who is eligible for benefits under WAC 182-12-114, with the exception of employees who establish eligibility under WAC 182-12-114 (2) or (3)(a)(ii).

"Blind vendor" means a "licensee" as defined in RCW 74.18.200.

"Board" means the public employees benefits board established under provisions of RCW 41.05.055.

"Calendar days" or "days" means all days including Saturdays, Sundays, and all state legal holidays as set forth in RCW 1.16.050.

"Consolidated Omnibus Budget Reconciliation Act" or "COBRA" means continuation coverage as administered under 42 U.S.C. Secs. 300bb-1 through 300bb-8.

"Continuation coverage" means the temporary continuation of PEBB benefits available to enrollees under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 42 U.S.C. Secs. 300bb-1 through 300bb-8, the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. Secs. 4301 through 4335, or the public employees benefits board's policies.

"Contracted vendor" means any person, persons, or entity under contract or agreement with the HCA to provide goods or services for the provision or administration of PEBB benefits. The term "contracted vendor" includes subcontractors of the HCA and subcontractors of any person, persons, or entity under contract or agreement with the HCA that provide goods or services for the provision or administration of PEBB benefits.

"Creditable coverage" means coverage that meets the definition of "creditable coverage" under RCW 48.66.020 (13)(a) and includes payment of medical and hospital benefits.

"Defer" means to postpone enrollment or interrupt enrollment in PEBB insurance coverage by a retiree or an eligible survivor.

"Dependent" means a person who meets eligibility requirements in WAC 182-12-260, except that "surviving spouses, state registered domestic partners, and dependent children" of emergency service personnel who are killed in the line of duty is defined in WAC 182-12-250.

"Dependent care assistance program" or "DCAP" means a benefit plan whereby employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 129 or other sections of the Internal Revenue Code.

"Director" means the director of the authority.

"Documents" means papers, letters, writings, electronic mail, electronic files, or other printed or written items.

"Effective date of enrollment" means the first date when an enrollee is entitled to receive covered benefits.

"Employee" for the public employees benefits board program includes all employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or

committees; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, if the legislative authority of the county, municipality, or other political subdivision of the state submits application materials to the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205 and 41.05.021 (1)(g); (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization; (c) through December 31, 2019, employees of a school district or represented employees of an educational service district if the authority agrees to provide any of the school districts' or educational service districts' insurance programs by contract with the authority as provided in RCW 28A.400.350; (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(f) and (g); (e) employees of the Washington health benefit exchange if the governing board of the exchange established in RCW 43.71.020 seeks and receives approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021 (1)(g) and (n); (f) through December 31, 2019, employees of a charter school established under chapter 28A.710 RCW; and (g) through December 31, 2023, nonrepresented employees of an educational service district. "Employee" does not include: Adult family home providers; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under RCW 41.05.011 or by the authority under this chapter.

"Employer" for the public employees benefits board program means the state of Washington.

"Employer-based group dental" means group dental related to a current employment relationship. It does not include dental coverage available to retired employees, individual market dental coverage, or government-sponsored programs such as medicaid.

"Employer-based group health plan" means group medical and group dental related to a current employment relationship. It does not include medical or dental coverage available to retired employees, individual market medical or dental coverage, or government-sponsored programs such as medicare or medicaid.

"Employer-based group medical" means group medical related to a current employment relationship. It does not include medical coverage available to retired employees, individual market medical coverage, or government-sponsored programs such as medicare or medicaid.

"Employer contribution" means the funding amount paid to the HCA by a state agency or employer group for its eligible employees as described under WAC 182-12-114 and 182-12-131.

"Employer group" means those counties, municipalities, political subdivisions, the Washington health benefit exchange, tribal governments, employee organizations representing state civil service employees, and through December 31, 2019, school districts and charter schools, and through December 31, 2023, educational service districts obtaining employee benefits through a contractual agreement with the

authority to participate in benefit plans developed by the public employees benefits board as described in WAC 182-08-245.

"Employer-paid coverage" means PEBB insurance coverage for which an employer contribution is made by a state agency or an employer group for employees eligible in WAC 182-12-114 and 182-12-131. It also means SEBB insurance coverage for which an employer contribution is made by a SEBB organization, or basic benefits described in RCW 28A.400.270(1) for which an employer contribution is made by an educational service district.

"Employing agency" for the public employees benefits board means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, or other political subdivision; and a tribal government covered by chapter 41.05 RCW.

"Enrollee" means a person who meets all eligibility requirements defined in chapter 182-12 WAC, who is enrolled in PEBB benefits, and for whom applicable premium payments have been made.

"Exchange" means the Washington health benefit exchange established in RCW 43.71.020, and any other health benefit exchange established under the Affordable Care Act.

"Exchange coverage" means coverage offered by a qualified health plan through an exchange.

"Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

"Federal retiree medical plan" means the Federal Employees Health Benefits program (FEHB) or TRICARE plans which are not employer-based group medical.

"Forms" or "form" means both paper forms and forms completed electronically.

"Health plan" means a plan offering medical or dental, or both, developed by the board and provided by a contracted vendor or self-insured plans administered by the HCA.

"Institutions of higher education" means the state public research universities, the public regional universities, The Evergreen State College, the community and technical colleges, and the state board for community and technical colleges.

"Layoff," for purposes of this chapter, means a change in employment status due to an employer's lack of funds or an employer's organizational change.

"Life insurance" means basic life insurance paid for by the employing agency, as well as supplemental life insurance or supplemental dependent life insurance offered to and paid for by employees for themselves and their dependents. Life insurance for eligible retirees includes retiree term life insurance offered to and paid for by retirees.

"Limited purpose flexible spending arrangement" or "limited purpose FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for dental and vision expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Long-term disability insurance" or "LTD insurance" means employer-paid long-term disability insurance and employee-paid long-term disability insurance offered by the PEBB program.

"Medical flexible spending arrangement" or "medical FSA" means a benefit plan whereby eligible state employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan established under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Pay status" means all hours for which an employee receives pay.

"PEBB" means the public employees benefits board.

"PEBB benefits" means one or more insurance coverages or other employee benefits administered by the PEBB program within the health care authority.

"PEBB insurance coverage" means any health plan, life insurance, accidental death and dismemberment insurance, long-term disability (LTD) insurance, long-term care insurance, or property and casualty insurance administered as a PEBB benefit.

"PEBB program" means the program within the HCA that administers insurance and other benefits for eligible employees (as described in WAC 182-12-114), eligible retired employees (as described in WAC 182-12-171, 182-12-180, and 182-12-211), eligible survivors (as described in WAC 182-12-180, 182-12-250, and 182-12-265), eligible dependents (as described in WAC 182-12-250 and 182-12-260) and others as defined in RCW 41.05.011.

"Plan year" means the time period established by the authority.

"Premium payment plan" means a benefit plan whereby public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under chapter 41.05 RCW pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"Premium surcharge" means a payment required from a subscriber, in addition to the subscriber's medical premium contribution, due to an enrollee's tobacco use or an enrolled subscriber's spouse or state registered domestic partner choosing not to enroll in their employer-based group medical when:

• The spouse's or state registered domestic partner's share of the medical premium is less than 95 percent of the additional cost an employee would be required to pay to enroll a spouse or state registered domestic partner in the public employees benefits board (PEBB) Uniform Medical Plan (UMP) Classic; and

• The benefits have an actuarial value of at least 95 percent of the actuarial value of PEBB UMP Classic benefits.

"Public employee" has the same meaning as employee.

"Qualified health plan" means a medical plan that is certified to be offered through an exchange.

"Salary reduction plan" means a benefit plan whereby public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, limited purpose flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the Internal Revenue Code.

"School employee" ((~~includes:~~

~~(a) Through December 31, 2023,~~)) means all employees of school districts and charter schools established under chapter 28A.710 RCW((~~,~~ ~~and represented employees of educational service districts. For the exclusive purpose of eligibility for PEBB retiree insurance coverage,~~

~~the term "school employee" also includes nonrepresented employees of an educational service district; and~~

~~(b) Effective January 1, 2024, all employees of school districts, educational service districts, and charter schools established under chapter 28A.710 RCW~~)); and effective January 1, 2024, all employees of educational service districts.

"SEBB" means the school employees benefits board.

"SEBB insurance coverage" means any medical, dental, vision, life insurance, accidental death and dismemberment insurance, or long-term disability insurance administered as a SEBB benefit.

"SEBB organization" means a public school district or educational service district or charter school established under chapter 28A.710 RCW that is required to participate in benefit plans provided by the school employees benefits board.

"Season" means any recurring annual period of work at a specific time of year that lasts three to 11 consecutive months.

"Seasonal employee" means a state employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

"Special open enrollment" means a period of time when subscribers may make changes to their health plan enrollment and salary reduction elections outside of the annual open enrollment period when specific life events occur. During the special open enrollment subscribers may change health plans and enroll or remove dependents from coverage. Additionally, employees may enroll in or waive enrollment (see definition of "waive" in this section). Employees eligible to participate in the salary reduction plan may enroll in or revoke their election under the DCAP, medical FSA, limited purpose FSA, or the premium payment plan and make a new election. For special open enrollment events related to specific PEBB benefits, see WAC 182-08-198, 182-08-199, 182-12-128, and 182-12-262.

"State agency" means an office, department, board, commission, institution, or other separate unit or division, however designated, of the state government. It includes the legislature, executive branch, and agencies or courts within the judicial branch, as well as institutions of higher education and any unit of state government established by law.

"State registered domestic partner" has the same meaning as defined in RCW 26.60.020(1) and substantially equivalent legal unions from other jurisdictions as defined in RCW 26.60.090.

"Subscriber" means the employee, retiree, continuation coverage enrollee, or survivor who has been determined eligible by the PEBB program, employer group, or state agency, is enrolled in PEBB benefits, and is the individual to whom the PEBB program and contracted vendors will issue all notices, information, requests, and premium bills on behalf of an enrollee.

"Supplemental coverage" means any life insurance or accidental death and dismemberment (AD&D) insurance coverage purchased by the employee in addition to the coverage provided by the employing agency.

"Tobacco products" means any product made with or derived from tobacco that is intended for human consumption, including any component, part, or accessory of a tobacco product. This includes, but is not limited to, cigars, cigarettes, pipe tobacco, chewing tobacco, snuff, and other tobacco products. It does not include e-cigarettes or United States Food and Drug Administration (FDA) approved quit aids.

"Tobacco use" means any use of tobacco products within the past two months. Tobacco use, however, does not include the religious or ceremonial use of tobacco.

"Tribal government" means an Indian tribal government as defined in Section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

"Waive" means an eligible employee affirmatively declining enrollment in PEBB medical because the employee is enrolled in other employer-based group medical, a TRICARE plan, or medicare as allowed under WAC 182-12-128. An employee on approved educational leave who obtains another employer-based group health plan may waive enrollment as allowed under WAC 182-12-136. An employee may waive enrollment in PEBB medical to enroll in SEBB medical only if they are enrolled in SEBB dental and SEBB vision. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-158 (Admin #2022-01), § 182-12-109, filed 6/21/22, effective 1/1/23; WSR 21-13-106 (Admin #2021-01.06), § 182-12-109, filed 6/18/21, effective 1/1/22; WSR 20-16-062 (Admin #2020-03), § 182-12-109, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-109, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-109, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-109, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-109, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-109, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-109, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-12-109, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-109, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-109, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-109, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-109, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-109, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-109, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-109, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.068. WSR 06-23-165 (Order 06-09), § 182-12-109, filed 11/22/06, effective 12/23/06. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-109, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-111 Which entities and individuals are eligible for public employees benefits board (PEBB) benefits? The following entities and individuals shall be eligible for public employees benefits board (PEBB) benefits subject to the terms and conditions set forth below:

(1) **State agencies.** State agencies, as defined in WAC 182-12-109, are required to participate in all PEBB benefits. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(2) **Employer groups.** Employer groups may apply to participate in PEBB insurance coverage for groups of employees described in (a)(i) of this subsection and for members of the group's governing authority as described in (a)(i), (ii), and (iii) of this subsection at the option of each employer group:

(a) All eligible employees of the entity must transfer as a unit with the following exceptions:

(i) Bargaining units may elect to participate separately from the whole group;

(ii) Nonrepresented employees may elect to participate separately from the whole group provided all nonrepresented employees join as a group; and

(iii) Members of the employer group's governing authority may participate as described in the employer group's governing statutes and RCW 41.04.205.

(b) Employer groups must apply through the process described in WAC 182-08-235. Applications from employees of employee organizations representing state civil service employees, the Washington health benefit exchange, and employer groups with ((~~five thousand~~)) 5,000 or more employees((~~, except for educational service districts~~)) are subject to review and approval by the health care authority (HCA) based on the employer group evaluation criteria described in WAC 182-08-240.

(c) Employer groups participate through a contract with the authority as described in WAC 182-08-245.

(3) ((**~~Washington state educational service districts.~~** ~~In addition to subsection (2) of this section, the following applies to Washington state educational service districts enrolling in PEBB insurance coverage for its nonrepresented employees until December 31, 2023:~~

~~(a) The HCA will collect an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premium by health plan and family size and an amount equal to any applicable premium surcharge as would be charged to state employees for each participating educational service district.~~

~~(b) The HCA may collect these amounts in accordance with the district fiscal year, as described in RCW 28A.505.030.~~

~~(4)~~)) **The Washington health benefit exchange.** In addition to subsection (2) of this section, the following provisions apply:

(a) The Washington health benefit exchange is subject to the same rules as an employing agency in chapters 182-08, 182-12, and 182-16 WAC.

(b) Employees of the Washington health benefit exchange are subject to the same rules as employees of an employing agency in chapters 182-08, 182-12 and 182-16 WAC.

((~~(5)~~)) (4) **Eligible nonemployees.**

(a) Blind vendors actively operating a business enterprise program facility in the state of Washington and deemed eligible by the department of services for the blind (DSB) may voluntarily participate in PEBB medical. Dependents of blind vendors are eligible as described in WAC 182-12-260.

(i) Eligible blind vendors and their dependents may enroll during the following times:

• When newly eligible: The DSB will notify eligible blind vendors of their eligibility in advance of the date they are eligible for enrollment in PEBB medical.

To enroll, blind vendors must submit the required forms to the DSB. The forms must be received by the DSB no later than ((~~thirty-one~~)) 31 days after the blind vendor becomes eligible for PEBB medical;

• During the annual open enrollment: Blind vendors may enroll during the annual open enrollment. The required form must be received by the DSB before the end of the annual open enrollment. Enrollment will begin January 1st of the following year; or

• Following loss of other medical insurance coverage: Blind vendors may enroll following loss of other medical insurance coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA). To enroll, blind vendors must submit the required forms to the DSB. The forms must be received by the DSB no later than ((~~sixty~~)) 60 days after the loss of other medical insurance coverage. In addition to the required forms, the DSB will require blind vendors to provide evidence of loss of other medical insurance coverage.

(ii) Blind vendors who cease to actively operate a facility become ineligible to participate in PEBB medical as described in (a) of this subsection. Enrollees who lose eligibility for coverage may continue enrollment in PEBB medical on a self-pay basis under Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage as described in WAC 182-12-146(5).

(iii) Blind vendors are not eligible for PEBB retiree insurance coverage.

(b) Dislocated forest products workers enrolled in the employment and career orientation program pursuant to chapter 50.70 RCW shall be eligible for PEBB medical and dental while enrolled in that program.

(c) Board members of Washington state school districts and educational service districts eligible to participate under RCW 28A.400.350 may participate in PEBB medical, dental, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, supplemental life insurance, and supplemental AD&D insurance as long as they remain eligible under that section. The board of directors of educational service districts must apply through the process described in WAC 182-08-235 and participate through a contract with the HCA as described in WAC 182-08-245. Dependents of board members are eligible as described in WAC 182-12-260.

(i) Upon contract with the HCA, eligible board members may individually decide to enroll in PEBB insurance coverage each plan year. If they elect not to enroll, they may only enroll at the following times:

• During the annual open enrollment; or

• Following loss of other medical insurance coverage as defined by the Health Insurance Portability and Accountability Act (HIPAA).

(ii) Board members who no longer hold a position become ineligible to participate in PEBB insurance coverage as described in (c) of

this subsection. Enrollees who lose eligibility for coverage may continue enrollment in PEBB medical, PEBB dental, or both on a self-pay basis under COBRA coverage as described in WAC 182-12-146(6).

(iii) Board members are not eligible for PEBB retiree insurance coverage.

((~~(6)~~)) (5) **Individuals and entities not eligible as employees include:**

(a) Adult family home providers as defined in RCW 70.128.010;

(b) Unpaid volunteers;

(c) Patients of state hospitals;

(d) Inmates in work programs offered by the Washington state department of corrections as described in RCW 72.09.100 or an equivalent program administered by a local government;

(e) Employees of the Washington state convention and trade center as provided in RCW 41.05.110;

(f) Students of institutions of higher education as determined by their institutions; and

(g) Any others not expressly defined as an employee.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-111, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-111, filed 8/20/19, effective 1/1/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-111, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-111, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-111, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-111, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-111, filed 9/25/12, effective 11/1/12; WSR 10-20-147 (Order 10-02), § 182-12-111, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-111, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-111, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-111, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-111, filed 8/26/04, effective 1/1/05; WSR 03-17-031 (Order 02-07), § 182-12-111, filed 8/14/03, effective 9/14/03. Statutory Authority: RCW 41.05.160. WSR 02-18-087 (Order 02-02), § 182-12-111, filed 9/3/02, effective 10/4/02; WSR 99-19-028 (Order 99-04), § 182-12-111, filed 9/8/99, effective 10/9/99; WSR 97-21-127, § 182-12-111, filed 10/21/97, effective 11/21/97. Statutory Authority: Chapter 41.05 RCW. WSR 96-08-043, § 182-12-111, filed 3/29/96, effective 4/29/96. Statutory Authority: RCW 41.04.205, 41.05.065, 41.05.011, 41.05.080 and chapter 41.05 RCW. WSR 92-03-040, § 182-12-111, filed 1/10/92, effective 1/10/92. Statutory Authority: Chapter 41.05 RCW. WSR 78-02-015 (Order 2-78), § 182-12-111, filed 1/10/78.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-113 What are the obligations of a state agency in the application of employee eligibility? (1) All state agencies must carry out all actions, policies, and guidance issued by the public employees benefits board (PEBB) program necessary for the operation of benefit plans, education of employees, claims administration, and appeals process including those described in chapters 182-08, 182-12, and 182-16 WAC. State agencies must:

(a) Use the methods provided by the PEBB program to determine eligibility and enrollment in benefits, unless otherwise approved in writing;

(b) Provide eligibility determination reports with content and in a format designed and communicated by the PEBB program or otherwise as approved in writing by the PEBB program; and

(c) Carry out corrective action and pay any penalties imposed by the authority and established by the board when the state agency's eligibility determinations fail to comply with the criteria under these rules.

(2) All state agencies must determine employee eligibility for PEBB benefits and the employer contribution according to the criteria in WAC 182-12-114 and 182-12-131. State agencies must:

(a) Notify newly hired employees of PEBB program rules and guidance for eligibility and appeal rights;

(b) Provide written notice to faculty who are potentially eligible for benefits and employer contribution of their potential eligibility as described in WAC 182-12-114(3) and 182-12-131;

(c) Inform an employee in writing whether or not they are eligible for PEBB benefits upon employment. The written notice must include a description of any hours that are excluded in determining eligibility and information about the employee's right to appeal eligibility and enrollment decisions. An employee eligible for PEBB benefits must have no less than ((~~ten~~)) 10 calendar days after the date of notice to elect coverage;

(d) Routinely monitor all employees' eligible work hours to establish eligibility and maintain the employer contribution toward PEBB benefits;

(e) Make eligibility determinations based on the criteria of the eligibility category that most closely describes the employee's work circumstances per the PEBB program's direction;

(f) Identify when a previously ineligible employee becomes eligible or a previously eligible employee loses eligibility; and

(g) Inform an employee in writing whether or not they are eligible for PEBB benefits and the employer contribution whenever there is a change in work pattern such that the employee's eligibility status changes. Whenever this occurs, state agencies must inform the employee of the right to appeal eligibility and enrollment decisions. An employee eligible for PEBB benefits must have no less than ((~~ten~~)) 10 calendar days after the date of notice to elect coverage.

(3) State agencies must determine employee's dependents eligibility for PEBB health plan coverage according to the criteria in WAC 182-12-260.

(4) State agencies must assist an employee in determining whether or not the employee or their dependent has experienced an event that creates a special open enrollment as described in WAC 182-08-198,

182-08-199, 182-12-128, or 182-12-262, and inform the employee of the changes they can make consistent with that event.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-113, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-113, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-113, filed 10/3/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-113, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-113, filed 9/25/12, effective 11/1/12; WSR 09-23-102 (Order 09-02), § 182-12-113, filed 11/17/09, effective 1/1/10.]

AMENDATORY SECTION (Amending WSR 22-13-164, filed 6/21/22, effective 1/1/23)

WAC 182-12-123 Is dual enrollment in public employees benefits board (PEBB) and school employees benefits board (SEBB) prohibited? Public employees benefits board (PEBB) medical and dental coverage is limited to a single enrollment per individual as described in subsections (1) through (5) of this section. Effective January 1, 2022, individuals are limited to a single enrollment in medical, dental, and vision plans in either the PEBB program or school employees benefits board (SEBB) program as described in subsection (6) of this section.

(1) An individual who has more than one source of eligibility for enrollment in PEBB medical and PEBB dental coverage (called "dual eligibility") is limited to one enrollment.

(2) An eligible employee may waive PEBB medical and enroll as a dependent under the PEBB medical plan of their spouse, state registered domestic partner, or parent as described in WAC 182-12-128.

(3) A dependent enrolled in PEBB medical or PEBB dental who becomes eligible for PEBB benefits as an employee must elect to enroll in PEBB benefits as described in WAC 182-08-197 (1) or (3). This includes making an election to enroll in or waive enrollment in PEBB medical as described in WAC 182-12-128.

(a) If the employee does not waive enrollment in PEBB medical, the employee is not eligible to remain enrolled in their spouse's, state registered domestic partner's, or parent's PEBB medical as a dependent. If the employee's spouse, state registered domestic partner, or parent does not take action to remove the employee (who is enrolled as a dependent) from their subscriber account, the PEBB program will automatically disenroll the employee's enrollment as a dependent the last day of the month before the employee's enrollment in PEBB benefits begins as described in WAC 182-12-114.

Exception: An enrolled dependent who becomes newly eligible for PEBB benefits as an employee may be dual-enrolled in PEBB medical and dental for one month. This exception is only allowed for the first month the dependent is enrolled as an employee, and only if the dependent becomes enrolled as an employee on the first working day of a month that is not the first day of the month.

(b) If the employee elects to waive their enrollment in PEBB medical, the employee will remain enrolled in PEBB medical under their spouse's, state registered domestic partner's, or parent's PEBB medical as a dependent.

(4) A child who is eligible for PEBB medical and PEBB dental under two subscribers may be enrolled under both subscribers but is

limited to a single enrollment in PEBB medical and a single enrollment in PEBB dental.

(5) When an employee is eligible for the employer contribution toward PEBB benefits due to employment in more than one PEBB-participating employing agency the following provisions apply:

(a) The employee must choose to enroll under only one employing agency.

Exception: Faculty who stack to establish or maintain eligibility as described in WAC 182-12-114(3) with two or more state institutions of higher education will be enrolled under the employing agency responsible to pay the employer contribution according to WAC 182-08-200(2).

(b) If the employee loses eligibility under the employing agency, they must notify their other employing agency no later than 60 days from the date PEBB benefits end through the employing agency described in (a) of this subsection to transfer coverage.

(c) The employee's elections remain the same when an employee transfers their enrollment under one employing agency to another employing agency without a break in PEBB benefits for one month or more, as described in (b) of this subsection.

(6) An individual who has more than one source of eligibility for enrollment in the PEBB and SEBB programs is limited to a single enrollment in medical, dental, and vision plans in either the PEBB or SEBB program. An employee must elect to enroll in PEBB benefits as described in WAC 182-08-197, waive enrollment as described in WAC 182-12-128, or remove eligible dependents as described in WAC 182-12-262. If the employee takes no action to resolve the dual enrollment, the PEBB program or the SEBB program will automatically enroll or automatically disenroll the individual as described in (d) through (h) of this subsection.

(a) An eligible employee may waive enrollment in PEBB medical to enroll in SEBB medical only if they are enrolled in SEBB dental and SEBB vision as described in WAC 182-12-128. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental.

(b) An eligible employee who waives enrollment in PEBB medical when they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in WAC 182-12-128, and are not enrolled in SEBB medical, may waive enrollment in PEBB dental only if they are enrolled in both SEBB dental and SEBB vision as an eligible dependent in the SEBB program.

(c) A school employee in the SEBB program who waives SEBB medical, SEBB dental, and SEBB vision for PEBB medical must be enrolled in PEBB dental. If the school employee is not already enrolled in PEBB dental, the PEBB program will automatically enroll the school employee in the associated subscriber's PEBB dental.

(d) If the employee is enrolled only in PEBB dental, and is also enrolled in SEBB medical, and no action is taken to resolve their dual enrollment, the employee will remain in SEBB medical. The PEBB program will automatically disenroll the employee from PEBB dental in which they are enrolled. If the employee is not already enrolled in SEBB dental or SEBB vision, the SEBB program will automatically enroll them in both as described in WAC 182-31-070 (6)(g). The employee's enrollment in PEBB program life insurance, accidental death and dismemberment (AD&D) insurance, and long-term disability (LTD) insurance will remain.

(e) If the employee is enrolled in PEBB medical and is also a school employee in the SEBB program and enrolled in SEBB medical, and the employee has been enrolled in SEBB medical longer than they have been enrolled in PEBB medical, and no action is taken by the employee

to resolve their dual enrollment, they will remain in SEBB medical. The PEBB program will automatically disenroll the employee from PEBB medical and PEBB dental. The employee's enrollment in PEBB program life insurance, AD&D insurance, and LTD insurance will remain. If the employee is not enrolled in medical under either the PEBB or SEBB program but is enrolled only in PEBB dental and SEBB vision (with or without enrollment in SEBB dental), the employee will remain in SEBB vision and if enrolled, SEBB dental. If the employee is not already enrolled in SEBB dental, the SEBB program will automatically enroll them as described in WAC 182-31-070 (6)(g). The PEBB program will automatically disenroll the employee from PEBB dental.

(f) If the employee's dependent is enrolled in any PEBB medical or PEBB dental plan, and the dependent is also a school employee in the SEBB program and enrolled in SEBB medical, and no action is taken by either the employee or the dependent to resolve the dependent's dual enrollment, the employee's dependent will remain in SEBB medical. The PEBB program will automatically disenroll the employee's dependent from PEBB medical and PEBB dental in which they are enrolled.

(g) If the employee's dependent is enrolled in both PEBB medical and SEBB medical as a dependent and has been enrolled in SEBB medical longer than they have been enrolled in PEBB medical, and no action is taken to resolve the dual enrollment, the employee's dependent will remain in SEBB medical. The PEBB program will automatically disenroll the employee's dependent from PEBB medical and PEBB dental if they are enrolled. If the employee's dependent who is eligible as a dependent in both the PEBB and SEBB programs is not enrolled in any medical but is enrolled only in PEBB dental and SEBB vision (with or without SEBB dental) as a dependent, the dependent will remain in SEBB vision and if enrolled, SEBB dental. The PEBB program will automatically disenroll the employee's dependent from PEBB dental.

Exception: If there is a National Medical Support Notice (NMSN) or a court order in place, enrollment will be in accordance with the NMSN or order.

(h) If the employee's dependent, who is also a school employee in the SEBB program who the SEBB program automatically disenrolled from SEBB dental and SEBB vision, the PEBB program will automatically enroll the employee's dependent in PEBB dental, if they are not already enrolled.

(i) If the employee who is eligible for the employer contribution toward PEBB benefits was enrolled as a dependent in SEBB medical, SEBB dental, and SEBB vision and is removed by the SEBB subscriber, the employee will be required to return from waived enrollment as described in WAC 182-12-128 (3)(b).

(j) If the PEBB program automatically disenrolls an individual from PEBB medical or PEBB dental to resolve their dual enrollment as described in (e), (f), or (g) of this subsection, but later determines that the employee did take action to resolve their dual enrollment within the required timelines, the PEBB program will reinstate coverage retroactive to the first of the month in which the individual was disenrolled.

(7) A retiree who defers enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 by enrolling as an eligible dependent in a health plan sponsored by PEBB((~~, a Washington state educational service district,~~)) or SEBB and who loses the employer contribution for such coverage must enroll in PEBB retiree insurance coverage as described in WAC 182-12-200 or defer enrollment as described in WAC 182-12-205.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Policy Resolution PEBB 2022-02. WSR 22-13-164 (Admin #2022-02.02), § 182-12-123, filed 6/21/22, effective 1/1/23. Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09. WSR 21-13-102 (Admin #2021-01.02), § 182-12-123, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-123, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-123, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-123, filed 10/3/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-123, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-123, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-123, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-123, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-123, filed 9/25/12, effective 11/1/12; WSR 10-20-147 (Order 10-02), § 182-12-123, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-123, filed 11/17/09, effective 1/1/10; WSR 07-20-129 (Order 07-01), § 182-12-123, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-123, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

WAC 182-12-128 When may an employee waive enrollment in public employees benefits board (PEBB) medical and when may they enroll in PEBB medical after having waived enrollment? An employee may waive enrollment in public employees benefits board (PEBB) medical ((~~only~~)) if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (1)(a) through (c) of this section. They may not waive enrollment in PEBB medical if they are enrolled in PEBB retiree insurance coverage. An employee who waives enrollment in PEBB medical must enroll in PEBB dental, basic life insurance, basic accidental death and dismemberment insurance, and employer-paid long-term disability (LTD) insurance (unless the employing agency does not participate in these PEBB insurance coverages). For an employing agency that participates in LTD insurance, an employee will also be enrolled in employee-paid LTD insurance automatically unless the employee declines their employee-paid LTD insurance as described in WAC 182-08-197.

Exception: An employee may waive their enrollment in PEBB medical to enroll in school employees benefits board (SEBB) medical only if they are enrolled in SEBB dental and SEBB vision. An employee who waives enrollment in PEBB medical to enroll in SEBB medical also waives enrollment in PEBB dental.

(1) To waive enrollment in PEBB medical, the employee must submit the required form to their employing agency at one of the following times:

(a) **When the employee becomes eligible:** An employee may waive PEBB medical when they become eligible for PEBB benefits. The employee must indicate their election to waive enrollment in PEBB medical on the required form and submit the form to their employing agency. The employing agency must receive the form no later than 31 days after the date the employee becomes eligible for PEBB benefits (see WAC 182-08-197). PEBB medical will be waived as of the date the employee becomes eligible for PEBB benefits.

(b) **During the annual open enrollment:** An employee may waive PEBB medical during the annual open enrollment. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** An employee may waive PEBB medical during a special open enrollment only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (4) of this section. A special open enrollment event must be an event other than an employee gaining initial eligibility or regaining eligibility for PEBB benefits.

The employee must submit the required form to their employing agency. The employing agency must receive the form no later than 60 days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment to the employing agency.

PEBB medical will be waived the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, PEBB medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical will be waived the last day of the previous month.

(2) If an employee waives PEBB medical, the employee may not enroll dependents in PEBB medical.

(3) Once PEBB medical is waived, the employee is only allowed to enroll in PEBB medical at the following times:

(a) During the annual open enrollment. The required form must be received by the employee's employing agency before the end of the annual open enrollment. PEBB medical will begin January 1st of the following year.

(b) During a special open enrollment. A special open enrollment allows an employee to revoke their election and make a new election outside of the annual open enrollment. A special open enrollment may be created when one of the events described in subsection (4) of this section occurs.

The employee must submit the required form to their employing agency. The employing agency must receive the form no later than 60 days after the event that creates the special open enrollment. In addition to the required form, the employee must provide evidence of the event that creates the special open enrollment to the employing agency.

PEBB medical will begin the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, PEBB medical for the employee will begin

on the first day of the month in which the event occurs. PEBB medical for the newly born child, newly adopted child, spouse, or state registered domestic partner will begin as described in WAC 182-12-262 (3)(a)(iv).

If an employee who is eligible for the employer contribution toward PEBB benefits was enrolled as a dependent in SEBB medical, SEBB dental, and SEBB vision and is removed by the SEBB subscriber, the health care authority will notify the employee of their removal from the SEBB subscriber's account and that they have experienced a special enrollment event. The employee will be required to return from waived enrollment and elect PEBB medical and PEBB dental. If the employee's employing agency does not receive the employee's required forms indicating their medical and dental elections within 60 days of the employee losing SEBB medical, SEBB dental, and SEBB vision, they will be defaulted into employee-only PEBB medical and PEBB dental as described in WAC 182-08-197 (1)(b)(i) and (ii).

(4) **Special open enrollment:** Any one of the events in (a) through (k) of this subsection may create a special open enrollment that allows the employee to enroll in PEBB medical after having waived enrollment. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the employee, the employee's dependent, or both.

(a) Employee acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(b) Employee or an employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Employee has a change in employment status that affects the employee's eligibility for their employer contribution toward their employer-based group medical;

(d) The employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group medical;

Note: As used in (d) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) Employee or an employee's dependent has a change in enrollment under an employer-based group medical plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(f) Employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence resulted in the dependent losing their health insurance;

(g) A court order requires the employee or any other individual to provide a health plan for an eligible dependent of the employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) Employee or an employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the employee or an employee's dependent loses eligibility for coverage under medicaid or CHIP;

Note: An employee may only return from having waived PEBB medical for the events described in (h) of this subsection. An employee may not waive their PEBB medical for the events described in (h) of this subsection.

(i) Employee or an employee's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(j) Employee or employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan;

(k) Employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-158 (Admin #2022-01), § 182-12-128, filed 6/21/22, effective 1/1/23. Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09. WSR 21-13-102 (Admin #2021-01.02), § 182-12-128, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-128, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-128, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-128, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-128, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-128, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-128, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-128, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-12-128, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-128, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-128, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-128, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-128, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-128, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-128, filed 10/1/08, effective 1/1/09; WSR 08-09-027 (Order 08-01), § 182-12-128, filed 4/8/08, effective 4/9/08; WSR 07-20-129 (Order 07-01), § 182-12-128, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-128, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-12-129 What happens when an employee moves from an eligible to an otherwise ineligible position or job due to a layoff?

This section applies to employees employed by state agencies (as defined in this chapter), including benefits-eligible seasonal employees, and is intended to address situations where an employee moves from one position or job to another due to a layoff, as described in WAC 182-12-109. This section does not apply to employees with an anticipated end date.

If an employee moves from an eligible to an otherwise ineligible position due to layoff, the employee may retain their eligibility for the employer contribution toward public employees benefits board (PEBB) benefits for each month that the employee is in pay status for at least eight hours. To maintain eligibility using this section the employee must:

• Be hired into a position with a state agency within ((~~twenty-four~~)) 24 months of the original eligible position ending; and

• Upon hire, notify the employing state agency that they are potentially eligible to use this section.

This section ceases to apply ((~~if~~)) when the employee is employed in a position eligible for PEBB benefits under WAC 182-12-114 ((~~within twenty-four months of leaving the original position.~~

~~After the twenty-fourth month, the employee must reestablish eligibility as described in WAC 182-12-114~~)) or at the end of the 24th month after the original eligible position ended, whichever occurs first.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-12-129, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160 and PEBB policy resolutions. WSR 18-20-117 (Admin #2018-02), § 182-12-129, filed 10/3/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-129, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-129, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 09-23-102 (Order 09-02), § 182-12-129, filed 11/17/09, effective 1/1/10.]

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

WAC 182-12-146 When is an enrollee eligible to continue public employees benefits board (PEBB) benefits under Consolidated Omnibus Budget Reconciliation Act (COBRA)? (1) An employee or an employee's dependent who loses eligibility for the employer contribution toward public employees benefits board (PEBB) benefits and who qualifies for continuation coverage under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA) may continue coverage for PEBB medical, dental, or both.

(2) An employee or an employee's dependent who loses eligibility for continuation coverage described in WAC 182-12-133, 182-12-141, 182-12-142, or 182-12-148 but who has not used the maximum number of months allowed under COBRA may continue PEBB medical, dental, or both for the remaining difference in months.

(3) A retired employee who loses eligibility for PEBB retiree insurance coverage because an employer group((~~, with the exception of educational service districts,~~)) ceases participation in PEBB insur-

ance coverage may continue PEBB medical, dental, or both on the same terms and conditions as retirees who are eligible under COBRA.

(4) A retiree or a dependent of a retiree, who is no longer eligible as described in WAC 182-12-171, 182-12-180, or 182-12-260 may continue PEBB medical, dental, or both.

(5) A blind vendor who ceases to actively operate a facility as described in WAC 182-12-111 ((~~(5)~~)) (4)(a) may continue enrollment in PEBB medical for the maximum number of months allowed under COBRA as described in this section.

(6) A board member who no longer qualifies as described in WAC 182-12-111 ((~~(5)~~)) (4)(c) may continue enrollment in PEBB medical, dental, or both for the maximum number of months allowed under COBRA as described in this section.

(7) An enrollee may continue PEBB medical, dental, or both under COBRA by self-paying the premium and applicable premium surcharges set by the health care authority (HCA):

(a) The election must be received by the PEBB program no later than 60 days from the date the enrollee's PEBB health plan coverage ended or from the postmark date on the election notice sent by the PEBB program, whichever is later;

(b) The first premium payment under COBRA coverage and applicable premium surcharges are due to the HCA no later than 45 days after the election period ends as described in (a) of this subsection. Following the enrollee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c);

(c) COBRA continuation coverage enrollees who voluntarily terminate their COBRA coverage will not be eligible to reenroll in COBRA coverage unless they regain eligibility as described in WAC 182-12-114. Those who request to terminate their COBRA coverage must do so in writing. COBRA coverage will end on the last day of the month in which the PEBB program receives the termination request or on the last day of the month specified in the COBRA enrollee's termination request, whichever is later. If the termination request is received on the first day of the month, COBRA coverage will end on the last day of the previous month;

(d) An employee enrolled in a medical flexible spending arrangement (FSA) or limited purpose FSA and the employee's dependents will have an opportunity to continue making contributions to their medical FSA or limited purpose FSA by electing COBRA if on the date of the qualifying event, as described under 42 U.S.C. Sec. 300bb-3, the employee's medical FSA or limited purpose FSA has a greater amount in remaining benefits than remaining contribution payments for the current year. The election must be received by the contracted vendor no later than 60 days from the date the PEBB health plan coverage ended or from the postmark date on the election notice sent by the contracted vendor, whichever is later. The first premium payment under COBRA coverage is due to the contracted vendor no later than 45 days after the election period ends as described above.

(8) A subscriber's state registered domestic partner and the state registered domestic partner's children may continue PEBB medical, dental, or both on the same terms and conditions as spouses and other eligible dependents under COBRA as described under RCW 26.60.015.

(9) Medical and dental coverage under COBRA begin on the first day of the month following the day the COBRA enrollee loses eligibility for PEBB health plan coverage as described in WAC 182-12-131,

182-12-133, 182-12-141, 182-12-142, 182-12-148, 182-12-171, 182-12-180, 182-12-250, 182-12-260, or 182-12-265.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-158 (Admin #2022-01), § 182-12-146, filed 6/21/22, effective 1/1/23; WSR 20-16-062 (Admin #2020-03), § 182-12-146, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-146, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-146, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-146, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-146, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-146, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin 2013-01), § 182-12-146, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-146, filed 9/25/12, effective 11/1/12; WSR 09-23-102 (Order 09-02), § 182-12-146, filed 11/17/09, effective 1/1/10; WSR 07-20-129 (Order 07-01), § 182-12-146, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-146, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 22-13-160, filed 6/21/22, effective 1/1/23)

WAC 182-12-171 When is a retiring employee or a retiring school employee eligible to enroll in public employees benefits board (PEBB) retiree insurance coverage? A retiring employee or a retiring school employee is eligible to continue enrollment or defer enrollment in public employees benefits board (PEBB) insurance coverage as a retiree if they meet procedural and substantive eligibility requirements as described in subsections (1), (2), and (3) of this section. An elected and full-time appointed official of the legislative and executive branch of state government is eligible as described in WAC 182-12-180.

(1) **Procedural requirements.** A retiring employee or a retiring school employee must enroll or defer enrollment in PEBB retiree insurance coverage as described in (a) through (d) of this subsection:

(a) To enroll in PEBB retiree insurance coverage, the required form must be received by the PEBB program no later than 60 days after the employee's or the school employee's own employer-paid coverage, Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage, or continuation coverage ends. The effective date of PEBB retiree insurance coverage is the first day of the month after the employee's or the school employee's employer-paid coverage, COBRA coverage, or continuation coverage ends;

Note: Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(b) The employee's or the school employee's first premium payment for PEBB retiree insurance coverage and applicable premium surcharges

are due to the health care authority (HCA) no later than 45 days after the election period ends as described in (a) of this subsection. Following the employee's or the school employee's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c); and

(c) If a retiring employee or a retiring school employee elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the retiring employee or the retiring school employee;

Exception: If a retiring employee or a retiring school employee selects a medicare supplement plan or MA-PD plan, nonmedicare enrollees will be enrolled in the UMP Classic. If a retiring employee or a retiring school employee selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(d) To defer enrollment in PEBB retiree insurance coverage, the employee or the school employee must meet substantive eligibility requirements in subsection (2) of this section and defer enrollment as described in WAC 182-12-200 or 182-12-205.

(2) **Substantive eligibility requirements.**

An employee who is eligible for PEBB benefits through an employing agency, or a school employee who is eligible for SEBB benefits through a SEBB organization or basic benefits through an educational service district as defined in RCW 28A.400.270 who ends public employment may enroll or defer enrollment in PEBB retiree insurance coverage if they meet procedural and substantive eligibility requirements.

To be eligible to continue enrollment or defer enrollment in PEBB retiree insurance coverage, the employee or the school employee must be vested in and eligible to retire under a Washington state-sponsored retirement plan when the employee's or school employee's own employer-paid coverage, COBRA coverage, or continuation coverage ends. An exception to the requirement to be vested in and eligible to retire under a Washington state-sponsored retirement plan is provided for employees of an employer group in (c)(i) of this subsection. To satisfy the requirement to immediately begin to receive a monthly retirement plan payment as described in (a), (b), (c)(ii), and (d) of this subsection, the employee or school employee must begin receiving a monthly retirement plan payment no later than the first month following the employee's or school employee's own employer-paid coverage, COBRA coverage, or continuation coverage ending.

(a) A retiring employee of a state agency must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring employee who receives a lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan; or

(ii) A retiring employee who is a member of a Plan 3 retirement plan, also called a separated employee (defined in RCW 41.05.011(25)), must meet their Plan 3 retirement eligibility criteria. The employee does not have to receive a retirement plan payment to enroll in PEBB retiree insurance coverage.

(b) A retiring employee of a Washington higher education institution who is a member of a higher education retirement plan (HERP) must immediately begin to receive a monthly retirement plan payment, or meet their HERP plan's retirement eligibility criteria, or be at least age 55 with 10 years of state service;

(c) A retiring employee of an employer group participating in PEBB insurance coverage under contractual agreement with the authority

must be eligible to retire as described in (c)(i) or (ii) of this subsection to be eligible to continue PEBB retiree insurance coverage((~~, except for an educational service district employee who must meet the requirements as described in (d) of this subsection~~)).

(i) A retiring employee who is eligible to retire under a retirement plan sponsored by an employer group or tribal government that is not a Washington state-sponsored retirement plan must meet the same age and years of service requirements as if they were a member of public employees retirement system Plan 1, if their date of hire with that employer group or tribal government was before October 1, 1977, or Plan 2, if their date of hire with that employer group or tribal government was on or after October 1, 1977.

(ii) A retiring employee who is eligible to retire under a Washington state-sponsored retirement plan must immediately begin to receive a monthly retirement plan payment, with exceptions described in (a)(i) and (ii) of this subsection.

(iii) A retired employee of an employer group((~~, except a Washington state educational service district,~~)) that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage if they enrolled after September 15, 1991. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-146.

(iv) A retired employee of a tribal government employer that ends participation in PEBB insurance coverage is no longer eligible to continue enrollment in PEBB retiree insurance coverage. Any retiree who loses eligibility for this reason may continue health plan enrollment as described in WAC 182-12-146.

(d) A retiring school employee must immediately begin to receive a monthly retirement plan payment, with exceptions described below:

(i) A retiring school employee who ends employment before October 1, 1993; or

(ii) A retiring school employee who receives a lump sum payment instead of a monthly retirement plan payment is only eligible if the department of retirement systems offered the school employee the choice between a lump sum actuarially equivalent payment and the ongoing monthly payment, as allowed by the plan, or the school employee enrolled before 1995; or

(iii) A retiring school employee who is a member of a Plan 3 retirement system, also called a separated employee (defined in RCW 41.05.011(25)), must meet their Plan 3 retirement eligibility criteria; or

(iv) A school employee who retired as of September 30, 1993, and began receiving a monthly retirement plan payment from a Washington state-sponsored retirement system (as defined in chapters 41.32, 41.35 or 41.40 RCW) is eligible if they enrolled in a PEBB health plan no later than the HCA's annual open enrollment period for the year beginning January 1, 1995.

(3) A retiring employee or a retiring school employee and their enrolled dependents who are eligible for medicare must enroll and maintain enrollment in both medicare Parts A and B if the employee or the school employee retired after July 1, 1991. If a retiree or an enrolled dependent becomes eligible for medicare after enrollment in PEBB retiree insurance coverage, they must enroll and maintain enrollment in medicare Parts A and B to remain enrolled in a PEBB retiree health plan. If an enrollee who is eligible for medicare does not meet this procedural requirement, the enrollee is no longer eligible for enrollment in a PEBB retiree health plan. The enrollee's eligibility

will end as described in the termination notice sent by the PEBB program. The enrollee may continue PEBB health plan enrollment as described in WAC 182-12-146.

Note: For the exclusive purpose of medicare Part A as described in this subsection, "eligible" means the enrollee is eligible for medicare Part A without a monthly premium.

(4) Washington state-sponsored retirement plans include:

(a) Higher education retirement plans;

(b) Law enforcement officers' and firefighters' retirement system;

(c) Public employees' retirement system;

(d) Public safety employees' retirement system;

(e) School employees' retirement system;

(f) State judges/judicial retirement system;

(g) Teachers' retirement system; and

(h) State patrol retirement system.

(i) The two federal retirement systems, Civil Service Retirement System and Federal Employees' Retirement System, are considered Washington state-sponsored retirement systems for Washington State University Extension for an employee covered under PEBB benefits at the time of retirement.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Policy Resolution PEBB 2022-03. WSR 22-13-160 (Admin #2022-02.03), § 182-12-171, filed 6/21/22, effective 1/1/23. Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-171, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolution. WSR 19-17-073 (Admin #2019-01), § 182-12-171, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-171, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-171, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-171, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-171, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-171, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-171, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-171, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-171, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-171, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-171, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-171, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-171, filed 10/3/07, effective 11/3/07; WSR 06-11-156 (Order 06-02), § 182-12-171, filed 5/24/06, effective 6/24/06. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-12-171, filed 7/27/05, effective 8/27/05. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-171, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 22-13-160, filed 6/21/22, effective 1/1/23)

WAC 182-12-200 May a retiring employee, a retiring school employee, or a retiree enrolled as a dependent in a health plan sponsored by public employees benefits board (PEBB)((~~, a Washington state educational service district,~~)) or school employees benefits board (SEBB) defer enrollment under PEBB retiree insurance coverage? (1) A retiring employee or a retiring school employee may defer enrollment in public employees benefits board (PEBB) retiree insurance coverage at retirement if they meet substantive eligibility requirements as described in WAC 182-12-171(2) or as described in WAC 182-12-180(1). An enrolled retiree may defer enrollment after enrolling in PEBB retiree insurance coverage. Enrollment in PEBB retiree insurance coverage may be deferred when they are enrolled as a dependent in a health plan sponsored by PEBB((~~, a Washington state educational service district,~~)) or school employees benefits board (SEBB), including such coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) or continuation coverage.

(2) A retiring employee, a retiring school employee, or a retiree who defers enrollment in PEBB retiree insurance coverage defers enrollment in PEBB medical and PEBB dental. A retiree must be enrolled in PEBB medical to enroll in PEBB dental. A retiree who defers enrollment also defers enrollment for all eligible dependents. A retiree may only defer enrollment in PEBB retiree term life insurance as described in WAC 182-12-209 (3)(b).

(3) A retiring employee, a retiring school employee, or a retiree who defers enrollment as described in this section may later enroll themselves and their dependents in a PEBB health plan by submitting the required forms as described below and evidence of continuous enrollment in a health plan sponsored by PEBB((~~, a Washington state educational service district,~~)) or SEBB. Evidence of continuous enrollment in a health plan sponsored by a Washington state educational service district may be required if a retiring employee, a retiring school employee, or a retiree deferred enrollment under this section prior to January 1, 2024. A gap of 31 days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of enrollment in a health plan sponsored by PEBB, a Washington state educational service district, or SEBB, and between each period of enrollment in qualifying coverages as described in WAC 182-12-205 (3)(a) through (e) during the deferral period:

(a) During the PEBB annual open enrollment period. The required form must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(b) When enrollment in a health plan sponsored by PEBB, a Washington state educational service district, or SEBB ends, or such coverage under COBRA or continuation coverage ends. The required forms to enroll must be received by the PEBB program no later than 60 days after coverage ends. PEBB health plan coverage begins the first day of the month following the date the other coverage ends. To continue in a deferred status, the retiree must defer enrollment as described in WAC 182-12-205.

Note: Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(c) If a retiree elects to enroll a dependent in PEBB health plan coverage as described in this subsection, the dependent must be enrolled in the same PEBB medical or PEBB dental plan as the retiree.

Exception: If a retiree selects a medicare supplement plan or MA-PD plan, nonmedicare enrollees will be enrolled in the UMP Classic. If a retiree selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Policy Resolution PEBB 2022-03. WSR 22-13-160 (Admin #2022-02.03), § 182-12-200, filed 6/21/22, effective 1/1/23. Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolution PEBB 2021-14. WSR 21-13-104 (Admin #2021-01.04), § 182-12-200, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-200, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-200, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-200, filed 10/3/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-200, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-200, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-200, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160. WSR 09-23-102 (Order 09-02), § 182-12-200, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-200, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-200, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-200, filed 8/26/04, effective 1/1/05. Statutory Authority: RCW 41.05.160. WSR 01-17-041 (Order 01-00), § 182-12-200, filed 8/9/01, effective 9/9/01; WSR 97-21-127, § 182-12-200, filed 10/21/97, effective 11/21/97. Statutory Authority: Chapter 41.05 RCW. WSR 96-08-043, § 182-12-200, filed 3/29/96, effective 4/29/96; Order 4-77, § 182-12-200, filed 11/17/77.]

AMENDATORY SECTION (Amending WSR 22-13-165, filed 6/21/22, effective 1/1/23)

WAC 182-12-205 May a retiree or a survivor defer enrollment or voluntarily terminate enrollment under public employees benefits board (PEBB) retiree insurance coverage? (1) The following individuals may defer enrollment in public employees benefits board (PEBB) retiree insurance coverage:

(a) A retiring employee or a retiring school employee;

(b) A dependent becoming eligible as a survivor; or

(c) A retiree or a survivor enrolled in PEBB retiree insurance coverage.

(2) A subscriber described in subsection (1) of this section who defers enrollment in PEBB retiree insurance coverage also defers en-

rollment for all eligible dependents, except as described in subsection (3)(c) of this section.

(3) A subscriber described in subsection (1) of this section who chooses to defer enrollment in PEBB retiree insurance coverage must maintain continuous enrollment in one or more qualifying coverages as described in this subsection or WAC 182-12-200. A gap of 31 days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period. A subscriber who chooses to defer enrollment, defers enrollment in PEBB medical and PEBB dental. A subscriber must be enrolled in PEBB medical to enroll in PEBB dental. A retiree may only defer enrollment in PEBB retiree term life insurance as described in WAC 182-12-209 (3)(b).

(a) Beginning January 1, 2001, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in employer-based group medical as an employee or the dependent of an employee, or such medical insurance continued under Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage or continuation coverage.

(b) Beginning January 1, 2001, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled as a retiree or the dependent of a retiree in a federal retiree medical plan.

(c) Beginning January 1, 2006, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in WAC 182-12-109. Dependents may continue their PEBB health plan enrollment if they meet PEBB eligibility criteria and are not eligible for creditable coverage under a medicaid program.

(d) Beginning January 1, 2014, subscribers who are not eligible for Parts A and B of medicare may defer enrollment in PEBB retiree insurance coverage when the subscriber is enrolled in exchange coverage.

(e) Beginning July 17, 2018, enrollment in PEBB retiree insurance coverage may be deferred when the subscriber is enrolled in the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA).

(4) To defer enrollment in PEBB retiree insurance coverage, the required forms must be submitted to the PEBB program.

(a) For a retiring employee or a retiring school employee who meets the substantive eligibility requirements as described in WAC 182-12-171(2), enrollment will be deferred the first of the month following the date their own employer-paid coverage, COBRA coverage, or continuation coverage ends. The forms must be received by the PEBB program no later than 60 days after ((~~the~~)) their own employer-paid coverage, COBRA coverage, or continuation coverage ends.

(b) For an official leaving public office who meets the requirements as described in WAC 182-12-180(1), enrollment will be deferred the first of the month following the date the official leaves public office. The forms must be received by the PEBB program no later than 60 days after the official leaves public office.

(c) For an employee or a school employee determined to be retroactively eligible for disability retirement who meets the requirements as described in WAC 182-12-211 (1)(a) through (c), enrollment will be deferred as described in WAC 182-12-211 (2) or (3). The forms and formal determination letter must be received by the PEBB program no later than 60 days after the date on the determination letter.

(d) For an eligible survivor, the dependent must meet the requirements described below and the forms must be received by the PEBB program within the time described:

(i) For a survivor of an employee or a school employee who meets the requirements as described in WAC 182-12-265 (1) or (3), enrollment will be deferred the first of the month following the later of the date of the employee's or the school employee's death or the date the survivor's PEBB insurance coverage, educational service district coverage, or school employees benefits board (SEBB) insurance coverage ends. The forms must be received by the PEBB program no later than 60 days after the later of the date of the employee's or the school employee's death or the date the survivor's PEBB insurance coverage, educational service district coverage, or SEBB insurance coverage ends.

(ii) For a survivor of an official who meets the requirements as described in WAC 182-12-180(2), enrollment will be deferred the first of the month following the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends. The forms must be received by the PEBB program no later than 60 days after the later of the date of the official's death or the date the survivor's PEBB insurance coverage ends.

(iii) For a survivor of a retiree who meets the requirements as described in WAC 182-12-265(2), enrollment will be deferred the first of the month following the date of the retiree's death. The forms must be received by the PEBB program no later than 60 days after the retiree's death.

(iv) For a survivor of an emergency service personnel killed in the line of duty who meets the requirements as described in WAC 182-12-250, enrollment will be deferred the first of the month following the later of one of the events described in WAC 182-12-250 (5)(a) through (d). The forms must be received by the PEBB program no later than 180 days after the later of one of the events described in WAC 182-12-250 (5)(a) through (d).

(e) For an enrolled retiree or survivor who submits the required forms to defer enrollment in PEBB retiree insurance coverage, enrollment will be deferred effective the first of the month following the date the required forms are received by the PEBB program. If the forms are received on the first day of the month, enrollment will be deferred effective that day.

Exception: When a subscriber or their dependent is enrolled in a medicare advantage plan (MA), then enrollment in PEBB retiree insurance coverage will be deferred effective the first of the month following the date the MA plan disenrollment form is received.

(5) A retiree who meets substantive eligibility requirements in WAC 182-12-171(2) and whose <u>own</u> employer-paid coverage, COBRA coverage, or continuation coverage ended between January 1, 2001, and December 31, 2001, was not required to have submitted the deferral form at that time, but must meet all procedural requirements as stated in this section, WAC 182-12-171, and 182-12-200.

(6) A subscriber described in subsection (1) of this section who defers enrollment while enrolled in qualifying coverage as described in subsection (3)(a) through (e) of this section may later enroll themselves and their dependents in a PEBB health plan by submitting the required forms as described below and evidence of continuous enrollment in one or more qualifying coverages as described in subsection (3)(a) through (e) of this section. A gap of 31 days or less is allowed between the date PEBB retiree insurance coverage is deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period:

(a) A subscriber who defers enrollment while enrolled in employer-based group medical or such medical insurance continued under COBRA coverage or continuation coverage may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their employer-based group medical or such coverage under COBRA coverage or continuation coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after the employer-based group medical coverage, COBRA coverage, or continuation coverage ends.

Note: Enrollment in the PEBB program's MA or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(b) A subscriber who defers enrollment while enrolled as a retiree or dependent of a retiree in a federal retiree medical plan will have a one-time opportunity to enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When the federal retiree medical plan coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after coverage under the federal retiree medical plan ends.

Note: Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(c) A subscriber who defers enrollment while enrolled in medicare Parts A and B and a medicaid program that provides creditable coverage as defined in WAC 182-12-109 may enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When their medicaid coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after the medicaid coverage ends; or

Note: Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(iii) No later than the end of the calendar year when their medicaid coverage ends if the retiree or survivor was also determined eligible under 42 U.S.C. § 1395w-114 and subsequently enrolled in a medicare Part D plan. Enrollment in the PEBB health plan will begin January 1st following the end of the calendar year when the medicaid coverage ends. The required forms must be received by the PEBB program no later than the last day of the calendar year in which the medicaid coverage ends.

(d) A subscriber who defers enrollment while enrolled in exchange coverage will have a one-time opportunity to enroll or reenroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When exchange coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after exchange coverage ends.

Note: Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(e) A subscriber who defers enrollment while enrolled in CHAMPVA will have a one-time opportunity to enroll in a PEBB health plan by submitting the required forms and evidence of continuous enrollment to the PEBB program:

(i) During the PEBB annual open enrollment period. The required forms must be received by the PEBB program no later than the last day of the open enrollment period. PEBB health plan coverage begins January 1st of the following year; or

(ii) When CHAMPVA coverage ends. The required forms and evidence of continuous enrollment must be received by the PEBB program no later than 60 days after coverage ends. PEBB health plan coverage begins the first day of the month after CHAMPVA coverage ends.

Note: Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(7) A subscriber described in subsection (1) of this section who defers enrollment while enrolled in qualifying coverage as described in subsection (3)(a) through (e) of this section may later enroll themselves and their dependents in a PEBB health plan if they receive formal notice that the authority has determined it is more cost-effective to enroll them or their eligible dependents in PEBB medical than a medical assistance program.

(8) If a subscriber elects to enroll a dependent in PEBB health plan coverage as described in subsection (6) or (7) of this section, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the subscriber.

Exception: If a subscriber selects a medicare supplement plan or MA-PD plan, nonmedicare enrollees will be enrolled in the UMP Classic. If a subscriber selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(9) An enrolled retiree or a survivor who requests to voluntarily terminate their enrollment in PEBB retiree insurance coverage must do

so in writing. The written termination request must be received by the PEBB program. A retiree or a survivor who voluntarily terminates their enrollment in a PEBB health plan also terminates enrollment for all eligible dependents. Once coverage is terminated, a retiree or a survivor may not enroll again in the future unless they reestablish eligibility for PEBB insurance coverage by becoming newly eligible. Enrollment in a PEBB health plan will terminate on the last day of the month in which the PEBB program receives the termination request. If the termination request is received on the first day of the month, enrollment will terminate on the last day of the previous month.

Exception: When a subscriber or their dependent is enrolled in a MA plan, then enrollment will terminate on the last day of the month when the MA plan disenrollment form is received.

(10) When a retiree becomes eligible for the employer contribution toward PEBB benefits, PEBB retiree insurance coverage will be automatically deferred. The subscriber will be exempt from the deferral form requirement. ((~~When the subscriber is no longer eligible for the employer contribution toward PEBB benefits, they must enroll or defer PEBB retiree insurance coverage as described in WAC 182-12-171, 182-12-200, and this section.~~))

Note: When the subscriber is no longer eligible for the employer contribution toward PEBB benefits, they may enroll in PEBB retiree insurance coverage as described in WAC 182-12-171 or continue in a deferred status if they meet the requirements described in WAC 182-12-200 or this section.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Policy Resolutions PEBB 2022-03 and 2022-04. WSR 22-13-165 (Admin #2022-02.04), § 182-12-205, filed 6/21/22, effective 1/1/23. Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolution PEBB 2021-14. WSR 21-13-104 (Admin #2021-01.04), § 182-12-205, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-205, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-205, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-205, filed 10/3/18, effective 1/1/19. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-205, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-205, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-205, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-205, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-205, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-205, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-205, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-205, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-205, filed 10/1/08, effective 1/1/09; WSR 08-09-027 (Order 08-01), § 182-12-205, filed 4/8/08, effective 4/9/08; WSR 07-20-129 (Order 07-01), § 182-12-205, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.068. WSR 06-23-165 (Order 06-09), § 182-12-205, filed 11/22/06, effective 12/23/06. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-12-205, filed 7/27/05, effective 8/27/05. Statutory Authority: RCW

41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-205, filed 8/26/04, effective 1/1/05.]

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

WAC 182-12-262 When may subscribers enroll or remove eligible dependents? (1) **Enrolling dependents in public employees benefits board (PEBB) health plan coverage, supplemental dependent life insurance, and accidental death and dismemberment (AD&D) insurance.** A dependent must be enrolled in the same health plan coverage as the subscriber except as described in WAC 182-12-171 (1)(c). The subscriber must be enrolled in health plan coverage to enroll their dependent in health plan coverage except as provided in WAC 182-12-205 (3)(c). A dependent with more than one source of eligibility for enrollment in the PEBB and school employees benefits board (SEBB) programs is limited to a single enrollment in medical, dental, and vision plans in either the PEBB or SEBB program. Subscribers must satisfy the enrollment requirements as described in subsection (4) of this section and may enroll eligible dependents at the following times:

(a) **When the subscriber becomes eligible** and enrolls in PEBB benefits. If eligibility is verified the dependent's effective date will be as follows:

(i) PEBB health plan coverage will be the same as the subscriber's effective date;

(ii) Supplemental dependent life insurance or AD&D insurance, if elected, will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) **During the annual open enrollment.** PEBB health plan coverage begins January 1st of the following year;

(c) **During special open enrollment.** Subscribers may enroll dependents during a special open enrollment as described in subsection (3) of this section;

(d) **When a National Medical Support Notice (NMSN)** requires a subscriber to cover a dependent child in health plan coverage as described in WAC 182-12-263; or

(e) **Any time during the calendar year for supplemental dependent life insurance or AD&D insurance** by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance. Supplemental dependent life insurance or AD&D insurance will be effective the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(2) **Removing dependents from a subscriber's PEBB health plan coverage or supplemental dependent life insurance or AD&D insurance.**

(a) **A dependent's eligibility for enrollment in PEBB health plan coverage or supplemental dependent life insurance or AD&D insurance ends the last day of the month the dependent** meets the eligibility criteria as described in WAC 182-12-250 or 182-12-260. Subscribers

must provide notice when a dependent is no longer eligible due to divorce, annulment, dissolution, or qualifying event of a dependent ceasing to be eligible as a dependent child, as described in WAC 182-12-260(3). For supplemental dependent life insurance or AD&D insurance, subscribers must notify the contracted vendor on the required form, in writing, or by telephone when a dependent is no longer eligible. Contact information for the contracted vendor may be found at hca.wa.gov/employees-contact-plan. For PEBB health plan coverage, the notice must be received within 60 days of the last day of the month the dependent loses eligibility. Employees must notify their employing agency when a dependent is no longer eligible for PEBB health plan coverage, except as required under WAC 182-12-260 (3)(g)(ii). All other subscribers must notify the PEBB program. Consequences for not submitting notice within the required 60 days include, but are not limited to:

(i) The dependent may lose eligibility to continue PEBB medical or dental under one of the continuation coverage options described in WAC 182-12-270;

(ii) The subscriber may be billed for claims paid by the health plan for services that were rendered after the dependent lost eligibility as described in WAC 182-12-270;

(iii) The subscriber may not be able to recover subscriber-paid insurance premiums for dependents that lost their eligibility; and

(iv) The subscriber may be responsible for premiums paid by the state for the dependent's health plan coverage after the dependent lost eligibility.

(b) **Employees have the opportunity to remove eligible dependents:**

(i) During the annual open enrollment. The dependent will be removed from PEBB health plan coverage the last day of December;

(ii) During a special open enrollment as described in subsections (3) and (4)(f) of this section;

(iii) When a NMSN requires a spouse, former spouse, or other individual to provide health plan coverage for a dependent who is already enrolled in PEBB coverage, and that health plan coverage is in fact provided as described in WAC 182-12-263(2); or

(iv) Any time during the calendar year from supplemental dependent life insurance or AD&D insurance by submitting a request to the contracted vendor on the required form, in writing, or by telephone. Contact information for the contracted vendor may be found at hca.wa.gov/employees-contact-plan.

(c) **Retirees (see WAC 182-12-171, 182-12-180, or 182-12-211), survivors (see WAC 182-12-180, 182-12-250, or 182-12-265), and PEBB continuation coverage enrollees (see WAC 182-12-133, 182-12-141, 182-12-142, 182-12-146, or 182-12-148) may remove dependents** from their PEBB health plan coverage outside of the annual open enrollment or a special open enrollment by providing written notice to the PEBB program. The dependent will be removed from the subscriber's PEBB health plan coverage prospectively. PEBB health plan coverage will end on the last day of the month in which the written notice is received by the PEBB program or on the last day of the month specified in the subscriber's written notice, whichever is later. If the written notice is received on the first day of the month, PEBB health plan coverage will end on the last day of the previous month. PEBB continuation coverage enrollees may remove dependents from supplemental dependent life insurance or AD&D insurance any time during the calendar year by submitting a request to the contracted vendor on the required form, in

writing, or by telephone. Contact information for the contracted vendor may be found at hca.wa.gov/employees-contact-plan.

(3) **Special open enrollment.**

(a) Subscribers may enroll or remove their eligible dependents outside of the annual open enrollment if a special open enrollment event occurs. The change in enrollment must be allowable under the Internal Revenue Code and Treasury Regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependents, or both. To disenroll from a medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan, the change in enrollment must be allowable under 42 C.F.R. Secs. 422.62(b) and 423.38(c).

(i) PEBB health plan coverage will begin the first of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the change in enrollment begins on that day except for a MA or MA-PD plan which will begin the first day of the month following the date the form is received.

(ii) PEBB health plan coverage for an extended dependent or a dependent with a disability will begin the first day of the month following the later of the event date or eligibility certification.

(iii) The dependent will be removed from the subscriber's PEBB health plan coverage the last day of the month following the later of the event date or the date the required form and proof of the event is received. If that day is the first of the month, the change in enrollment will be made the last day of the previous month.

(iv) If the special open enrollment is due to the birth or adoption of a child, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption of a child, PEBB health plan coverage will begin or end as follows:

• For the newly born child, PEBB health plan coverage will begin the date of birth;

• For a newly adopted child, PEBB health plan coverage will begin on the date of placement or the date a legal obligation is assumed in anticipation of adoption, whichever is earlier;

• For a spouse or state registered domestic partner of a subscriber, PEBB health plan coverage will begin the first day of the month in which the event occurs. The spouse or state registered domestic partner will be removed from PEBB health plan coverage the last day of the month in which the event occurred.

(v) Supplemental dependent life insurance or AD&D insurance will begin the first day of the month following the date the contracted vendor receives the required form or approves the enrollment. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage is effective.

(b) The events described in this subsection (3)(b)(i) of this section create a special open enrollment to enroll eligible dependents in supplemental dependent life insurance or AD&D insurance. Any one of the following events may create a special open enrollment to enroll or remove eligible dependents from PEBB health plan coverage:

(i) Subscriber acquires a new dependent due to:

• Marriage or registering a state registered domestic partnership;

• Birth, adoption, or when a subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

• A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(iii) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(iv) The subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (iv) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 54.9801-6.

(v) Subscriber or a subscriber's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the PEBB program's annual open enrollment;

(vi) Subscriber's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence resulted in the dependent losing their health insurance;

(vii) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(viii) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(ix) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(x) Subscriber's dependent enrolls in medicare, or loses eligibility for medicare.

(4) **Enrollment requirements. A subscriber must submit the required forms within the time frames described in this subsection.** For PEBB health plan coverage, an employee must submit the required forms to their employing agency, a subscriber on continuation coverage or PEBB retiree insurance coverage must submit the required forms to the PEBB program. In addition to the required forms indicating dependent enrollment, the subscriber must provide the required documents as evidence of the dependent's eligibility; or as evidence of the event that created the special open enrollment. All required forms and documents must be received within the required time frames. An employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval within the required time frames.

Note: When enrolling a state registered domestic partner or a state registered domestic partner's child, a subscriber must certify that the state registered domestic partner or state registered domestic partner's child is a tax dependent on the required form; otherwise, the PEBB program will assume the state registered domestic partner or state registered domestic partner's child is not a tax dependent.

(a) If a subscriber wants to enroll their eligible dependents in PEBB health plan coverage when the subscriber becomes eligible to enroll in PEBB benefits, the subscriber must include the dependent's enrollment information on the required forms and submit them within the required time frame described in WAC 182-08-197, 182-12-171, 182-12-180, 182-12-211, or 182-12-250. If an employee enrolls a dependent in supplemental dependent life insurance or AD&D insurance,

the required form must be submitted within the required time frame described in WAC 182-08-197.

(b) If a subscriber wants to enroll eligible dependents in PEBB health plan coverage during the PEBB annual open enrollment period, the required forms must be received no later than the last day of the annual open enrollment.

(c) If a subscriber wants to enroll newly eligible dependents, the required forms must be received no later than 60 days after the dependent becomes eligible. An employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval. An employee may enroll a dependent in supplemental dependent life insurance up to the guaranteed issue coverage amount without evidence of insurability if the required form is submitted to the contracted vendor as required. Evidence of insurability will be required for supplemental dependent life insurance over the guaranteed issue coverage amount. Evidence of insurability is not required for supplemental AD&D insurance.

(d) If a subscriber wants to enroll a newborn or child whom the subscriber has adopted or has assumed a legal obligation for total or partial support in anticipation of adoption in PEBB health plan coverage, the subscriber should notify the PEBB program by submitting the required forms as soon as possible to ensure timely payment of claims. If adding the child increases the premium, the required forms must be received no later than 60 days after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption. An employee enrolling a dependent in supplemental dependent life insurance or AD&D insurance must submit the required form to the contracted vendor for approval no later than 60 days after the date of the birth, adoption, or the date the legal obligation is assumed for total or partial support in anticipation of adoption. A newly born child must be at least 14 days old before supplemental dependent life insurance or AD&D insurance coverage can become effective.

(e) If the subscriber wants to enroll a child age 26 or older as a child with a disability in PEBB health plan coverage, the required forms must be received no later than 60 days after the child reaches age 26 or within the relevant time frame described in (a), (b), and (f) of this subsection. To recertify an enrolled child with a disability, the required forms must be received by the PEBB program or the contracted vendor by the child's scheduled PEBB health plan coverage termination date.

(f) If the subscriber wants to change a dependent's enrollment status in PEBB health plan coverage during a special open enrollment, the required forms must be received no later than 60 days after the event that creates the special open enrollment.

Exception: If the subscriber wants to change a dependent's enrollment or disenrollment in a medicare advantage or medicare advantage-prescription drug plan, the required forms must be received during a special enrollment period as allowed under 42 C.F.R. Secs. 422.62(b) and 423.38(c).

(g) An employee may enroll a dependent in supplemental dependent life insurance or AD&D insurance at any time during the calendar year by submitting the required form to the contracted vendor for approval. Evidence of insurability may be required for supplemental dependent life insurance but will not be required for supplemental AD&D insurance.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-158 (Admin #2022-01), § 182-12-262, filed 6/21/22, effective 1/1/23; WSR

21-13-106 (Admin #2021-01.06), § 182-12-262, filed 6/18/21, effective 1/1/22; WSR 20-16-062 (Admin #2020-03), § 182-12-262, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-262, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-262, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-262, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-262, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-12-262, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-262, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-12-262, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-12-262, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-262, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-262, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-12-262, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-12-262, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-262, filed 10/1/08, effective 1/1/09; WSR 08-09-027 (Order 08-01), § 182-12-262, filed 4/8/08, effective 4/9/08.]

AMENDATORY SECTION (Amending WSR 22-13-160, filed 6/21/22, effective 1/1/23)

WAC 182-12-265 What options for continuing health plan enrollment are available to a surviving spouse, state registered domestic partner, or child, if an employee, a school employee, or a retiree dies? The survivor of an eligible employee, an eligible school employee, or a retiree who meets the eligibility criteria and submits the required forms as described in subsection (1), (2), or (3) of this section is eligible to enroll or defer enrollment as a survivor under public employees benefits board (PEBB) retiree insurance coverage. If enrolling in PEBB retiree insurance coverage, the survivor's first premium payment and applicable premium surcharges are due to the health care authority (HCA) no later than 45 days after the election period ends as described in subsection (1), (2), or (3) of this section. Following the survivor's first premium payment, premiums and applicable premium surcharges must be paid as described in WAC 182-08-180 (1)(c).

(1) An employee's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible employee may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage provided they immediately begin receiving a monthly retirement benefit from any state of Washington sponsored retirement system. To satisfy the requirement to immediately receive a monthly retirement benefit they must begin receiving monthly benefit payments no later than 120 days from the date of death of the employee. The required forms to enroll or defer enrollment must be received by the

PEBB program no later than 60 days after the later of the date of the employee's death or the date the survivor's PEBB insurance coverage ends.

Note: Enrollment in the PEBB program's medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in Uniform Medical Plan (UMP) Classic during the gap month(s) prior to when the MA-PD coverage begins.

(a) The employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The employee's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

Notes: If a spouse, state registered domestic partner, or child of an eligible employee is not eligible for a monthly retirement benefit, they are not eligible to enroll as a survivor under PEBB retiree insurance coverage. However, they may continue health plan enrollment as described in WAC 182-12-146.

Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an employee of a participating employer group will cease at the end of the month in which the group's contract with the authority ends ((~~unless the employer group is an educational service district~~)).

Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an elected and full-time appointed official of the legislative and executive branches of state government is described in WAC 182-12-180.

(2) A retiree's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible retiree may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage. The required forms to enroll or defer enrollment must be received by the PEBB program no later than 60 days after the retiree's death.

(a) The retiree's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The retiree's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

(c) If a spouse, state registered domestic partner, or child of an eligible retiree is not enrolled in a PEBB health plan at the time of the retiree's death, the survivor is eligible to enroll or defer enrollment as a survivor under PEBB retiree insurance coverage. The required forms to enroll or defer enrollment must be received by the PEBB program no later than 60 days after the retiree's death. For a survivor to enroll in a PEBB health plan who is not enrolled due to the retiree electing to defer enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 or 182-12-205, the survivor must also provide evidence of continuous enrollment in one or more qualifying coverages as described in WAC 182-12-205 (3)(a) through (e) from the most recent open enrollment for which the survivor was not enrolled in a PEBB medical plan prior to the retiree's death. A gap of 31 days or less is allowed between the date PEBB retiree insurance coverage was deferred and the start date of a qualifying coverage, and between each period of enrollment in qualifying coverages during the deferral period.

Note: Eligibility for the surviving spouse, surviving state registered domestic partner, or surviving child of an employer group retiree will cease at the end of the month in which the group's contract with the authority ends ((~~unless the employer group is an educational service district~~)).

(3) A school employee's spouse, state registered domestic partner, or child who loses eligibility due to the death of an eligible school employee may enroll or defer enrollment as a survivor under PEBB retiree insurance coverage at the time of the school employee's death, provided the employee died on or after October 1, 1993. The survivor must immediately begin receiving a retirement benefit allowance under chapter 41.32, 41.35 or 41.40 RCW. The required forms to enroll or defer enrollment must be received by the PEBB program no later than 60 days after the later of the date of the school employ-

ee's death or the date the survivor's educational service district coverage, or school employees benefits board (SEBB) insurance coverage ends.

Note: Enrollment in the PEBB program's MA or MA-PD plan may not be retroactive. If a subscriber elects to enroll in a MA plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in a plan with the same contracted vendor during the gap month(s) prior to when the MA coverage begins. If a subscriber elects to enroll in a MA-PD plan, and the required forms are received by the PEBB program after the date the PEBB retiree insurance coverage is to begin, the subscriber and their enrolled dependents will be enrolled in UMP Classic during the gap month(s) prior to when the MA-PD coverage begins.

(a) The school employee's spouse or state registered domestic partner may continue health plan enrollment until death.

(b) The school employee's children may continue health plan enrollment until they lose eligibility as described in WAC 182-12-260.

Note: If a spouse, state registered domestic partner, or child of an eligible school employee is not eligible for a retirement benefit allowance, they are not eligible to enroll as a survivor under PEBB retiree insurance coverage. However, a spouse, state registered domestic partner, or child of an eligible school employee enrolled in SEBB insurance coverage may continue health plan enrollment as described in WAC 182-31-090.

(4) If premiums and applicable premium surcharges received by the HCA are sufficient as described in WAC 182-08-180 (1)(d)(ii) to maintain PEBB health plan enrollment after the employee, school employee, or retiree's death, the PEBB program will consider the payment as notice of the survivor's intent to continue enrollment.

If the survivor's enrollment ended due to the death of the employee, school employee, or retiree, the PEBB program will reinstate the survivor's enrollment without a gap subject to payment of premium and applicable premium surcharges.

(5) If a survivor elects to enroll a dependent in PEBB health plan coverage, the dependent must be enrolled in the same PEBB medical and PEBB dental plan as the survivor.

Exception: If a survivor selects a medicare supplement plan or MA-PD plan, nonmedicare enrollees will be enrolled in the UMP Classic. If a survivor selects any other medicare plan, they must also select a nonmedicare plan with the same contracted vendor available to nonmedicare enrollees.

(6) In order to avoid duplication of group medical coverage, a survivor may defer enrollment in PEBB retiree insurance coverage as described in WAC 182-12-200 and 182-12-205.

[Statutory Authority: RCW 41.05.021, 41.05.160, and Policy Resolution PEBB 2022-03. WSR 22-13-160 (Admin #2022-02.03), § 182-12-265, filed 6/21/22, effective 1/1/23. Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolution PEBB 2021-14. WSR 21-13-104 (Admin #2021-01.04), § 182-12-265, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160, 42 C.F.R. § 422.62(b) and § 423.38(c) and PEBB policy resolution 2020-05. WSR 20-16-063 (Admin #2020-02), § 182-12-265, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-12-265, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-12-265, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-12-265, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-12-265, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-12-265, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-12-265, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-12-265, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 09-23-102 (Order 09-02), § 182-12-265, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-12-265, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-12-265, filed 10/3/07, ef-

fective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.068. WSR 06-23-165 (Order 06-09), § 182-12-265, filed 11/22/06, effective 12/23/06. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-12-265, filed 7/27/05, effective 8/27/05. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-12-265, filed 8/26/04, effective 1/1/05.]

WSR 23-14-016
PERMANENT RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)
[Admin #2023-02.01—Filed June 23, 2023, 9:00 a.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: The purpose for adoption is to amend existing rules to support the public employees benefits board (PEBB) program:

1. Implement PEBB policy resolutions: Amended WAC 182-08-196 and 182-08-198 to implement Resolutions PEBB 2023-01 when a subscriber has a change in residence that affects medical plan availability and PEBB 2023-02 when a subscriber is involuntarily terminated by a medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan.

2. Make other technical amendments: Amended WAC 182-08-196 to update the title, add when the required forms electing an MA-PD plan must be received by the PEBB program, add an exception for MA or MA-PD plan's enrollment effective date, and update subsections' references within the section; and amended WAC 182-08-198 to move a note up to the beginning of subsection (2), add an exception for an MA or MA-PD plan's enrollment effective date, clarify when a subscriber may select a dental plan when there is a change in residence, and add a new special enrollment event when there is a substantial decrease in the providers available under a PEBB medical plan.

Citation of Rules Affected by this Order: Amending WAC 182-08-196 and 182-08-198.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy Resolutions PEBB 2023-01 and 2023-02.

Adopted under notice filed as WSR 23-10-075 on May 2, 2023.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, 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 23, 2023.

Wendy Barcus
Rules Coordinator

OTS-4514.1

AMENDATORY SECTION (Amending WSR 20-16-062, filed 7/28/20, effective 1/1/21)

WAC 182-08-196 What happens if my health plan becomes unavailable ((~~due to a change in contracted service area or eligibility for~~

~~**medicare**~~))? (1) A subscriber must elect a new health plan when their previously selected health plan becomes unavailable due to a change in contracting service area as described below:

(a) When a health plan becomes unavailable during the plan year, a subscriber must elect a new health plan no later than ((~~sixty~~)) 60 days after the date their previously selected health plan becomes unavailable.

(i) An employee must submit the required forms to their employing agency electing their new health plan.

(ii) Any other subscriber must submit the required forms to the PEBB program electing their new health plan.

(iii) The effective date of the change in health plan will be the first day of the month following the later of the date the health plan becomes unavailable or the date the form is received. If that day is the first of the month, the change in health plan begins on that day.

(b) When a health plan becomes unavailable at the beginning of the next plan year, a subscriber must elect a new health plan no later than the last day of the public employees benefits board (PEBB) annual open enrollment.

(i) An employee must submit the required forms to their employing agency electing their new health plan.

(ii) Any other subscriber must submit the required forms to the PEBB program electing their new health plan.

(iii) The effective date of the change in health plan will be January 1st of the following year.

(c) A subscriber who fails to elect a new health plan within the required time period as required in (a) or (b) of this subsection will be enrolled in a health plan designated by the director or designee.

(2) A subscriber must elect a new health plan when their previously selected health plan becomes unavailable due to the subscriber or subscriber's dependent ceasing to be eligible for their current health plan because of enrollment in medicare as described below:

(a) The required forms electing a new health plan must be received no later than ((~~sixty~~)) 60 days after the date their previously selected health plan becomes unavailable.

Exception: The required forms electing a new medicare advantage (MA) or medicare advantage-prescription drug (MA-PD) plan must be received no later than two months after the date their previously selected health plan becomes unavailable.

((~~(b)~~)) (i) An employee must submit the required forms to their employing agency electing their new health plan.

((~~(c)~~)) (ii) Any other subscriber must submit the required forms to the PEBB program electing their new health plan.

((~~(d)~~)) (iii) The effective date of the change in health plan will be the first day of the month following the later of the date the health plan becomes unavailable or the date the form is received. If that day is the first of the month, the change in health plan begins on that day except for a MA or MA-PD plan which will begin the first day of the month following the date the form is received.

((~~(e)~~)) (b) A subscriber who is enrolled in a ((~~high deductible~~)) consumer directed health plan (((~~HDHP~~)) CDHP) with a health savings account (HSA), and fails to elect a new health plan within the required time period as required in this subsection, will not be eligible to receive contributions to the HSA. A subscriber will be liable for any tax penalties resulting from contributions made when they are no longer eligible.

(3) A subscriber must elect a new medical plan when their previously selected medical plan becomes unavailable due to a change in their residence as described below.

(a) When a subscriber's medical plan becomes unavailable during the plan year, a subscriber must elect a new medical plan no later than 60 days after the date their previously selected medical plan becomes unavailable as described in WAC 182-08-198 (2)(e).

(i) An employee must submit the required forms to their employing agency electing their new medical plan.

(ii) Any other subscriber must submit the required forms to the PEBB program electing their new medical plan.

(iii) The effective date of the change in medical plan will be the first day of the month following the later of the date the medical plan becomes unavailable or the date the form is received. If that day is the first of the month, the change in medical plan begins on that day except for a MA or MA-PD plan which will begin the first day of the month following the date the form is received.

(b) A subscriber who fails to elect a new medical plan within the required time period as required in (a) of this subsection will be enrolled in a public employees benefits board medical plan designated by the director or designee.

(4) When a subscriber or their dependent must be disenrolled by a MA or MA-PD plan as required by federal law, the subscriber and their enrolled dependents will be enrolled in a PEBB medical plan as designated by the director or designee. The new medical plan coverage will begin the first day of the month following the date the MA or MA-PD plan is terminated.

(5) A subscriber enrolled in a health plan as described in subsection (1)(c) ((~~or (2)(e)~~)), (2)(b), (3)(b), or (4) of this section may not change health plans except as allowed in WAC 182-08-198.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-08-196, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-196, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-196, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-196, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-196, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-08-196, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-08-196, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-08-196, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-08-196, filed 10/1/08, effective 1/1/09; WSR 07-20-129 (Order 07-01), § 182-08-196, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-08-196, filed 7/27/05, effective 8/27/05. Statutory Authority: RCW 41.05.160 and 41.05.165. WSR 04-18-039, § 182-08-196, filed 8/26/04, effective 1/1/05; WSR 03-17-031 (Order 02-07), § 182-08-196, filed 8/14/03, effective 9/14/03.]

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

WAC 182-08-198 When may a subscriber change health plans? A subscriber may change health plans at the following times:

(1) **During the annual open enrollment:** A subscriber may change health plans during the public employees benefits board (PEBB) annual open enrollment period. A subscriber must submit the required enrollment forms to change their health plan. An employee submits the enrollment forms to their employing agency. Any other subscriber submits the enrollment forms to the PEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** A subscriber may revoke their health plan election and make a new election outside of the annual open enrollment if a special open enrollment event occurs. A special open enrollment event must be an event other than an employee gaining initial eligibility for PEBB benefits as described in WAC 182-12-114 or regaining eligibility for PEBB benefits as described in WAC 182-08-197. The change in enrollment must be allowable under Internal Revenue Code and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both.

A subscriber may not change their health plan during a special open enrollment if their state registered domestic partner or state registered domestic partner's child is not a tax dependent. A subscriber may change their health plan as described in subsection (1) of this section.

To disenroll from a medicare advantage (MA) plan or medicare advantage-prescription drug (MA-PD) plan, the change in enrollment must be allowable under 42 C.F.R. Secs. 422.62(b) and 423.38(c). To make a health plan change, a subscriber must submit the required enrollment forms (and a completed disenrollment form, if required). The forms must be received no later than 60 days after the event occurs, except as described in (i) of this subsection. An employee submits the enrollment forms to their employing agency. Any other subscriber submits the enrollment forms to the PEBB program. In addition to the required forms, a subscriber must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day except for a MA or MA-PD plan which will begin the first day of the month following the date the form is received.

Exception: When a subscriber or their dependent is enrolled in a ((~~medicare advantage or medicare advantage-prescription drug~~)) MA or MA-PD plan, they may disenroll during a special enrollment period as allowed under 42 C.F.R. Secs. 422.62(b) and 423.38(c). The new medical plan coverage will begin the first day of the month following the date the medicare advantage plan disenrollment form is received.

If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. If the special open enrollment is due to the enrollment of an extended dependent or a dependent with a disability, the change in health plan coverage will begin the first day of the month following the later of

the event date or eligibility certification. Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

((**Note:** ~~A subscriber may not change their health plan if their state registered domestic partner or state registered domestic partner's child is not a tax dependent.~~))

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber has a change in employment status that affects the subscriber's eligibility for their employer contribution toward their employer-based group health plan;

(d) The subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (d) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability.

(i) If the subscriber ((~~moves~~)) has a change in residence and the subscriber's current ((~~health~~)) medical plan is ((~~not~~)) no longer available ((~~in the new location~~)), the subscriber must select a new ((~~health~~)) medical plan((~~, otherwise there will be limited accessibility to network providers and covered services~~)) as described in WAC 182-08-196(3);

(ii) If the subscriber or the subscriber's dependent has a change in residence and the subscriber's current dental plan does not have available providers within 50 miles of the subscriber or the subscriber's dependent's new residence, the subscriber may select a new dental plan;

((**Exception:** ~~A dental plan is considered available if a provider is located within 50 miles of the subscriber's new residence.~~))

(f) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(g) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(h) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for PEBB health plan coverage from medicaid or CHIP;

(i) Subscriber or a subscriber's dependent enrolls in coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare, or enrolls in or terminates enrollment in a medicare advantage-prescription drug or a Part D plan. If the subscriber's current medical plan becomes unavailable due to the subscriber's or a subscriber's dependent's enrollment in medicare,

the subscriber must select a new medical plan as described in WAC 182-08-196(2).

(i) A subscriber enrolled in PEBB retiree insurance coverage or an eligible subscriber enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage has six months from the date of their or their dependent's enrollment in medicare Part B to enroll in a PEBB medicare supplement plan for which they or their dependent is eligible. The forms must be received by the PEBB program no later than six months after the enrollment in medicare Part B for either the subscriber or the subscriber's dependent;

(ii) A subscriber enrolled in PEBB retiree insurance coverage or an eligible subscriber enrolled in Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage has seven months to enroll in a medicare advantage or medicare advantage-prescription drug plan that begins three months before they or their dependent first enrolled in both medicare Part A and Part B and ends three months after the month of medicare eligibility. A subscriber may also enroll themselves or their dependent in a medicare advantage or medicare advantage-prescription drug plan before their last day of the medicare Part B initial enrollment period. The forms must be received by the PEBB program no later than the last day of the month prior to the month the subscriber or the subscriber's dependent enrolls in the medicare advantage or medicare advantage-prescription drug plan.

(j) Subscriber or a subscriber's dependent's current medical plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The authority may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(k) Subscriber or a subscriber's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the subscriber or the subscriber's dependent. A subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the PEBB program determines that a continuity of care issue exists. The PEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy;

(ii) Treatment following a recent organ transplant;

(iii) A scheduled surgery;

(iv) Recent major surgery still within the postoperative period; or

(v) Treatment for a high-risk pregnancy;

(l) The PEBB program determines that there has been a substantial decrease in the providers available under a PEBB medical plan.

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

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-158 (Admin #2022-01), § 182-08-198, filed 6/21/22, effective 1/1/23; WSR 21-13-106 (Admin #2021-01.06), § 182-08-198, filed 6/18/21, effective 1/1/22; WSR 20-16-062 (Admin #2020-03), § 182-08-198, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-198, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), §

182-08-198, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-198, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-198, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-198, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160, 2013 2nd sp.s. c 4 and PEBB policy resolutions. WSR 14-08-040, § 182-08-198, filed 3/26/14, effective 4/26/14. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-198, filed 10/28/13, effective 1/1/14. Statutory Authority: RCW 41.05.160. WSR 12-20-022 (Order 2012-01), § 182-08-198, filed 9/25/12, effective 11/1/12. Statutory Authority: RCW 41.05.160 and 2011 c 8. WSR 11-22-036 (Order 11-02), § 182-08-198, filed 10/26/11, effective 1/1/12. Statutory Authority: RCW 41.05.160. WSR 10-20-147 (Order 10-02), § 182-08-198, filed 10/6/10, effective 1/1/11; WSR 09-23-102 (Order 09-02), § 182-08-198, filed 11/17/09, effective 1/1/10; WSR 08-20-128 (Order 08-03), § 182-08-198, filed 10/1/08, effective 1/1/09; WSR 08-09-027 (Order 08-01), § 182-08-198, filed 4/8/08, effective 4/9/08; WSR 07-20-129 (Order 07-01), § 182-08-198, filed 10/3/07, effective 11/3/07. Statutory Authority: RCW 41.05.160 and 41.05.068. WSR 06-23-165 (Order 06-09), § 182-08-198, filed 11/22/06, effective 12/23/06. Statutory Authority: RCW 41.05.160, 41.05.350, and 41.05.165. WSR 05-16-046 (Order 05-01), § 182-08-198, filed 7/27/05, effective 8/27/05.]

WSR 23-14-017
PERMANENT RULES
HEALTH CARE AUTHORITY
(Public Employees Benefits Board)
[Admin #2023-02.02—Filed June 23, 2023, 9:07 a.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: The purpose for adoption is to amend an existing rule to support the public employees benefits board (PEBB) program: Amended WAC 182-08-187 to implement Policy Resolution PEBB 2022-01 when an employee returns to work from active duty.

Citation of Rules Affected by this Order: Amending WAC 182-08-187.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy Resolution PEBB 2022-01.

Adopted under notice filed as WSR 23-10-076 on May 2, 2023.

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

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

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

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

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

Date Adopted: June 23, 2023.

Wendy Barcus
Rules Coordinator

OTS-4554.1

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

WAC 182-08-187 How do employing agencies and contracted vendors correct enrollment errors and is there a limit on retroactive enrollment? (1) An employing agency or contracted vendor that makes one or more of the following enrollment errors must correct the error as described in subsections (2) through (5) of this section.

(a) Failure to timely notify an employee of their eligibility for public employee benefits board (PEBB) benefits and the employer contribution as described in WAC 182-12-113(2);

(b) Failure to enroll the employee and their dependents in PEBB benefits as elected by the employee, if the elections were timely;

(c) Failure to enroll an employee and their dependents in PEBB benefits as described in WAC 182-08-197 (1)(b);

(d) Failure to accurately reflect an employee's premium surcharge attestation on the employee's account;

(e) Enrolling an employee or their dependent in PEBB insurance coverage when they are not eligible as described in WAC 182-12-114 or 182-12-260 and it is clear there was no fraud or intentional misrepresentation by the employee involved; or

(f) Providing incorrect information regarding PEBB benefits to the employee that they relied upon.

(2) The employing agency or the applicable contracted vendor must enroll the employee and the employee's dependents, as elected, or terminate enrollment in PEBB benefits as described in subsection (3) of this section, reconcile premium payments and applicable premium surcharges as described in subsection (4) of this section, and provide recourse as described in subsection (5) of this section.

(3) **Enrollment or termination.**

(a) PEBB medical and dental enrollment is effective the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (5) of this section. If the enrollment error is identified on the first day of the month, the enrollment correction is effective that day;

Exception: When an employee who is called to active duty in the uniformed services under Uniformed Services Employment and Reemployment Rights Act (USERRA) loses eligibility for the employer contribution toward PEBB benefits, they regain eligibility for the employer contribution toward PEBB benefits the day they return from active duty. Employer-paid PEBB benefits will begin the first day of the month in which they return from active duty.

(b) Basic life, basic accidental death and dismemberment (AD&D), employer-paid long-term disability (LTD) insurance, and employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)) enrollment is retroactive to the first day of the month following the day the employee became newly eligible, or the first day of the month the employee regained eligibility, as described in WAC 182-08-197. If the employee became newly eligible on the first working day of a month, basic life, basic AD&D, employer-paid LTD insurance, and employee-paid LTD insurance begin on that date;

Exception: When an employee who is called to active duty in the uniformed services under USERRA loses eligibility for the employer contribution toward PEBB benefits, they regain eligibility for the employer contribution toward PEBB benefits the day they return from active duty. Employer-paid PEBB benefits will begin the first day of the month in which they return from active duty.

(c) Supplemental life, supplemental AD&D, and employee-paid LTD insurance enrollment is retroactive to the first day of the month following the day the employee became newly eligible if the employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date on the employee's application for this coverage). If an employing agency enrollment error occurred when the employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-08-197(3):

(i) Supplemental life, supplemental AD&D, and employee-paid LTD insurance is enrolled the first day of the month the employee regained eligibility, at the same level of coverage the employee continued during the period of leave, without evidence of insurability.

(ii) If the employee was not eligible to continue employee-paid LTD insurance during the period of leave as described in WAC 182-12-133, employee-paid LTD insurance is reinstated the first day of the month the employee regained eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(iii) If the employee was eligible to continue supplemental life insurance, supplemental AD&D insurance, and employee-paid LTD insurance under the period of leave but did not, the employee must provide

evidence of insurability and receive approval from the contracted vendor.

(d) If the employee is eligible and elects (or elected) to enroll in the medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP), enrollment is limited to 60 days prior to the date enrollment is processed, but not earlier than the current plan year. If an employee was not enrolled in a medical FSA, limited purpose FSA, or DCAP as elected, the employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect;

(e) If the employee or their dependent was not eligible but still enrolled as described in subsection (1)(e) of this section, the employee's or their dependent's PEBB benefits will be terminated prospectively effective as of the last day of the month.

(4) **Premium payments.**

(a) The employing agency must remit to the authority the employer contribution and the employee contribution for health plan premiums, applicable premium surcharges, basic life, basic AD&D, and employer-paid LTD starting the date PEBB benefits begins as described in subsections (3) and (5)(a)(i) of this section. If a state agency failed to notify a newly eligible employee of their eligibility for PEBB benefits, the state agency may only collect the employee contribution for health plan premiums and applicable premium surcharges for coverage for the months after the employee was notified.

(b) When an employing agency fails to correctly enroll the amount of employee-paid LTD insurance elected by the employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the employee is responsible for premiums for the most recent 24 months of coverage. The employing agency is responsible for additional months of premiums.

(ii) When a premium refund is due to the employee, the LTD insurance contracted vendor is responsible for premium refunds for the most recent 24 months of coverage. The employing agency is responsible for additional months of premium refund.

(c) When an employing agency mistakenly enrolls an employee or their dependent as described in subsection (1)(e) of this section, premiums and any applicable premium surcharges will be refunded by the employing agency to the employee without rescinding the insurance coverage.

(5) **Recourse.**

(a) Employee eligibility for PEBB benefits begins on the first day of the month following the date eligibility is established as described in WAC 182-12-114. Dependent eligibility is described in WAC 182-12-260, and dependent enrollment is described in WAC 182-12-262. When retroactive correction of an enrollment error is limited as described in subsection (3)(b), (c) and (d) of this section, the employing agency must work with the employee, and receive approval from the authority, to implement retroactive PEBB benefits within the following parameters:

(i) Retroactive enrollment in a PEBB insurance coverage;

(ii) Reimbursement of claims paid;

(iii) Reimbursement of amounts paid by the employee or dependent for medical and dental premiums;

(iv) Reimbursement of amounts paid by the employee for the premium surcharges;

(v) Other legal remedy received or offered; or

(vi) Other recourse, upon approval by the authority.

(b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for noncovered services or in the case of an individual who is not eligible for PEBB benefits.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-158 (Admin #2022-01), § 182-08-187, filed 6/21/22, effective 1/1/23. Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-11 and 2021-12. WSR 21-13-103 (Admin #2021-01.03), § 182-08-187, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-08-187, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-187, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-187, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-187, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-187, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-187, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-187, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-187, filed 10/28/13, effective 1/1/14.]

WSR 23-14-018
PERMANENT RULES
HEALTH CARE AUTHORITY
(School Employees Benefits Board)
[Admin #2023-01—Filed June 23, 2023, 9:15 a.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: The purpose of this proposal is to amend some of the existing rules to support the school employees benefits board (SEBB) program:

1. Make technical amendments: Amended WAC 182-30-100 to move notes to subsection (2) and add language to address when a school employee who enrolls in a high deductible health plan with a health savings account during the annual open enrollment and has a carryover amount from a medical flexible spending arrangement; and amended WAC 182-31-080 to clarify when a school employee may waive enrollment in SEBB medical.

2. Amend rules to improve the administration of the SEBB program: Amended WAC 182-31-030 to add a new requirement that a SEBB organization must assist a school employee in determining whether or not the school employee or their dependent has experienced an event that creates a special open enrollment.

Citation of Rules Affected by this Order: Amending WAC 182-30-100, 182-31-030, and 182-31-080.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-10-063 on May 2, 2023.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: June 23, 2023.

Wendy Barcus
Rules Coordinator

OTS-4506.2

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-30-100 When may a school employee enroll, or revoke an election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP)? A school employee who is eligible to participate in the salary reduction plan as described in WAC

182-31-060 may enroll, or revoke their election and make a new election under the premium payment plan, medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP) at the following times:

(1) When newly eligible under WAC 182-31-040 and enrolling as described in WAC 182-30-080(1).

(2) **During annual open enrollment:** An eligible school employee may elect to enroll in or opt out of participation under the premium payment plan during the annual open enrollment by submitting the required form to their school employees benefits board (SEBB) organization. An eligible school employee may elect to enroll or reenroll in the medical FSA, limited purpose FSA, DCAP, or both an FSA and DCAP during the annual open enrollment by submitting the required forms to their SEBB organization or applicable contracted vendor as instructed. All required forms must be received no later than the last day of the annual open enrollment. The enrollment or new election becomes effective January 1st of the following year.

((~~Note:~~ ~~1. School employees cannot enroll in a medical FSA and a limited purpose FSA in the same year.~~
~~2. School employees enrolled in a high deductible health plan (HDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. School employees who elect enrollment in the HDHP with a HSA and a medical FSA will instead be enrolled in a limited purpose FSA.~~
~~3. School employees who are not enrolled in a HDHP with a HSA and elect both a medical FSA and a limited purpose FSA will be enrolled in the medical FSA.~~))

(a) School employees cannot enroll in a medical FSA and a limited purpose FSA in the same year.

(b) School employees enrolled in a high deductible health plan (HDHP) with a health savings account (HSA) cannot also enroll in a medical FSA in the same plan year. School employees who elect enrollment in the HDHP with a HSA and a medical FSA will only be enrolled in a HDHP with a HSA.

(c) If a school employee enrolls in a HDHP with a HSA during annual open enrollment and has a carryover amount from a medical FSA, the school employee will be enrolled in a limited purpose FSA and the carryover amount will be deposited into the limited FSA.

(d) School employees who are not enrolled in a HDHP with a HSA and elect both a medical FSA and a limited purpose FSA will be enrolled in the medical FSA.

(3) **During a special open enrollment:** A school employee who is eligible to participate in the salary reduction plan may enroll or revoke their election and make a new election under the premium payment plan, medical FSA, limited purpose FSA, or DCAP outside of the annual open enrollment if a special open enrollment event occurs. The enrollment or change in election must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment. To make a change or enroll, the school employee must submit the required form to their SEBB organization. The SEBB organization must receive the required form and evidence of the event that created the special open enrollment no later than 60 days after the event occurs.

For purposes of this section, an eligible dependent includes any person who qualifies as a dependent of the school employee for tax purposes under IRC 26 U.S.C. Sec. 152 without regard to the income limitations of that section. It does not include a state registered domestic partner unless the state registered domestic partner otherwise qualifies as a dependent for tax purposes under IRC 26 U.S.C. Sec. 152.

(a) **Premium payment plan.** A school employee may enroll or revoke their election and elect to opt out of the premium payment plan when

any of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or election to opt out will be effective the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

• Marriage;

• Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;

• Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or

• A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee's dependent no longer meets SEBB eligibility criteria because:

• School employee has a change in marital status;

• School employee's domestic partnership with a state registered domestic partner who is a tax dependent is dissolved or terminated;

• An eligible dependent child turns age 26 or otherwise does not meet dependent child eligibility criteria;

• An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

• An eligible dependent dies.

(iii) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by Health Insurance Portability and Accountability Act (HIPAA);

(iv) School employee has a change in employment status that affects the school employee's eligibility for their employer contribution toward their employer-based group health plan;

(v) The school employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution toward their employer-based group health plan;

Exception: As used in (a)(v) of this subsection, "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(vi) School employee or a school employee's dependent has a change in enrollment under an employer-based group health plan during its annual open enrollment that does not align with the SEBB annual open enrollment;

(vii) School employee or a school employee's dependent has a change in residence that affects health plan availability;

(viii) School employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States, and that change in residence resulted in the dependent losing their health insurance;

(ix) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(x) School employee or a school employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(xi) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(xii) School employee or a school employee's dependent enrolls in coverage under medicare or the school employee or a school employee's dependent loses eligibility for coverage under medicare;

(xiii) School employee or a school employee's dependent's current medical plan becomes unavailable because the school employee or enrolled dependent is no longer eligible for a HSA. The HCA may require evidence that the school employee or a school employee's dependent is no longer eligible for a HSA;

(xiv) School employee or a school employee's dependent experiences a disruption of care for active and ongoing treatment, that could function as a reduction in benefits for the school employee or a school employee's dependent. The school employee may not change their health plan election if the school employee's or dependent's physician stops participation with the school employee's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

• Active cancer treatment such as chemotherapy or radiation therapy;

• Treatment following a recent organ transplant;

• A scheduled surgery;

• Recent major surgery still within the postoperative period; or

• Treatment for a high-risk pregnancy.

(xv) School employee or school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan.

(xvi) Subscriber has a change in employment from a SEBB organization to a public school district that results in the subscriber having different medical plans available, and the subscriber changes their election. The subscriber may change their election if the change in employment causes:

• The subscriber's current medical plan to no longer be available, in this case the subscriber may select from any available medical plan; or

• The subscriber has one or more new medical plans available, in this case the subscriber may select to enroll in a newly available plan.

• As used in this subsection the term "public school district" shall be interpreted to not include charter schools and educational service districts.

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

(b) **Medical FSA and limited purpose FSA.** A school employee may enroll or revoke their election and make a new election under the medical FSA or limited purpose FSA when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the

event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

• Marriage;

• Registering a state registered domestic partnership when the dependent is a tax dependent of the school employee;

• Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or

• A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee's dependent no longer meets SEBB eligibility criteria because:

• School employee has a change in marital status;

• School employee's domestic partnership with a state registered domestic partner who qualifies as a tax dependent is dissolved or terminated;

• An eligible dependent child turns age 26 or otherwise does not meet dependent child eligibility criteria;

• An eligible dependent ceases to be eligible as an extended dependent or as a dependent with a disability; or

• An eligible dependent dies.

(iii) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by HIPAA;

(iv) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for the medical FSA or limited purpose FSA;

(v) A court order requires the school employee or any other individual to provide insurance coverage for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(vi) School employee or a school employee's dependent enrolls in coverage under medicaid or CHIP, or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

(vii) School employee or a school employee's dependent enrolls in coverage under medicare.

(c) **DCAP.** A school employee may enroll or revoke their election and make a new election under the DCAP when any one of the following special open enrollment events occur, if the requested change corresponds to and is consistent with the event. The enrollment or new election will be effective the first day of the month following the later of the event date or the date the required form and evidence of the event that created the special open enrollment is received by the SEBB organization. If that day is the first of the month, the enrollment or change in election begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, the enrollment or change in election will begin the first of the month in which the event occurs.

(i) School employee acquires a new dependent due to:

• Marriage;

• Registering a state registered domestic partnership if the state registered domestic partner qualifies as a tax dependent of the school employee;

• Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or

• A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(ii) School employee or a school employee's dependent has a change in employment status that affects the school employee's or a dependent's eligibility for DCAP;

(iii) School employee or school employee's dependent has a change in enrollment under an employer-based DCAP during its annual open enrollment that does not align with the SEBB annual open enrollment;

(iv) School employee changes dependent care provider; the change to the DCAP election amount can reflect the cost of the new provider;

(v) School employee or school employee's spouse experiences a change in the number of qualifying individuals as defined in IRC 26 U.S.C. Sec. 21 (b)(1);

(vi) School employee's dependent care provider imposes a change in the cost of dependent care; school employee may make a change in the DCAP election amount to reflect the new cost if the dependent care provider is not a qualifying relative of the school employee as defined in IRC 26 U.S.C. Sec. 152.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-168 (Admin #2022-01), § 182-30-100, filed 6/21/22, effective 1/1/23; WSR 21-13-117 (Admin #2021-01.04), § 182-30-100, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-100, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160 and 2018 c 260. WSR 20-01-082, § 182-30-100, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-100, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-30-100, filed 12/14/18, effective 1/14/19.]

OTS-4508.2

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-31-030 What are the obligations of a school employees benefits board (SEBB) organization in the application of school employee eligibility? (1) All school employees benefits board (SEBB) organizations must carry out all actions, policies, and guidance issued by the SEBB program which are necessary for the operation of benefit plans, education of school employees, claims administration, and appeals process including those described in chapters 182-30, 182-31, and 182-32 WAC. SEBB organizations must:

(a) Use the methods provided by the SEBB program to determine eligibility and enrollment in benefits;

(b) Provide eligibility determination reports with content and in a format designed and communicated by the SEBB program;

(c) Support SEBB program auditing of eligibility and enrollment decisions as needed; and

(d) Carry out corrective action and pay any penalties imposed by the health care authority (HCA) and established by the board when the SEBB organization's eligibility determinations fail to comply with the criteria under these rules.

(2) SEBB organizations must determine school employee eligibility for SEBB benefits and the employer contribution according to the criteria in WAC 182-31-040 and 182-31-050. SEBB organizations must:

(a) Notify newly hired school employees of SEBB program rules and guidance for eligibility and appeal rights;

(b) Inform a school employee in writing whether or not they are eligible for SEBB benefits upon employment. The written notice must include information about the school employee's right to appeal eligibility and enrollment decisions. A school employee eligible for SEBB benefits must have no less than ((~~ten~~)) 10 calendar days after the date of notice to elect coverage;

(c) Routinely monitor all school employees work hours to establish eligibility and maintain the employer contribution toward SEBB benefits;

(d) Identify when a previously ineligible school employee becomes eligible or a previously eligible school employee loses eligibility; and

(e) Inform a school employee in writing whether or not they are eligible for SEBB benefits and the employer contribution whenever there is a change in work pattern such that the school employee's eligibility status changes. Whenever this occurs, SEBB organizations must inform the school employee of the right to appeal eligibility and enrollment decisions. A school employee eligible for SEBB benefits must have no less than ((~~ten~~)) 10 calendar days after the date of notice to elect coverage.

(3) SEBB organizations must determine school employee's dependents eligibility for SEBB benefits according to the criteria in WAC 182-31-140.

(4) SEBB organizations must assist a school employee in determining whether the school employee or their dependent has experienced an event that creates a special open enrollment as described in WAC 182-30-090, 182-30-100, 182-31-080, or 182-31-150, and inform the school employee of the changes they can make consistent with that event.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-030, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-030, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-31-030, filed 12/14/18, effective 1/14/19.]

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-31-080 When may a school employee waive enrollment in school employees benefits board (SEBB) medical and when may they enroll in SEBB medical after having waived enrollment? A school employee may waive enrollment in school employees benefits board (SEBB) medical ((~~only~~)) if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (1)(a) through (c) of this section. A school employee who waives enrollment in SEBB medical must enroll in SEBB dental, SEBB vision, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, and employer-paid long-term disability (LTD) insurance. A school employee will also be enrolled in employee-paid LTD insurance automatically unless the school employee declines their employee-paid LTD insurance as described in WAC 182-30-080.

Exception: A school employee may waive their enrollment in SEBB medical to enroll in public employees benefits board (PEBB) medical only if they are enrolled in PEBB dental. A school employee who waives enrollment in SEBB medical to enroll in PEBB medical also waives enrollment in SEBB dental and SEBB vision.

(1) To waive enrollment in SEBB medical, the school employee must submit the required form to their SEBB organization at one of the following times:

(a) **When the school employee becomes eligible:** A school employee may waive SEBB medical when they become eligible for SEBB benefits. The school employee must indicate their election to waive enrollment in SEBB medical on the required form and submit the form to their SEBB organization. The SEBB organization must receive the form no later than 31 days after the date the school employee becomes eligible for SEBB benefits (see WAC 182-30-080). SEBB medical will be waived as of the date the school employee becomes eligible for SEBB benefits.

(b) **During the annual open enrollment:** A school employee may waive SEBB medical during the annual open enrollment. The required form must be received by the school employee's SEBB organization before the end of the annual open enrollment. SEBB medical will be waived beginning January 1st of the following year.

(c) **During a special open enrollment:** A school employee may waive SEBB medical during a special open enrollment only if they are enrolled in other employer-based group medical, a TRICARE plan, or medicare as described in subsection (4) of this section. A special open enrollment event must be an event other than a school employee gaining initial eligibility or regaining eligibility for SEBB benefits.

The school employee must submit the required form to their SEBB organization. The SEBB organization must receive the form no later than 60 days after the event that creates the special open enrollment. In addition to the required form, the school employee must provide evidence of the event that creates the special open enrollment to their SEBB organization.

SEBB medical will be waived the last day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, SEBB medical will be waived the last day of the previous month. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, SEBB medical will be waived the last day of the previous month.

(2) If a school employee waives SEBB medical, the school employee may not enroll dependents in SEBB medical.

(3) Once SEBB medical is waived, the school employee is only allowed to enroll in SEBB medical at the following times:

(a) During the annual open enrollment. The required form must be received by the school employee's SEBB organization before the end of the annual open enrollment. SEBB medical will begin January 1st of the following year.

(b) During a special open enrollment. A special open enrollment allows a school employee to revoke their election and make a new election outside of the annual open enrollment. A special open enrollment may be created when one of the events described in subsection (4) of this section occurs.

The school employee must submit the required form to their SEBB organization. The SEBB organization must receive the form no later than 60 days after the event that creates the special open enrollment. In addition to the required form, the school employee must provide evidence of the event that creates the special open enrollment to the SEBB organization.

SEBB medical will begin the first day of the month following the later of the event date or the date the required form is received. If that day is the first of the month, coverage is effective on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, SEBB medical for the school employee will begin on the first day of the month in which the event occurs. SEBB medical for the newly born child, newly adopted child, spouse, or state-registered domestic partner will begin as described in WAC 182-31-150 (3)(a)(iv).

If a school employee who is eligible for the employer contribution toward SEBB benefits was enrolled as a dependent in PEBB medical and PEBB dental and is removed by the PEBB subscriber, the health care authority will notify the school employee of their removal from the PEBB subscriber's account and that they have experienced a special enrollment event. The school employee will be required to return from waived enrollment and elect SEBB medical, SEBB dental, and SEBB vision. If the school employee's SEBB organization does not receive the school employee's required forms indicating their medical, dental, and vision elections within 60 days of the school employee losing PEBB medical and PEBB dental, they will be defaulted into employee-only SEBB medical, SEBB dental, and SEBB vision as described in WAC 182-30-080 (1)(b)(i) through (iii).

(4) **Special open enrollment:** Any one of the events in (a) through (k) of this subsection may create a special open enrollment that allows the school employee to enroll in SEBB medical after having waived enrollment. The change in enrollment must be allowable under the Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the school employee, the school employee's dependent, or both.

(a) School employee acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the school employee has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

(b) School employee or a school employee's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) School employee has a change in employment status that affects the school employee's eligibility for their employer contribution toward their employer-based group medical;

(d) The school employee's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group medical;

Note: As used in (d) of this subsection "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(e) School employee or a school employee's dependent has a change in enrollment under an employer-based group medical plan during its annual open enrollment that does not align with the SEBB program's annual open enrollment;

(f) School employee's dependent has a change in residence from outside of the United States to within the United States, or from within the United States to outside of the United States and that change in residence results in the dependent losing their health insurance;

(g) A court order requires the school employee or any other individual to provide a health plan for an eligible dependent of the school employee (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) School employee or a school employee's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the school employee or a school employee's dependent loses eligibility for coverage under medicaid or CHIP;

Note: A school employee may only return from having waived SEBB medical for the events described in (h) of this subsection. A school employee may not waive their SEBB medical for the events described in (h) of this subsection.

(i) School employee or a school employee's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(j) School employee or a school employee's dependent becomes eligible and enrolls in a TRICARE plan, or loses eligibility for a TRICARE plan;

(k) School employee becomes eligible and enrolls in medicare, or loses eligibility for medicare.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-168 (Admin #2022-01), § 182-31-080, filed 6/21/22, effective 1/1/23. Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions SEBB 2021-02, 2021-03, 2021-04, 2021-05, 2021-06, 2021-07, 2021-08, 2021-09, 2021-11. WSR 21-13-115 (Admin #2021-01.02), § 182-31-080, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-31-080, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-080, filed 7/1/19, effective 8/1/19.]

WSR 23-14-019
PERMANENT RULES
HEALTH CARE AUTHORITY
(School Employees Benefits Board)
[Admin #2023-02.01—Filed June 23, 2023, 9:21 a.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: The purpose of this proposal is to add a new section to support the school employees benefits board (SEBB) program.

Created WAC 182-31-093 to implement the following SEBB policy resolutions: Policy Resolution SEBB 2023-01 continuation coverage eligibility for nonrepresented educational service district (ESD) school employees not eligible for benefits under the SEBB program; Policy Resolution SEBB 2023-02 continuation coverage for dependents not eligible under the SEBB program; and Policy Resolution SEBB 2023-03 continuation coverage for a nonrepresented school employee's dependent who is already on an ESD's continuation coverage.

Citation of Rules Affected by this Order: New WAC 182-31-093.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Other Authority: Policy Resolutions SEBB 2023-01, 2023-02, and 2023-03.

Adopted under notice filed as WSR 23-10-067 on May 2, 2023.

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

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

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

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

Date Adopted: June 23, 2023.

Wendy Barcus
Rules Coordinator

OTS-4509.2

NEW SECTION

WAC 182-31-093 School employees benefits boards (SEBB) continuation coverage for nonrepresented educational service district (ESD) school employees and their dependents who are not eligible for benefits under the SEBB program as of January 1, 2024, and for dependents who were already on an ESD's or public employees benefits board (PEBB) program's continuation coverage as of December 31, 2023. Nonrepresented educational service district (ESD) school employees and their dependents may gain temporary eligibility for school employees benefits board (SEBB) benefits, on a self-pay basis, if they meet the following criteria:

(1) A nonrepresented ESD school employee and their dependents who are enrolled in medical, dental, or vision under a group plan offered by a SEBB organization on December 31, 2023, who lose eligibility because the school employee is not eligible under WAC 182-30-130 or 182-31-040, may elect to continue existing enrollment in one or more of the following SEBB benefits: Medical, dental, or vision coverage. These benefits will be provided for a maximum of 18 months.

(2) A dependent of a SEBB eligible nonrepresented school employee of an ESD who is enrolled in medical, dental, or vision under a school employee's account on December 31, 2023, who loses eligibility because they are not an eligible dependent under WAC 182-31-140 may continue existing enrollment for a maximum of 36 months.

(3) A dependent of a nonrepresented school employee who is continuing medical, dental, or vision coverage through an ESD on December 31, 2023, may elect to continue existing enrollment to finish out their remaining months, up to the maximum number of months authorized by Consolidated Omnibus Budget Reconciliation Act for a similar event, by enrolling in a medical, dental, or vision plan offered through the SEBB program.

(4) The nonrepresented school employee's or the dependent's election must be received by the SEBB program no later than 60 days after January 1, 2024. If the nonrepresented school employee's or a dependent's monthly premium or applicable premium surcharges remain unpaid for 60 days from the original due date, the nonrepresented school employee's SEBB benefits will be terminated retroactive to the last day of the month for which the monthly premium and applicable premium surcharges were paid as described in WAC 182-30-040 (1)(c).

[]

WSR 23-14-020
PERMANENT RULES
HEALTH CARE AUTHORITY
(School Employees Benefits Board)
[Admin #A2023-02.02—Filed June 23, 2023, 9:32 a.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: The purpose of this proposal is to implement policy resolutions and to make technical amendments to support the school employees benefits board (SEBB) program:

1. Implement SEBB policy resolution: Amended WAC 182-30-085 and 182-30-090 to implement Policy Resolution SEBB 2023-04 when a subscriber has a change in residence or employment location that affects medical plan availability.

2. Make other technical amendments: Amended WAC 182-30-085 to change the title and update subsections' references within the section, and amended WAC 182-30-090 to move the note up to the beginning of subsection (2), clarify when a subscriber may select a dental plan when there is a change in residence, and add a new special enrollment event when the SEBB program determines that there is a substantial decrease in the providers available under a SEBB medical plan.

Citation of Rules Affected by this Order: Amending WAC 182-30-085 and 182-30-090.

Statutory Authority for Adoption: RCW 41.05.021 and 41.05.160.

Other Authority: Policy Resolution SEBB 2023-04.

Adopted under notice filed as WSR 23-10-068 on May 2, 2023.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, 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 23, 2023.

Wendy Barcus
Rules Coordinator

OTS-4507.2

AMENDATORY SECTION (Amending WSR 20-16-067, filed 7/28/20, effective 8/28/20)

WAC 182-30-085 What happens if my health plan becomes unavailable ((~~due to a change in contracted service area or eligibility for medicare~~))? (1) A subscriber must select a new health plan when their previously selected health plan becomes unavailable due to a change in contracting service area as described below:

(a) When a health plan becomes unavailable during the plan year, a subscriber must elect a new health plan no later than ((~~sixty~~)) 60 days after the date their previously selected health plan becomes unavailable.

(i) A school employee must submit the required form to their school employees benefits board (SEBB) organization electing their new health plan.

(ii) All other subscribers must submit the required forms to the SEBB program electing their new health plan.

(iii) The effective date of the change in health plan will be the first day of the month following the later of the date the health plan becomes unavailable or the date the form is received. If that day is the first of the month, the change in health plans begins on that day.

(b) When a health plan becomes unavailable at the beginning of the next plan year, a subscriber must elect a new health plan no later than the last day of the SEBB annual open enrollment.

(i) A school employee must submit the required forms to their SEBB organization electing their new health plan.

(ii) Any other subscriber must submit the required forms to the SEBB program electing their new health plan.

(iii) The effective date of the change in health plan will be January 1st of the following year.

(c) A subscriber who fails to elect a new health plan within the required time period as required in (a) or (b) of this subsection will be enrolled in a health plan designated by the director or their designee.

(2) A subscriber must elect a new health plan when their previously selected health plan becomes unavailable due to the subscriber or subscriber's dependent ceasing to be eligible for their current health plan because of enrollment in medicare as described below:

(a) The required forms electing a new health plan must be received no later than ((~~sixty~~)) 60 days after the date their previously selected health plan becomes unavailable.

((~~(b)~~)) (i) A school employee must submit the required forms to their SEBB organization electing their new health plan.

((~~(c)~~)) (ii) All other subscribers must submit the required forms to the SEBB program electing their new health plan.

((~~(d)~~)) (iii) The effective date of the change in their health plan will be the first day of the month following the later of the date the health plan becomes unavailable or the date the form is received. If that day is the first of the month, the change in the health plan begins on that day.

((~~(e)~~)) (b) A subscriber who is enrolled in a high deductible health plan (HDHP) with a health savings account (HSA), will not be eligible to receive contributions to the HSA, and will be liable for any tax penalties resulting from contributions made when they are no longer eligible.

(3) A subscriber must elect a new medical plan when their previously selected medical plan becomes unavailable due to a change in their residence or employment location as described below:

(a) When a subscriber's medical plan becomes unavailable during the plan year, a subscriber must elect a new medical plan no later than 60 days after the date their previously selected medical plan becomes unavailable as described in WAC 182-30-090 (2)(d) or (f).

(i) A school employee must submit the required forms to their SEBB organization electing their new medical plan.

(ii) Any other subscriber must submit the required forms to the SEBB program electing their new medical plan.

(iii) The effective date of the change in medical plan will be the first day of the month following the later of the date the medical plan becomes unavailable or the date the form is received. If that day is the first of the month, the change in medical plan begins on that day.

(b) A subscriber who fails to elect a new medical plan within the required time period as required in (a) of this subsection will be enrolled in a school employees benefits board medical plan designated by the director or their designee.

(4) A subscriber enrolled in a health plan as described in subsection (1)(c) ((~~or (2)(e)~~)), (2)(b), or (3)(b) of this section may not change health plans except as allowed in WAC 182-30-090.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-085, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-085, filed 7/1/19, effective 8/1/19.]

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-30-090 When may a subscriber change health plans? A subscriber may change health plans at the following times:

(1) **During the annual open enrollment:** A subscriber may change health plans during the school employees benefits board (SEBB) annual open enrollment period. The subscriber must submit the required enrollment forms to change their health plan. A school employee submits the enrollment forms to their SEBB organization. A subscriber on continuation coverage submits the enrollment forms to the SEBB program. The required enrollment forms must be received no later than the last day of the annual open enrollment. Enrollment in the new health plan will begin January 1st of the following year.

(2) **During a special open enrollment:** A subscriber may revoke their health plan election and make a new election outside of the annual open enrollment if a special open enrollment event occurs. A special open enrollment event must be an event other than a school employee gaining initial eligibility for SEBB benefits as described in WAC 182-31-040 or regaining eligibility for SEBB benefits as described in WAC 182-30-080. The change in enrollment must be allowable under Internal Revenue Code (IRC) and Treasury regulations, and correspond to and be consistent with the event that creates the special open enrollment for the subscriber, the subscriber's dependent, or both.

A subscriber may not change their health plan during a special open enrollment if their state registered domestic partner or state registered domestic partner's child is not a tax dependent. A subscriber may change their health plan as described in subsection (1) of this section.

To make a health plan change, a subscriber must submit the required enrollment forms. The forms must be received no later than 60 days after the event occurs. A school employee submits the enrollment forms to their SEBB organization. A subscriber on continuation coverage submits the enrollment forms to the SEBB program. In addition to

the required forms, a subscriber must provide evidence of the event that created the special open enrollment. New health plan coverage will begin the first day of the month following the later of the event date or the date the form is received. If that day is the first of the month, the change in enrollment begins on that day. If the special open enrollment is due to the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption of a child, health plan coverage will begin the month in which the birth, adoption, or assumption of legal obligation for total or partial support in anticipation of adoption occurs. If the special open enrollment is due to the enrollment of an extended dependent or a dependent with a disability, the change in health plan coverage will begin the first day of the month following the later of the event date or the eligibility certification. Any one of the following events may create a special open enrollment:

(a) Subscriber acquires a new dependent due to:

(i) Marriage or registering a state registered domestic partnership;

(ii) Birth, adoption, or when the subscriber has assumed a legal obligation for total or partial support in anticipation of adoption; or

(iii) A child becoming eligible as an extended dependent through legal custody or legal guardianship.

((**Note:** ~~A subscriber may not change their health plan if their state registered domestic partner or state registered domestic partner's child is not a tax dependent.~~))

(b) Subscriber or a subscriber's dependent loses other coverage under a group health plan or through health insurance coverage, as defined by the Health Insurance Portability and Accountability Act (HIPAA);

(c) Subscriber has a change in employment status that affects the subscriber's eligibility for the employer contribution toward their employer-based group health plan;

(d) Subscriber has a change in employment ((~~from a SEBB organization to a public school district that results in the subscriber having different medical plans available. The subscriber may change their election if the change in employment causes:~~

~~(i) The subscriber's current medical plan to no longer be available, in this case the subscriber may select from any available medical plan; or~~

~~(ii)~~)) location that affects medical plan availability. If the subscriber changes employment locations and the subscriber's current medical plan is no longer available, the subscriber must select a new medical plan as described in WAC 182-30-085(3). If the subscriber has one or more new medical plans available, ((~~in this case~~)) the subscriber may select to enroll in a newly available plan.

((~~(iii) As used in this subsection the term "public school district" shall be interpreted to not include charter schools and educational service districts.~~))

(e) The subscriber's dependent has a change in their own employment status that affects their eligibility or their dependent's eligibility for the employer contribution under their employer-based group health plan;

Note: As used in (e) of this subsection "employer contribution" means contributions made by the dependent's current or former employer toward health coverage as described in Treasury Regulation 26 C.F.R. 54.9801-6.

(f) Subscriber or a subscriber's dependent has a change in residence that affects health plan availability.

(i) If the subscriber ((~~moves~~)) has a change in residence and the subscriber's current ((~~health~~)) medical plan is ((~~not~~)) no longer available ((~~in the new location~~)), the subscriber must select a new ((~~health plan, otherwise there will be limited accessibility to network providers and covered services;~~

~~Exception:~~ ~~A dental plan is considered available if a provider is located within 50 miles of the subscriber's new residence.~~)) medical plan, as described in WAC 182-30-085(3).

(ii) If the subscriber or the subscriber's dependent has a change in residence and the subscriber's current dental plan does not have available providers within 50 miles of the subscriber or the subscriber's dependent's new residence, the subscriber may select a new dental plan.

(g) A court order requires the subscriber or any other individual to provide insurance coverage for an eligible dependent of the subscriber (a former spouse or former state registered domestic partner is not an eligible dependent);

(h) Subscriber or a subscriber's dependent enrolls in coverage under medicaid or a state children's health insurance program (CHIP), or the subscriber or a subscriber's dependent loses eligibility for coverage under medicaid or CHIP;

(i) Subscriber or a subscriber's dependent becomes eligible for state premium assistance subsidy for SEBB health plan coverage from medicaid or CHIP;

(j) Subscriber or a subscriber's dependent enrolls in coverage under medicare, or the subscriber or a subscriber's dependent loses eligibility for coverage under medicare. If the subscriber's current medical plan becomes unavailable due to the subscriber's or a subscriber's dependent's enrollment in medicare, the subscriber must select a new medical plan as described in WAC 182-30-085(2);

(k) Subscriber or a subscriber's dependent's current medical plan becomes unavailable because the subscriber or enrolled dependent is no longer eligible for a health savings account (HSA). The authority may require evidence that the subscriber or subscriber's dependent is no longer eligible for an HSA;

(l) Subscriber or a subscriber's dependent experiences a disruption of care for active and ongoing treatment that could function as a reduction in benefits for the subscriber or the subscriber's dependent. The subscriber may not change their health plan election if the subscriber's or dependent's physician stops participation with the subscriber's health plan unless the SEBB program determines that a continuity of care issue exists. The SEBB program will consider but not limit its consideration to the following:

(i) Active cancer treatment such as chemotherapy or radiation therapy;

(ii) Treatment following a recent organ transplant;

(iii) A scheduled surgery;

(iv) Recent major surgery still within the postoperative period; or

(v) Treatment for a high-risk pregnancy.

(m) The SEBB program determines that there has been a substantial decrease in the providers available under a SEBB medical plan.

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

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-168 (Admin #2022-01), § 182-30-090, filed 6/21/22, effective 1/1/23; WSR 21-13-117 (Admin #2021-01.04), § 182-30-090, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and 2020 c 231. WSR 20-16-067 (Admin #2020-04), § 182-30-090, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160 and 2018 c 260. WSR 20-01-082, § 182-30-090, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-090, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-30-090, filed 12/14/18, effective 1/14/19.]

WSR 23-14-021
PERMANENT RULES
HEALTH CARE AUTHORITY
(School Employees Benefits Board)
[Admin #2023-02.03—Filed June 23, 2023, 9:37 a.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: The purpose of adoption is to amend some of the existing rules to support the school employees benefits board (SEBB) program:

1. Implement SEBB policy resolution: Amended WAC 182-30-060 and 182-31-040 to add language related to Policy Resolution SEBB 2022-01 when school employees returning to work from active duty.

2. Make technical amendments: Amended WAC 182-30-060 to clarify the enrollment is effective when the school employee regained eligibility for basic life, basic accidental death and dismemberment (AD&D), employer-paid long-term disability (LTD) insurance, and employer-paid LTD insurance, supplement [supplemental] life and supplemental AD&D.

Citation of Rules Affected by this Order: Amending WAC 182-30-060 and 182-31-040.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy Resolution SEBB 2022-01.

Adopted under notice filed as WSR 23-10-073 on May 2, 2023.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, 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 23, 2023.

Wendy Barcus
Rules Coordinator

OTS-4553.1

AMENDATORY SECTION (Amending WSR 22-13-168, filed 6/21/22, effective 1/1/23)

WAC 182-30-060 How do school employees benefits board (SEBB) organizations and contracted vendors correct enrollment errors? (1) A school employees benefits board (SEBB) organization or contracted vendor that makes one or more of the following enrollment errors must correct the error as described in subsections (2) through (5) of this section.

(a) Failure to timely notify a school employee of their eligibility for SEBB benefits and the employer contribution as described in WAC 182-31-030;

(b) Failure to enroll a school employee or their dependents in SEBB benefits as elected by the school employee, if the election was timely;

(c) Failure to enroll a school employee and their dependents in SEBB benefits as described in WAC 182-30-080 (1)(b);

(d) Failure to accurately reflect a school employee's premium surcharge attestation on the school employee's account;

(e) Enrolling a school employee or their dependents in SEBB insurance coverage when they are not eligible as described in WAC 182-31-040 or 182-31-140 and it is clear there was no fraud or intentional misrepresentation by the school employee involved; or

(f) Providing incorrect information, via a benefits administrator or contracted vendor, regarding SEBB benefits to the school employee that they relied upon.

(2) The SEBB organization or the applicable contracted vendor must enroll the school employee and the school employee's dependents, as elected, or terminate enrollment in SEBB benefits as described in subsection (3) of this section, reconcile premium payments and applicable premium surcharges as described in subsection (4) of this section, and provide recourse as described in subsection (5) of this section.

(3) **Enrollment or termination.**

(a) SEBB medical, vision, and dental enrollment is effective the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (5) of this section;

Exception: When a school employee who is called to active duty in the uniformed services under Uniformed Services Employment and Reemployment Rights Act (USERRA) loses eligibility for the employer contribution toward SEBB benefits, they regain eligibility for the employer contribution toward SEBB benefits the day they return from active duty. Employer-paid SEBB benefits will begin the first day of the month in which they return from active duty.

(b) Basic life, basic accidental death and dismemberment (AD&D), employer-paid long-term disability (LTD) insurance, and employee-paid LTD insurance (unless the school employee declines the employee-paid LTD insurance as described in WAC 182-30-080(1)) enrollment is retroactive to the first day of the month following the day the school employee became newly eligible, or the first day of the month following the date the school employee regained eligibility, as described in WAC 182-30-080;

Exception: When a school employee who is called to active duty in the uniformed services under USERRA loses eligibility for the employer contribution toward SEBB benefits, they regain eligibility for the employer contribution toward SEBB benefits the day they return from active duty. Employer-paid SEBB benefits will begin the first day of the month in which they return from active duty.

(c) Supplemental life, supplemental AD&D, and employee-paid LTD insurance enrollment is retroactive to the first day of the month following the day the school employee became newly eligible if the school employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date on the school employee's application for this coverage). If a SEBB organization enrollment error occurred when the school employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-30-080(3):

(i) Supplemental life and supplemental AD&D is enrolled the first day of the month following the date the school employee regained eligibility, at the same level of coverage the school employee continued during the period of leave, without evidence of insurability.

(ii) If the school employee was eligible to continue supplemental life insurance and supplemental AD&D insurance during the period of leave but did not, the school employee must provide evidence of insurability and receive approval from the contracted vendor.

(iii) School employees may not continue employee-paid LTD insurance while on leave without pay as described in WAC 182-31-100. Employee-paid LTD insurance is reinstated the first day of the month following the date the school employee regains eligibility, to the level of coverage the school employee was enrolled in prior to the period of leave, without evidence of insurability.

(d) If the school employee is eligible and elects (or elected) to enroll in the medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP), enrollment is limited to 60 days prior to the date enrollment is processed, but not earlier than the current plan year. If a school employee was not enrolled in a medical FSA, limited purpose FSA, or DCAP as elected, the school employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect;

(e) If the school employee or their dependent was not eligible but still enrolled as described in subsection (1)(e) of this section, the employee's or their dependent's SEBB benefits will be terminated prospectively effective as of the last day of the month.

(4) **Premium payments.**

(a) The SEBB organization must remit to the authority the employer contribution and the school employee contribution for health plan premiums, applicable premium surcharges, basic life, basic AD&D, and employer-paid LTD insurance starting the date SEBB benefits begin as described in subsections (3) and (5)(a)(i) of this section. If a SEBB organization failed to notify a newly eligible school employee of their eligibility for SEBB benefits, the SEBB organization may only collect the school employee contribution for health plan premiums and applicable premium surcharges for coverage for the months after the school employee was notified.

(b) When a SEBB organization fails to correctly enroll the amount of employee-paid LTD insurance elected by the school employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the school employee is responsible for premiums for the most recent 24 months of coverage. The SEBB organization is responsible for additional months of premiums; and

(ii) When a premium refund is due to the school employee, the LTD insurance contracted vendor is responsible for premium refunds for the most recent 24 months of coverage. The SEBB organization is responsible for additional months of premium refunds after the 24 months of coverage and the overall refunding process to the school employee.

(c) When a SEBB organization mistakenly enrolls a school employee or their dependents as described in subsection (1)(e) of this section, premiums and any applicable premium surcharges will be refunded by the SEBB organization to the school employee without rescinding the insurance coverage.

(5) **Recourse.**

(a) School employee eligibility for SEBB benefits begins on the first day of the month following the date eligibility is established or the first day of work for school employees who start on or before the first day of school as described in WAC 182-31-040. Dependent eli-

gibility is described in WAC 182-31-140, and dependent enrollment is described in WAC 182-31-150. When retroactive correction of an enrollment error is limited as described in subsection (3)(b), (c), and (d) of this section, the SEBB organization must work with the school employee, and receive approval from the authority, to implement retroactive SEBB benefits within the following parameters:

(i) Retroactive enrollment in a SEBB insurance coverage;

(ii) Reimbursement of claims paid;

(iii) Reimbursement of amounts paid by the school employee or dependent for medical, vision, and dental premiums;

(iv) Reimbursement of amounts paid by the school employee for the premium surcharges;

(v) Other legal remedy received or offered; or

(vi) Other recourse, upon approval by the authority.

(b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for noncovered services or in the case of an individual who is not eligible for SEBB benefits.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-168 (Admin #2022-01), § 182-30-060, filed 6/21/22, effective 1/1/23. Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions SEBB 2021-11 and 2021-12. WSR 21-13-116 (Admin #2021-01.03), § 182-30-060, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolution 2020-06. WSR 20-16-066 (Admin #2020-03), § 182-30-060, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-30-060, filed 7/1/19, effective 8/1/19.]

OTS-4560.1

AMENDATORY SECTION (Amending WSR 21-13-116, filed 6/21/21, effective 1/1/22)

WAC 182-31-040 How do school employees establish eligibility for the employer contribution toward school employees benefits board (SEBB) benefits and when do SEBB benefits begin? (1) Eligibility shall be determined solely by the criteria that most closely describes the school employee's work circumstance.

(2) All hours worked by an employee in their capacity as a school employee must be included in the calculation of hours for determining eligibility. All hours for which a school employee receives compensation from a school employees benefits board (SEBB) organization during an approved leave (e.g., sick leave, personal leave, bereavement leave) or a paid holiday must be included when determining how many hours a school employee is anticipated to work, or did work, in the school year.

(3) A school employee may establish eligibility for the employer contribution toward SEBB benefits by stacking of hours from multiple positions within one SEBB organization. A school employee may not gain eligibility by stacking of hours from multiple SEBB organizations.

(4) School employee eligibility criteria shall be determined in the following order:

(a) A school employee is eligible for the employer contribution toward SEBB benefits if they are anticipated to work at least ((~~six hundred thirty~~)) 630 hours per school year. The eligibility effective date shall be determined as follows:

(i) If the school employee's first day of work is on or after September 1st but not later than the first day of school for the current school year as established by the SEBB organization, they are eligible for the employer contribution on the first day of work; or

(ii) If the school employee's first day of work is at any other time during the school year, they are eligible for the employer contribution on that day.

(b) A school employee is presumed eligible for the employer contribution at the start of the school year, as described in (a) of this subsection, if they:

(i) Worked at least ((~~six hundred thirty~~)) 630 hours in each of the previous two school years; and

(ii) Are returning to the same type of position (teacher, paraeducator, food service worker, custodian, etc.) or combination of positions with the same SEBB organization.

Note: A SEBB organization rebuts this presumption by notifying the school employee, in writing, of the specific reasons why the school employee is not anticipated to work at least ((~~six hundred thirty~~)) 630 hours in the current school year and how to appeal the eligibility determination.

(c) A school employee who is not anticipated to work ((~~six hundred thirty~~)) 630 hours within the school year because of the time of year they are hired but is anticipated to work at least ((~~six hundred thirty~~)) 630 hours the next school year, establishes eligibility for the employer contribution toward SEBB benefits as of their first working day if they are:

(i) A nine to ((~~ten~~)) 10 month school employee anticipated to be compensated for at least ((~~seventeen and one-half~~)) 17.5 hours a week in six of the last eight weeks counting backwards from the week that contains the last day of school; or

(ii) A ((~~twelve~~)) 12 month school employee anticipated to be compensated for at least ((~~seventeen and one-half~~)) 17.5 hours a week in six of the last eight weeks counting backwards from the week that contains August 31st, the last day of the school year.

(d) A school employee who returns from approved leave without pay will maintain or establish eligibility for the employer contribution toward SEBB benefits if their work schedule, had it been in effect at the start of the school year, would have resulted in the school employee being anticipated to work the minimum hours to meet SEBB eligibility for the employer contribution in the school year. A school employee who regains eligibility under this subsection, establishes eligibility for the employer contribution toward SEBB benefits as of the date they returned from approved leave without pay.

(5) A school employee who is not anticipated to work at least ((~~six hundred thirty~~)) 630 hours in the school year as described in subsection (4)(a) of this section, may later be eligible for SEBB benefits when:

(a) Their work pattern is revised in such a way that they are now anticipated to work ((~~six hundred thirty~~)) 630 hours in the school year. The school employee becomes eligible for the employer contribution toward SEBB benefits on the date their work pattern is revised; or

(b) They actually worked ((~~six hundred thirty~~)) 630 hours in the school year. The school employee becomes eligible for the employer contribution toward SEBB benefits on the date they actually worked ((~~six hundred thirty~~)) 630 hours.

(6) If the school employee is not eligible under subsection (4) or (5) of this section, they may be eligible for SEBB benefits if their SEBB organization is engaging in local negotiations regarding eligibility for school employees as described in WAC 182-30-130.

(7) When SEBB benefits begin:

(a) For a school employee who establishes eligibility under subsection (4)(a)(i) of this section, medical, dental, vision, basic life insurance, basic accidental death and dismemberment (AD&D) insurance, employer-paid long-term disability (LTD) insurance, employee-paid LTD insurance (unless the school employee declines the employee-paid LTD insurance as described in WAC 182-30-080(1)), and if eligible, benefits under the salary reduction plan begin on the first day of work for the new school year. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

(b) For a school employee who establishes eligibility under subsection (4)(a)(ii), (c), (d), or (5) of this section, medical, dental, vision, basic life insurance, basic AD&D insurance, employer-paid LTD insurance, employee-paid LTD insurance (unless the school employee declines the employee-paid LTD insurance as described in WAC 182-30-080(1)), and if eligible, benefits under the salary reduction plan begin on the first day of the month following the date the school employee becomes eligible for the employer contribution toward SEBB benefits. Supplemental life insurance and supplemental AD&D insurance begin on the first day of the month following the date the contracted vendor receives the required form or approves the enrollment.

Exceptions: (1) When a school employee establishes eligibility for the employer contribution toward SEBB benefits as described under subsection (4)(d) or (5) of this section, at any time in the month of August, SEBB benefits begin on September 1st only if the school employee is also determined to be eligible for the employer contribution toward SEBB benefits for the school year that begins on September 1st. (2) When a school employee who is called to active duty in the uniformed services under Uniformed Services Employment and Reemployment Rights Act (USERRA) loses eligibility for the employer contribution toward SEBB benefits, they regain eligibility for the employer contribution toward SEBB benefits the day they return from active duty. Employer-paid SEBB benefits will begin the first day of the month in which they return from active duty (see WAC 182-30-080(3)).

[Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions SEBB 2021-11 and 2021-12. WSR 21-13-116 (Admin #2021-01.03), § 182-31-040, filed 6/21/21, effective 1/1/22. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions 2020-01, 2020-02, and 2020-05. WSR 20-16-064 (Admin #2020-01), § 182-31-040, filed 7/28/20, effective 8/28/20. Statutory Authority: RCW 41.05.021, 41.05.160, 2017 3rd sp.s. c 13, 2018 c 260, and SEBB policy resolutions. WSR 19-14-093 (Admin #2019-01), § 182-31-040, filed 7/1/19, effective 8/1/19. Statutory Authority: RCW 41.05.021, 41.05.160 and SEBB policy resolutions. WSR 19-01-055 (Admin #2018-01), § 182-31-040, filed 12/14/18, effective 1/14/19.]

WSR 23-14-029
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed June 26, 2023, 10:16 a.m., effective July 27, 2023]

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

Purpose: Amending WAC 388-76-10350 Assessment—Updates required, 388-78A-2100 Ongoing assessments, and 388-107-0080 Ongoing comprehensive assessments; and adding new WAC 388-76-10351, 388-78A-2101, and 388-107-0081 to codify the timeline and requirements established under emergency rules in effect during the COVID-19 public health emergency.

Citation of Rules Affected by this Order: New WAC 388-76-10351, 388-78A-2101 and 388-107-0081; and amending WAC 388-76-10350, 388-78A-2100, and 388-107-0080.

Statutory Authority for Adoption: Chapter 18.51 RCW.

Adopted under notice filed as WSR 23-07-076 on March 13, 2023.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 1, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 2, Repealed 0.

Date Adopted: June 23, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4914.5

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10350 Assessment—Updates required. (1) The department amended portions of this rule from January 18, 2022, through June 8, 2023, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-76-10351.

(2) The adult family home must ensure each resident's assessment is reviewed and updated to document the resident's ongoing needs and preferences as follows:

((~~(1)~~)) (a) When there is a significant change in the resident's physical or mental condition;

((~~(2)~~)) (b) When the resident's negotiated care plan no longer reflects the resident's current status, needs, and preferences;

((~~(3)~~)) (c) At the resident's request or at the request of the resident's representative; or

((~~(4)~~)) (d) At least every ((~~twelve~~)) 12 months.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10350, filed 10/16/07, effective 1/1/08.]

NEW SECTION

WAC 388-76-10351 Assessment—Updates required—Requirements in effect from January 18, 2022, through June 8, 2023, in response to the state of emergency related to COVID-19. (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.320 on January 18, 2022, to amend a portion of WAC 388-76-10350. The emergency rules remained in effect until June 8, 2023. The amended rules in place at that time were:

(2) The adult family home must ensure each resident's assessment is reviewed and updated to document the resident's ongoing needs and preferences as follows:

(a) When there is a significant change in the resident's physical or mental condition;

(b) When the resident's negotiated care plan no longer reflects the resident's current status, needs, and preferences;

(c) At the resident's request or at the request of the resident's representative; or

(d) At least every 12 months, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency.

[]

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2100 ((~~On-going~~)) Ongoing assessments. (1) The department amended portions of this rule from January 18, 2022, through June 8, 2023, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-78A-2101.

(2) The assisted living facility must:

((~~(1)~~)) (a) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually;

((~~(2)~~)) (b) Complete an assessment specifically focused on a resident's identified problems and related issues:

((~~(a)~~)) (i) Consistent with the resident's change of condition as specified in WAC 388-78A-2120;

((~~(b)~~)) (ii) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;

((~~(c)~~)) (iii) When the resident has an injury requiring the intervention of a practitioner.

((~~(3)~~)) (c) Ensure the staff person performing the ((~~on-going~~)) ongoing assessments is qualified to perform them.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2100, filed 6/18/13, effective 7/19/13. Statutory Authority: RCW 18.20.090. WSR 06-01-047, § 388-78A-2100, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. WSR 04-16-065, § 388-78A-2100, filed 7/30/04, effective 9/1/04.]

NEW SECTION

WAC 388-78A-2101 Ongoing assessments—Requirements in effect from January 18, 2022, through June 8, 2023, in response to the state of emergency related to COVID-19. (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.320 on January 18, 2022, to amend a portion of WAC 388-78A-2100. The emergency rules remained in effect until June 8, 2023. The amended rules in place at that time were:

(2) The assisted living facility must:

(a) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency;

(b) Complete an assessment specifically focused on a resident's identified problems and related issues:

(i) Consistent with the resident's change of condition as specified in WAC 388-78A-2120;

(ii) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;

(iii) When the resident has an injury requiring the intervention of a practitioner.

(c) Ensure the staff person performing the ongoing assessments is qualified to perform them.

[]

AMENDATORY SECTION (Amending WSR 16-14-078, filed 7/1/16, effective 8/1/16)

WAC 388-107-0080 Ongoing comprehensive assessments. (1) The department amended portions of this rule from January 18, 2022, through June 8, 2023, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-107-0081.

(2) The enhanced services facility must:

((~~(1)~~)) (a) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070, upon a significant change in the resident's condition or at least every 180 days if there is no significant change in condition;

((~~(2)~~)) (b) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations, and related issues:

((~~(a)~~)) (i) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

((~~(b)~~)) (ii) When the resident's person-centered service plan no longer addresses the resident's current needs and preferences; and

((~~(c)~~)) (iii) When the resident has an injury requiring the intervention of a practitioner;

((~~(3)~~)) (c) Review each resident's needs to evaluate discharge or transfer options when the resident:

((~~(a)~~)) (i) No longer needs the level of behavioral support provided by the facility; or

((~~(b)~~)) (ii) Expresses the desire to move to a different type of community based setting;

((~~(4)~~)) (d) Ensure that the person-centered service planning team discusses all available placement options; and

((~~(5)~~)) (e) Ensure the staff person performing the ongoing assessments is a qualified assessor.

[Statutory Authority: RCW 70.97.230 and HCBS Final Rule 42 C.F.R. WSR 16-14-078, § 388-107-0080, filed 7/1/16, effective 8/1/16. Statutory Authority: Chapter 70.97 RCW. WSR 14-19-071, § 388-107-0080, filed 9/12/14, effective 10/13/14.]

NEW SECTION

WAC 388-107-0081 Ongoing comprehensive assessments—Requirements in effect from January 18, 2022, through June 8, 2023, in response to the state of emergency related to COVID-19. (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.320 on January 18, 2022, to amend a portion of WAC 388-107-0080. The emergency rules remained in effect until June 8, 2023. The amended rules in place at that time were:

(2) The enhanced services facility must:

(a) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070 on the following timelines:

(i) Upon a significant change in the resident's condition; or

(ii) At least every 180 days if there is no significant change in condition, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency.

(b) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations, and related issues:

(i) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

(ii) When the resident's person-centered service plan no longer addresses the resident's current needs and preferences; and

(iii) When the resident has an injury requiring the intervention of a practitioner;

(c) Review each resident's needs to evaluate discharge or transfer options when the resident:

(i) No longer needs the level of behavioral support provided by the facility; or

(ii) Expresses the desire to move to a different type of community based setting;

(d) Ensure that the person-centered service planning team discusses all available placement options; and

(e) Ensure the staff person performing the ongoing assessments is a qualified assessor.

[]

WSR 23-14-042
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed June 27, 2023, 8:25 a.m., effective July 17, 2023]

Effective Date of Rule: July 17, 2023.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This rule will become effective July 17, 2023, to ensure outdoor workers are adequately protected from the hazards associated with exposure to high ambient outdoor temperatures; it's necessary for the preservation of public health, safety, and welfare.

Purpose: On June 28, 2021, the department of labor and industries (L&I) received a petition for rule making requesting changes to L&I's rules to include more specific requirements to prevent heat-related illness and injury. The petition for rule making was accepted, recognizing the need to reexamine the current rules, especially in light of information suggesting the occurrence of heat illnesses below the current trigger temperatures and the increasing temperatures experienced in our state since the rule was first established in 2008.

L&I filed emergency rules related to outdoor ambient heat in the summer of 2021 and 2022 to protect outdoor workers from heat-related illnesses due to outdoor heat exposure. The current rules do not affirmatively address preventative measures to avoid overheating other than access to drinking water. The hazards of heat are well documented and research suggests the occurrence of heat-related illnesses below the current trigger temperatures. Research also documents increased temperatures in Washington since the rule was first established.

WAC 296-62-09510 and 296-307-09710 Outdoor heat exposure. Sets scope of the rule to apply to all outdoor work environments year-around rather than May through September. Removed redundant WAC citations. Scope no longer supplements or applies to chapter 296-305 WAC, Safety standards for firefighters.

WAC 296-62-09520 and 296-307-09720 Definitions. All definitions were numerated to aid in cross-referencing.

- Broadened definition of "acclimatization" to include period of time required to become acclimatized and when acclimatization can be lost.
- Added definition for "buddy system."
- Removed definition for "double-layer woven clothing" as it is no longer a key in trigger temperature table.
- Clarified definition of "drinking water" to be suitably cool in temperature.
- Clarified definition of "engineering controls" to be devices used to reduce heat exposure and aid in cooling, not including wearable items.
- Removed definition for "environmental factors for heat-related illness."
- Removed sentence in "outdoor environment" definition regarding construction activity that may be contradictory.
- Added definition for "risk factors for heat-related illness."
- Added definition for "shade."
- In "vapor barrier clothing" definition, replaced "nonbreathing" with "nonbreathable."

WAC 296-62-09530 and 296-307-09730 Employer and employee responsibility. Adds prescriptive requirements for the outdoor heat exposure safety plan. Adds requirement for preventative cool-down rest periods when employees begin to feel overheated. Adds Table 1 with trigger temperatures of 52°F and 80°F depending on clothing worn and PPE used. Specifies that employees must be allowed and encouraged to take a preventative cool-down rest in the shade or using another means provided by the employer to reduce body temperature when they feel the need to do so to protect themselves from overheating. Finally, adds employee requirement to take preventative cool-down rest periods when they begin to feel overheated.

New WAC 296-62-09535 and 296-307-09735 Access to shade. Adds requirement to provide one or more areas of shade for employees that is large enough to accommodate all employees during a meal or rest period that is not otherwise required to be compensated. The provided shade must also be as close as practicable to areas where employees are working. The rule also provides alternatives employers may use in lieu of shade.

WAC 296-62-09540 and 296-307-09740 Drinking water. Adds clarification that drinking water must be suitably cool in temperature which has been standard under department of operational safety and health (DOSH) Directive 10.15.

New WAC 296-62-09545 and 296-307-09745 Acclimatization. Adds requirement for observation for up to 14 days for newly assigned employees to ensure employees become accustomed to working at various temperatures. Adds definition of "heat wave" and adds requirement for close observation during the heat wave. Provides a "Note" that employers may consider additional acclimatization procedures recommended by National Institute for Occupational Safety and Health.

New WAC 296-62-09547 and 296-307-09747 High heat procedures. Adds requirement for rest periods when temperatures exceed 90°F or 100°F according to new Table 2. Adds requirement to closely observe employees for signs and symptoms of heat-related illness at and above 90°F. Provides exclusion for emergency response operations from mandatory cool-down rest periods in Table 2 when restoring or maintaining critical infrastructure at risk.

WAC 296-62-09550 and 296-307-09750 Responding to signs and symptoms of heat-related illness. Adds requirement for employers to ensure there is means for effective communication between employees and supervisors.

WAC 296-62-09560 and 296-307-09760 Information and training. Adds requirement for training to be effective and performed prior to outdoor work when occupational exposure to heat might occur. Adds defined environmental factors and other work conditions that may contribute to heat-related illness. Adds physical fitness, previous heat-related illness and pregnancy as conditions that may contribute to heat-related illness. Removed caffeine use and nicotine use as contributors to heat-related illness.

Adds the importance of acclimatization and considerations for cool-down rest periods, gradual increase of work in the heat and importance that employees are unable to build tolerance to working in the heat. Adds the importance of taking preventative cool-down rest periods, and mandatory rest periods when temperatures exceed 90°F. Adds training requirement for procedures for shade or other means to reduce body temperature, and employer's procedures for close observation of employees. Finally, adds the importance of considering the use of engineering or administrative controls to reduce exposure.

Citation of Rules Affected by this Order: New WAC 296-62-09535, 296-62-09545, 296-62-09547, 296-307-09735, 296-307-09745 and 296-307-09747; and amending WAC 296-62-09510, 296-62-09520, 296-62-09530, 296-62-09540, 296-62-09550, 296-62-09560, 296-307-09710, 296-307-09720, 296-307-09730, 296-307-09740, 296-307-09750, and 296-307-09760.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 23-07-123 on March 21, 2023 [and 23-13-038 on June 12, 2023].

Changes Other than Editing from Proposed to Adopted Version: **WAC 296-62-09510 and 296-307-09710 Outdoor heat exposure.** Scope no longer supplements or applies to chapter 296-305 WAC, Safety standards for firefighters.

WAC 296-62-09520 and 296-307-09720 Definitions. Definition of "engineering controls" now clarifies this does not include wearable items.

WAC 296-62-09530 and 296-307-09730 Employer and employee responsibility. Clarified the preventative cool-down rest period must be paid unless taken during a meal period that is not otherwise required to be compensated.

WAC 296-62-09547 and 296-307-09747 High heat procedures. Provides an exemption for emergency response operations from mandatory cool-down rest periods in Table 2 when aiding firefighting, protecting public health and safety, or restoring or maintaining critical infrastructure at risk. Employees under this exemption must still be permitted to take preventative cool-down rest periods when they think they need to. Clarified the mandatory cool-down rest period must be paid unless taken during a meal period that is not otherwise required to be compensated.

WAC 296-62-09560 and 296-307-09760 Information and training. Added training must include appropriate first aid as well as emergency response procedures.

A final cost-benefit analysis is available by contacting Carmyn Shute, Administrative Regulations Analyst, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@Lni.wa.gov, website https://lni.wa.gov/safety-health/safety-rules/rulemaking-stakeholder-information/ambient-heat-exposure-rulemaking.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 6, Amended 12, 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 6, Amended 12, 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, 2023.

Joel Sacks
Director

OTS-4162.7

AMENDATORY SECTION (Amending WSR 19-01-094, filed 12/18/18, effective 1/18/19)

WAC 296-62-09510 Scope and purpose. ((~~(1)~~)) WAC 296-62-095 through 296-62-09560:

(1) Applies to all employers with employees performing work in an outdoor environment.

(2) ((~~The requirements of WAC 296-62-095 through 296-62-09560 apply~~)) Applies to outdoor work environments ((~~from May 1 through September 30, annually, only~~)) when employees are exposed to outdoor heat ((~~at or above an applicable temperature listed in Table 1~~)).

((~~**Table 1**~~

~~To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.~~

~~Outdoor Temperature Action Levels~~

~~All other clothing~~	~~89°~~
~~Double-layer woven clothes including coveralls, jackets and sweatshirts~~	~~77°~~
~~Nonbreathing clothes including vapor barrier clothing or PPE such as chemical resistant suits~~	~~52°~~

~~**Note:** There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.~~))

(3) ((~~WAC 296-62-095 through 296-62-09560~~)) Does not apply to incidental exposure ((~~which exists when~~)). Incidental exposure means an employee is not required to perform a work activity outdoors for more than ((~~fifteen~~)) 15 minutes in any ((~~sixty-minute~~)) 60-minute period. This exception may be applied every hour during the work shift.

(4) ((~~WAC 296-62-095 through 296-62-09560 supplement all industry-specific standards with related requirements. Where the requirements under these sections provide more specific or greater protection than the industry-specific standards, the employer must comply with the requirements under these sections. Additional related requirements are found in~~)) Does not apply to work within the scope of chapter 296-305 WAC, Safety standards for firefighters ((~~and~~)) or chapter 296-307 WAC, Safety standards for agriculture.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 19-01-094, § 296-62-09510, filed 12/18/18, effective 1/18/19; WSR 08-12-109, § 296-62-09510, filed 6/4/08, effective 7/5/08.]

AMENDATORY SECTION (Amending WSR 19-01-094, filed 12/18/18, effective 1/18/19)

WAC 296-62-09520 Definitions. (1) **Acclimatization.** The body's temporary adaptation to work in heat that occurs as a person is exposed to it over ((~~time.~~

~~Double-layer woven clothing.~~ ~~Clothing worn in two layers allowing air to reach the skin. For example, coveralls worn on top of regular~~

~~work clothes.~~)) a period of seven to 14 days depending on the amount of recent work in the heat and the individual factors. Acclimatization can be lost after seven consecutive days away from working in the heat.

(2) **Buddy system.** A system where individuals are paired or teamed up into work groups so each employee can be observed by at least one other member of the group to monitor and report signs and symptoms of heat-related illness.

(3) **Drinking water.** Potable water that is suitable to drink((~~.~~)) and suitably cool in temperature. Other acceptable beverages include drinking water packaged as a consumer product, and electrolyte-replenishing beverages (i.e., sports drinks) that do not contain high amounts of sugar, caffeine ((~~are acceptable~~)), or both such as energy drinks.

(4) **Engineering controls.** The use of devices to reduce exposure and aid cooling ((~~(i.e., air conditioning).~~

~~Environmental factors for heat-related illness.~~ ~~Working conditions that increase susceptibility for heat-related illness such as air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload (i.e., heavy, medium, or low) and duration, and personal protective equipment worn by employees. Measurement of environmental factors is not required by WAC 296-62-095~~)), not including wearable items. Examples of engineering controls include fans, misting stations, air-conditioning, etc.

(5) **Heat-related illness.** A medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

(6) **Outdoor environment.** An environment where work activities are conducted outside. Work environments such as inside vehicle cabs, sheds, and tents or other structures may be considered an outdoor environment if the environmental factors affecting temperature are not managed by engineering controls. ((~~Construction activity is considered to be work in an indoor environment when performed inside a structure after the outside walls and roof are erected.~~))

(7) **Risk factors for heat-related illness.** Conditions that increase susceptibility for heat-related illness including:

(a) Environmental factors such as air temperature, relative humidity, air movement, radiant heat from the sun and other sources, conductive heat sources such as the ground;

(b) Workload (light, moderate, or heavy) and work duration;

(c) Personal protective equipment and clothing worn by employees; and

(d) Personal factors such as age, medications, physical fitness, and pregnancy.

(8) **Shade.** A blockage of direct sunlight. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and that does not deter or discourage access or use. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. Shade is not adequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool. For example, a car sitting in the sun does not provide acceptable shade to a person sitting in it, unless the car is running with air-conditioning.

(9) **Vapor barrier clothing.** Clothing that significantly inhibits or completely prevents sweat produced by the body from evaporating in-

to the outside air. Such clothing includes encapsulating suits, various forms of chemical resistant suits used for PPE, and other forms of ((~~nonbreathing~~)) nonbreathable clothing.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 19-01-094, § 296-62-09520, filed 12/18/18, effective 1/18/19; WSR 08-12-109, § 296-62-09520, filed 6/4/08, effective 7/5/08.]

AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

WAC 296-62-09530 Employer and employee responsibility. (1) Employers of employees exposed to temperatures at or above ((~~temperatures~~)) those listed in ((~~WAC 296-62-09510(2)~~)) Table 1 of this section must:

(a) Address their outdoor heat exposure safety program in their written accident prevention program (APP)((~~; and~~

~~(b)~~))**,** in a language that employees understand;

(b) Ensure the outdoor heat exposure safety program contains, at a minimum, the following elements:

(i) Procedures for providing sufficiently cool drinking water;

(ii) Procedures for providing shade or other sufficient means to reduce body temperature, including the location of such means and how employees can access them;

(iii) Emergency response procedures for employees demonstrating signs or symptoms of heat-related illness;

(iv) Acclimatization methods and procedures;

(v) High heat procedures; and

(vi) The specific method used by the employer to closely observe for signs and symptoms of heat-related illness as required under WAC 296-62-09545 and 296-62-09547(2);

(c) Ensure a copy of the outdoor heat exposure safety program is made available to employees and their authorized representatives;

(d) Encourage employees to frequently consume water or other acceptable beverages to ensure hydration((~~.~~))**;** and

(e) Encourage and allow employees to take a preventative cool-down rest period when they feel the need to do so to protect themselves from overheating using sufficient means to reduce body temperature such as shade or other equally or more effective means. The preventative cool-down rest period must be paid unless taken during a meal period that is not otherwise required to be compensated. If an employee is showing signs and symptoms of heat-related illness during the cool-down rest period, the employer must comply with requirements under WAC 296-62-09550.

Table 1. To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.

Nonbreathable clothes including vapor barrier clothing or PPE such as chemical resistant suits	52°F
All other clothing	80°F

Note: There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.

(2) Employees are responsible for monitoring their own personal factors for heat-related illness including consumption of water or other acceptable beverages to ensure hydration, and taking preventative cool-down rest periods when they feel the need to do so to prevent from overheating.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09530, filed 6/4/08, effective 7/5/08.]

NEW SECTION

WAC 296-62-09535 Access to shade. Employers of employees exposed to temperatures at or above those listed in Table 1 of WAC 296-62-09530 must:

(1) Provide and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling, and not adjoining a radiant heat source such as machinery or a concrete structure. The shade must be located as close as practicable to the areas where employees are working.

(2) Ensure the amount of shade present is large enough to accommodate the number of employees on a meal or rest period, so they can sit in a normal posture fully in the shade.

(3) In lieu of shade, employers may use other means to reduce body temperature if they can demonstrate such means are equally or more effective than shade. Some alternatives to shade may include the provision of misting stations, cooling vests, or air-conditioned areas.

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AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

WAC 296-62-09540 Drinking water. (1) Keeping workers hydrated in a hot outdoor environment requires that more water be provided than at other times of the year. Federal OSHA and research indicate that employers should be prepared to supply at least one quart of drinking water per employee per hour. When employee exposure is at or above an applicable temperature listed in WAC ((~~296-62-09510(2)~~)) 296-62-09530 Table 1:

(a) Employers must ensure that a sufficient quantity of suitably cool drinking water is readily accessible to employees at all times; and

(b) Employers must ensure that all employees have the opportunity to drink at least one quart of drinking water per hour.

(2) Employers are not required to supply the entire quantity of drinking water needed to be supplied for all employees on a full shift at the beginning of the shift. Employers may begin the shift with smaller quantities of drinking water if effective procedures are established for replenishment during the shift.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09540, filed 6/4/08, effective 7/5/08.]

NEW SECTION

WAC 296-62-09545 Acclimatization. Employers must closely observe employees for signs and symptoms of heat-related illness by implementing one or more of the close observation options under WAC 296-62-09547(2).

(1) For 14 days when employees:

(a) Are newly assigned to working at or above the applicable temperatures listed in Table 1 of WAC 296-62-09530;

(b) Return to work at the applicable temperatures listed in Table 1 of WAC 296-62-09530 after an absence seven days or more;

(2) During a heat wave. For purposes of this section only, "heat wave" means any day in which the predicted high temperature for the day will be at least the temperatures listed in Table 1 of WAC 296-62-09530 and at least 10 degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

Note: Employers may also consider additional acclimatization procedures recommended by NIOSH:
- NIOSH Heat Stress: Acclimatization. https://www.cdc.gov/niosh/mining/userfiles/works/pdfs/2017-124.pdf
- NIOSH Criteria for a Recommended Standard for Occupational Exposure to Heat and Hot Environments: https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSHPUB2016106

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NEW SECTION

WAC 296-62-09547 High heat procedures. The employer must implement the following high heat procedures when the temperature is at or above 90 degrees Fahrenheit, unless engineering or administrative controls (such as air-conditioning or scheduling work at cooler times of the day) are used to lower employees' exposure below 90 degrees Fahrenheit.

(1) Ensure that employees take at minimum the mandatory cool-down rest periods in Table 2. The cool-down rest period must be provided in the shade or using other equally or more effective means to reduce body temperature. The mandatory cool-down rest period may be provided concurrently with any meal or rest period required under WAC 296-126-092 and must be paid unless taken during a meal period that is not otherwise required to be compensated. Mandatory cool-down rest periods in Table 2 are not required during emergency response operations where rescue, evacuation, utilities, communications, transportation, law enforcement, and medical operations are directly aiding firefighting, protecting public health and safety, or actively protecting, restoring or maintaining the safe and reliable operation of critical infrastructure at risk.

Table 2

Air Temperature	Mandatory cool-down rest periods
At or above 90°F	10 minutes/2 hours

Air Temperature	Mandatory cool-down rest periods
At or above 100°F	15 minutes/1 hour

Notes:
• Employers may also consider implementing more additional protective rest periods per NIOSH or ACGIH methods:
- NIOSH Criteria for a Recommended Standard for Occupational Exposure to Heat and Hot Environments: https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSHPUB2016106
- American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV) for Heat Stress and Strain: https://www.acgih.org/heat-stress-and-strain-2/
• The department will review work-rest periods within three years after the outdoor heat exposure rule goes into effect. We will review applicable data including, but not limited to, heat-related illness claims, inspections, other national and state regulations, peer-reviewed publications, and nationally recognized standards.

(2) Closely observe employees for signs and symptoms of heat-related illness by implementing one or more of the following:

(a) Regular communication with employees working alone, such as by radio or cellular phone;

(b) A mandatory buddy system; or

(c) Other effective means of observation.

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AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

WAC 296-62-09550 Responding to signs and symptoms of heat-related illness. (1) Employers must ensure that effective communication by voice, observation, or electronic means is maintained so that employees at the work site and their supervisor can contact each other to report signs and symptoms of heat-related illness and get medical attention when necessary. An electronic device, such as a cellular phone or text messaging device, may be used for this purpose only if reception in the area is reliable.

(2) Employees showing signs or demonstrating symptoms of heat-related illness must be relieved from duty and provided with a sufficient means to reduce body temperature.

((~~(2)~~)) (3) Employees showing signs or demonstrating symptoms of heat-related illness must be monitored to determine whether medical attention is necessary.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09550, filed 6/4/08, effective 7/5/08.]

AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

WAC 296-62-09560 Information and training. (1) All ((~~training must be provided to~~)) employees and supervisors((~~,~~)) must be trained as required by this section prior to outdoor work where occupational exposure to heat might occur and at least annually after the initial training. Training must be provided in a language and manner the employee or supervisor understands((~~, prior to outdoor work which exceeds a temperature listed in WAC 296-62-09510(2) Table 1, and at least annually thereafter~~)).

((~~(1)~~)) (2) Employee training. Effective training on the following topics must be provided to all employees who may be exposed to

outdoor heat ((~~at or above the temperatures listed in WAC 296-62-09510(2) Table 1~~)):

(a) The environmental factors and other work conditions (i.e., workload, work duration, personal protective equipment, clothing) that contribute to the risk of heat-related illness;

(b) General awareness of personal factors that may increase susceptibility to heat-related illness including, but not limited to, an individual's age, physical fitness, degree of acclimatization, medical conditions, drinking water consumption, alcohol use, ((~~caffeine use, nicotine use~~)) previous heat-related illness, pregnancy, and use of medications that affect the body's responses to heat. This information is for the employee's personal use;

(c) The importance of removing heat-retaining personal protective equipment such as nonbreathable chemical resistant clothing during all breaks;

(d) The importance of frequent consumption of small quantities of drinking water or other acceptable beverages;

(e) The ((~~importance of~~)) acclimatization((~~;~~ ~~(f)~~)) requirements under WAC 296-62-09545, the concept of acclimatization, and the importance of the following considerations:

(i) Frequent cool-down rest periods;

(ii) Gradual increase of work duration in the heat; and

(iii) Employees are unable to build a tolerance to working in the heat during a heat wave;

(f) The importance of taking preventative cool-down rest periods when employees feel the need to do so in order to protect themselves from overheating;

(g) The mandatory cool-down rest periods under WAC 296-62-09547 when the outdoor temperature reaches or exceeds 90 degrees Fahrenheit;

(h) The employer's procedures for providing shade or other sufficient means to reduce body temperature, including the location of such means and how employees can access them;

(i) The different types of heat-related illness, the common signs and symptoms of heat-related illness; ((~~and~~ ~~(g)~~)) (j) The importance of immediately reporting signs or symptoms of heat-related illness in either themselves or in co-workers to the person in charge and the procedures the employee must follow including appropriate first aid and emergency response procedures((~~. (2)~~)); and

(k) The employer's procedures for close observation of employees for signs and symptoms of heat-related illness.

(3) Supervisor training. Prior to supervising employees working in outdoor environments with heat exposure at or above the temperature levels listed in WAC ((~~296-62-09510(2)~~)) 296-62-09530(2) Table 1, supervisors must have training on the following topics:

(a) The information required to be provided to employees listed in subsection (1) of this section;

(b) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-62-095 through 296-62-09560;

(c) The importance of considering the use of engineering or administrative controls such as air-conditioning and scheduling work during the cooler hours of the day in order to reduce employees' exposure to heat;

(d) The procedures the supervisor must follow if an employee exhibits signs or symptoms consistent with possible heat-related illness, including appropriate first aid and emergency response procedures; and

((~~(d)~~)) (e) Procedures for moving or transporting an employee(s) to a place where the employee(s) can be reached by an emergency medical service provider, if necessary.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09560, filed 6/4/08, effective 7/5/08.]

OTS-4164.6

AMENDATORY SECTION (Amending WSR 20-21-091, filed 10/20/20, effective 11/20/20)

WAC 296-307-09710 Scope and purpose. ((~~(1) WAC 296-307-097~~)) WAC 296-307-09710 through 296-307-09760:

(1) Applies to all employers with employees performing work in an outdoor environment.

(2) ((~~The requirements of WAC 296-307-097 through 296-307-09760 apply~~)) Applies to outdoor work environments ((~~from May 1 through September 30, annually, only~~)) when employees are exposed to outdoor heat ((~~at or above an applicable temperature listed in Table 1~~)).

((~~**Table 1**~~

~~To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.~~

~~Outdoor Temperature Action Levels~~

~~All other clothing~~	~~89°~~
~~Double-layer woven clothes including coveralls, jackets and sweatshirts~~	~~77°~~
~~Nonbreathing clothes including vapor barrier clothing or PPE such as chemical resistant suits~~	~~52°~~

~~**Note:** There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.~~))

(3) ((~~WAC 296-307-097 through 296-307-09760~~)) Does not apply to incidental exposure ((~~which exists when~~)). Incidental exposure means an employee is not required to perform a work activity outdoors for more than ((~~fifteen~~)) 15 minutes in any ((~~sixty-minute~~)) 60-minute period. This exception may be applied every hour during the work shift.

((~~(4) WAC 296-307-097 through 296-307-09760 supplement all industry-specific standards with related requirements. Where the requirements under these sections provide more specific or greater protection than the industry-specific standards, the employer must comply with the requirements under these sections. Additional related requirements are found in chapter 296-305 WAC, Safety standards for firefighters and chapter 296-307 WAC, Safety standards for agriculture.~~))

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 20-21-091, § 296-307-09710, filed 10/20/20, effective 11/20/20; WSR 09-07-098, § 296-307-09710, filed 3/18/09, effective 5/1/09.]

AMENDATORY SECTION (Amending WSR 20-21-091, filed 10/20/20, effective 11/20/20)

WAC 296-307-09720 Definitions. (1) **Acclimatization.** The body's temporary adaptation to work in heat that occurs as a person is exposed to it over ((~~time.~~

~~Double-layer woven clothing.~~ ~~Clothing worn in two layers allowing air to reach the skin. For example, coveralls worn on top of regular work clothes.~~)) a period of seven to 14 days depending on the amount of recent work in the heat and individual factors. Acclimatization can be lost after seven consecutive days away from working in the heat.

(2) **Buddy system.** A system where individuals are paired or teamed up into work groups so each employee can be observed by at least one other member of the group to monitor and report signs and symptoms of heat-related illness.

(3) **Drinking water.** Potable water that is suitable to drink((~~.~~)) and suitably cool in temperature. Other acceptable beverages include drinking water packaged as a consumer product, and electrolyte-replenishing beverages (i.e., sports drinks) that do not contain high amounts of sugar, caffeine ((~~are acceptable~~)), or both such as energy drinks.

(4) **Engineering controls.** The use of devices to reduce exposure and aid cooling ((~~(i.e., air conditioning).~~

~~Environmental factors for heat-related illness.~~ ~~Working conditions that increase susceptibility for heat-related illness such as air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload (i.e., heavy, medium, or low) and duration, and personal protective equipment worn by employees. Measurement of environmental factors is not required by WAC 296-307-097~~)), not including wearable items. Examples of engineering controls include fans, misting stations, air-conditioning, etc.

(5) **Heat-related illness.** A medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

(6) **Outdoor environment.** An environment where work activities are conducted outside. Work environments such as inside vehicle cabs, sheds, and tents or other structures may be considered an outdoor environment if the environmental factors affecting temperature are not managed by engineering controls. ((~~Construction activity is considered to be work in an indoor environment when performed inside a structure after the outside walls and roof are erected.~~))

(7) **Risk factors for heat-related illness.** Conditions that increase susceptibility for heat-related illness including:

(a) Environmental factors such as air temperature, relative humidity, air movement, radiant heat from the sun and other sources, conductive heat sources such as the ground;

(b) Workload (light, moderate, or heavy) and work duration;

(c) Personal protective equipment and clothing worn by employees; and

(d) Personal factors such as age, medications, physical fitness, and pregnancy.

(8) **Shade.** A blockage of direct sunlight. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and that does not deter or discourage access or use. One indicator that blockage is sufficient is when ob-

jects do not cast a shadow in the area of blocked sunlight. Shade is not adequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool. For example, a car sitting in the sun does not provide acceptable shade to a person sitting in it, unless the car is running with air-conditioning.

(9) **Vapor barrier clothing.** Clothing that significantly inhibits or completely prevents sweat produced by the body from evaporating into the outside air. Such clothing includes encapsulating suits, various forms of chemical resistant suits used for PPE, and other forms of ((~~nonbreathing~~)) nonbreathable clothing.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 20-21-091, § 296-307-09720, filed 10/20/20, effective 11/20/20; WSR 09-07-098, § 296-307-09720, filed 3/18/09, effective 5/1/09.]

AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

WAC 296-307-09730 Employer and employee responsibility. (1) Employers of employees exposed to temperatures at or above ((~~temperatures~~)) those listed in ((~~WAC 296-307-09710(2)~~)) Table 1 of this section must:

(a) Address their outdoor heat exposure safety program in their written accident prevention program (APP)((~~; and~~

~~(b)~~)), in a language that employees understand;

(b) Ensure the outdoor heat exposure safety program contains, at a minimum, the following elements:

(i) Procedures for providing sufficiently cool drinking water;

(ii) Procedures for providing shade or other sufficient means to reduce body temperature, including the location of such means and how employees can access them;

(iii) Emergency response procedures for employees demonstrating signs or symptoms of heat-related illness;

(iv) Acclimatization methods and procedures;

(v) High heat procedures; and

(vi) The specific method used by the employer to closely observe employees for signs and symptoms of heat-related illness as required under WAC 296-307-09745 and 296-307-09747(2);

(c) Ensure a copy of the outdoor heat exposure safety program is made available to employees and their authorized representatives;

(d) Encourage employees to frequently consume water or other acceptable beverages to ensure hydration((~~.~~)); and

(e) Encourage and allow employees to take a preventative cool-down rest period when they feel the need to do so to protect themselves from overheating using sufficient means to reduce body temperature such as shade or other equally or more effective means. The preventative cool-down rest period must be paid unless taken during a meal period that is not otherwise required to be compensated. If an employee is showing signs or symptoms of heat-related illness during the cool-down rest period, the employer must comply with the requirements under WAC 296-307-09750.

Table 1. To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.

Nonbreathable clothes including vapor barrier clothing or PPE such as chemical resistant suits	52°F
All other clothing	80°F

Note: There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.

(2) Employees are responsible for monitoring their own personal factors for heat-related illness including consumption of water or other acceptable beverages to ensure hydration, and taking preventative cool-down rest periods when they feel the need to do so to prevent from overheating.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09730, filed 3/18/09, effective 5/1/09.]

NEW SECTION

WAC 296-307-09735 Access to shade. Employers of employees exposed at or above temperatures listed in Table 1 of WAC 296-307-09730 must:

(1) Provide and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling, and not adjoining a radiant heat source such as machinery or a concrete structure. The shade must be located as close as practicable to the areas where employees are working.

(2) Ensure the amount of shade present is large enough to accommodate the number of employees on a meal or rest period, so they can sit in a normal posture fully in the shade.

(3) In lieu of shade, employers may use other means to reduce body temperature if they can demonstrate such means are equally or more effective than shade. Some alternatives to shade may include the provision of misting stations, cooling vests, or air-conditioned areas.

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AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

WAC 296-307-09740 Drinking water. (1) Keeping workers hydrated in a hot outdoor environment requires that more water be provided than at other times of the year. Federal OSHA and research indicate that employers should be prepared to supply at least one quart of drinking water per employee per hour. When employee exposure is at or above an applicable temperature listed in WAC ((~~296-307-09710(2)~~)) 296-307-09730 Table 1:

(a) Employers must ensure that a sufficient quantity of suitably cool drinking water is readily accessible to employees at all times; and

(b) Employers must ensure that all employees have the opportunity to drink at least one quart of drinking water per hour.

(2) Employers are not required to supply the entire quantity of drinking water needed to be supplied for all employees on a full shift at the beginning of the shift. Employers may begin the shift with smaller quantities of drinking water if effective procedures are established for replenishment during the shift.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09740, filed 3/18/09, effective 5/1/09.]

NEW SECTION

WAC 296-307-09745 Acclimatization. Employers must closely observe employees for signs and symptoms of heat-related illness by implementing one or more of the close observation options under WAC 296-307-09747(2).

(1) For 14 days when employees:

(a) Are newly assigned to working at or above the applicable temperatures listed in Table 1 of WAC 296-307-09730;

(b) Return to work at the applicable temperatures listed in Table 1 of WAC 296-307-09730 after an absence of seven days or more;

(2) During a heat wave. For purposes of this section only, "heat wave" means any day in which the predicted high temperature for the day will be at least the temperatures listed in Table 1 of WAC 296-307-09730 and at least 10 degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

Note: Employers may also consider additional acclimatization procedures recommended by NIOSH:
- NIOSH Heat Stress: Acclimatization. https://www.cdc.gov/niosh/mining/userfiles/works/pdfs/2017-124.pdf
- NIOSH Criteria for a Recommended Standard for Occupational Exposure to Heat and Hot Environments: https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSHPUB2016106

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NEW SECTION

WAC 296-307-09747 High heat procedures. The employer must implement the following high heat procedures when the temperature is at or above 90 degrees Fahrenheit, unless engineering or administrative controls (such as air-conditioning or scheduling work at cooler times of the day) are used to lower employees' exposure below 90 degrees Fahrenheit.

(1) Ensure that employees take at a minimum the mandatory cool-down rest periods in Table 2. The cool-down rest period must be provided in the shade or using other equally or more effective means to reduce body temperature. The mandatory cool-down rest period may be provided concurrently with any meal or rest period required under WAC 296-131-020 and must be paid unless taken during a meal period that is not otherwise required to be compensated. Mandatory cool-down rest periods in Table 2 are not required during emergency response operations where rescue, evacuation, utilities, communications, transportation, law enforcement, and medical operations are directly aiding firefight-

ing, protecting public health and safety, or actively protecting, restoring or maintaining the safe and reliable operation of critical infrastructure at risk.

Table 2

Air Temperature	Mandatory cool-down rest periods
At or above 90°F	10 minutes/2 hours
At or above 100°F	15 minutes/1 hour

Notes:
• Employers may also consider implementing more additional protective rest periods per NIOSH or ACGIH methods:
- NIOSH Criteria for a Recommended Standard for Occupational Exposure to Heat and Hot Environments: https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSHPUB2016106
- American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV) for Heat Stress and Strain: https://www.acgih.org/heat-stress-and-strain-2/
• The department will review work-rest periods within three years after the outdoor heat exposure rule goes into effect. We will review applicable data including, but not limited to, heat-related illness claims, inspections, other national and state regulations, peer-reviewed publications, and nationally recognized standards.

(2) Closely observe employees for signs and symptoms of heat-related illness by implementing one or more of the following:

(a) Regular communication with employees working alone, such as by radio or cellular phone;

(b) A mandatory buddy system; or

(c) Other effective means of observation.

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AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

WAC 296-307-09750 Responding to signs and symptoms of heat-related illness. (1) Employers must ensure that effective communication by voice, observation, or electronic means is maintained so that employees at the work site and their supervisor can contact each other to report signs and symptoms of heat-related illness and get medical attention when necessary. An electronic device, such as a cellular phone or text messaging device, may be used for this purpose only if reception in the area is reliable.

(2) Employees showing signs or demonstrating symptoms of heat-related illness must be relieved from duty and provided with a sufficient means to reduce body temperature.

((~~(2)~~)) (3) Employees showing signs or demonstrating symptoms of heat-related illness must be monitored to determine whether medical attention is necessary.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09750, filed 3/18/09, effective 5/1/09.]

AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

WAC 296-307-09760 Information and training. (1) All ((~~training must be provided to~~)) employees and supervisors((~~,~~)) must be trained as required by this section prior to outdoor work where occupational

exposure to heat might occur and at least annually after the initial training. Training must be provided in a language and manner the employee or supervisor understands((~~, prior to outdoor work which exceeds a temperature listed in WAC 296-307-09710(2) Table 1, and at least annually thereafter~~)).

((~~(1)~~)) (2) Employee training. Effective training on the following topics must be provided to all employees who may be exposed to outdoor heat ((~~at or above the temperatures listed in WAC 296-307-09710(2) Table 1~~)):

(a) The environmental factors and other work conditions (i.e., workload, work duration, personal protective equipment, clothing) that contribute to the risk of heat-related illness;

(b) General awareness of personal factors that may increase susceptibility to heat-related illness including, but not limited to, an individual's age, physical fitness, degree of acclimatization, medical conditions, drinking water consumption, alcohol use, ((~~caffeine use, nicotine use~~)) previous heat-related illness, pregnancy, and use of medications that affect the body's responses to heat. This information is for the employee's personal use;

(c) The importance of removing heat-retaining personal protective equipment such as nonbreathable chemical resistant clothing during all breaks;

(d) The importance of frequent consumption of small quantities of drinking water or other acceptable beverages;

(e) The importance of acclimatization((~~;~~ ~~(f)~~)) requirements under WAC 296-307-09745, the concept of acclimatization, and the importance of the following considerations:

(i) Frequent cool-down rest periods;

(ii) Gradual increase of work duration in the heat; and

(iii) Employees are unable to build a tolerance to working in the heat during a heat wave;

(f) The importance of taking preventative cool-down rest periods when employees feel the need to do so in order to protect themselves from overheating;

(g) The mandatory cool-down rest periods under WAC 296-307-09747 when the outdoor temperature reaches or exceeds 90 degrees Fahrenheit;

(h) The employer's procedures for providing shade or other sufficient means to reduce body temperature, including the location of such means and how employees can access them;

(i) The different types of heat-related illness, the common signs and symptoms of heat-related illness; ((~~and~~ ~~(g)~~)) (j) The importance of immediately reporting signs or symptoms of heat-related illness in either themselves or in co-workers to the person in charge and the procedures the employee must follow including appropriate first aid and emergency response procedures((~~. (2)~~)); and

(k) The employer's procedures for close observation of employees for signs and symptoms of heat-related illness.

(3) Supervisor training. Prior to supervising employees working in outdoor environments with heat exposure at or above the temperature levels listed in WAC ((~~296-307-09710(2)~~)) 296-307-09730(2) Table 1, supervisors must have training on the following topics:

(a) The information required to be provided to employees listed in subsection (1) of this section;

(b) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-307-097 through 296-307-09760;

(c) The importance of considering the use of engineering or administrative controls such as air-conditioning and scheduling work during the cooler hours of the day in order to reduce employees' exposure to heat;

(d) The procedures the supervisor must follow if an employee exhibits signs or symptoms consistent with possible heat-related illness, including appropriate first aid and emergency response procedures; and

((~~(d)~~)) (e) Procedures for moving or transporting an employee(s) to a place where the employee(s) can be reached by an emergency medical service provider, if necessary.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09760, filed 3/18/09, effective 5/1/09.]

WSR 23-14-064
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed June 28, 2023, 12:42 p.m., effective August 1, 2023]

Effective Date of Rule: August 1, 2023.

Purpose: The agency is removing outdated clinical criteria for coverage of oxygen and replacing them with medicaid's current clinical criteria under the Centers for Medicare and Medicaid Services.

Citation of Rules Affected by this Order: Amending WAC 182-552-0005, 182-552-0200, and 182-552-0800.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-11-134 on May 23, 2023.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: June 28, 2023.

Wendy Barcus
Rules Coordinator

OTS-4476.2

AMENDATORY SECTION (Amending WSR 12-14-022, filed 6/25/12, effective 8/1/12)

WAC 182-552-0005 Respiratory care—Definitions. The following definitions and those in chapter 182-500 WAC apply to this chapter.

"Adult family home" - A residential home licensed to care for up to six residents that provides rooms, meals, laundry, supervision, assistance with activities of daily living, and personal care. In addition to these services, some homes provide nursing or other special care and services.

"Apnea" - The cessation of airflow for at least ((~~ten~~)) 10 seconds.

"Apnea-hypopnea index (AHI)" - The average number of episodes of apnea and hypopnea per hour of sleep without the use of a positive airway pressure device. For purposes of this chapter, respiratory effort related arousals (RERAs) are not included in the calculation.

"Arterial PaO_2" - Measurement of partial pressure of arterial oxygen.

"Authorized prescriber" - A health care practitioner authorized by law or rule in the state of Washington to prescribe oxygen and respiratory care equipment, supplies, and services.

"Base year" - As used in this chapter, means the year in which the respiratory care ((~~medicaid provider guide's~~)) current fee schedule is adopted.

"Bi-level respiratory assist device with backup rate" - A device that allows independent setting of inspiratory and expiratory pressures to deliver positive airway pressure (within a single respiratory cycle) by way of tubing and a noninvasive interface (such as a nasal or oral facial mask) to assist spontaneous respiratory efforts and supplement the volume of inspired air into the lungs. In addition, these devices have a timed backup feature to deliver this air pressure whenever sufficient spontaneous inspiratory efforts fail to occur.

"Bi-level respiratory assist device without backup rate" - A device that allows independent setting of inspiratory and expiratory pressures to deliver positive airway pressure (within a single respiratory cycle) by way of tubing and a noninvasive interface (such as a nasal, oral, or facial mask) to assist spontaneous respiratory efforts and supplement the volume of inspired air into the lungs.

"Blood gas study" - For the purposes of this chapter, is either an oximetry test or an arterial blood gas test.

"Boarding home" - Adult residential care (ARC) facility, enhanced adult residential care (EARC) facility, or assisted living (AL) facility.

"Central sleep apnea (CSA)" - Is defined as:

(1) An apnea-hypopnea index (AHI) greater than or equal to five; and

(2) Central apneas/hypopneas greater than ((~~fifty~~)) 50 percent of the total apneas/hypopneas; and

(3) Central apneas or hypopneas greater than or equal to five times per hour; and

(4) Symptoms of either excessive sleepiness or disrupted sleep.

"Chronic obstructive pulmonary disease (COPD)" - Any disorder that persistently obstructs bronchial airflow. COPD mainly involves two related diseases: Chronic bronchitis and emphysema. Both cause chronic obstruction of air flowing through the airways and in and out of the lungs. The obstruction is generally permanent and worsens over time.

"Complex sleep apnea (CompSA)" - A form of central apnea specifically identified by the persistence or emergence of central apneas or hypopneas, upon exposure to CPAP or a bi-level respiratory assist device without a back-up rate feature, when obstructive events have disappeared. These clients have predominantly obstructive or mixed apneas during the diagnostic sleep study occurring at greater than or equal to five times per hour. With use of a CPAP or bi-level respiratory assist device without a back-up rate feature, the client shows a pattern of apneas and hypopneas that meets the definition of central sleep apnea (CSA).

"Continuous positive airway pressure (CPAP)" - A single-level device which delivers a constant level of positive air pressure (within a single respiratory cycle) by way of tubing and an interface to assist spontaneous respiratory efforts and supplement the volume of inspired air into the lungs.

"Dependent edema" - Fluid in the tissues, usually ankles, wrists, and the arms.

"Emergency oxygen" - The immediate, short-term administration of oxygen to a client who normally does not receive oxygen((~~,~~)) but is experiencing an acute episode which requires oxygen.

"Erythrocythemia" - More hematocrit (red blood cells) than normal.

"FIO_2" - The fractional concentration of oxygen delivered to the client for inspiration. For the purpose of this policy, the client's prescribed FIO_2 refers to the oxygen concentration the client normally breathes when not undergoing testing to qualify for coverage of a respiratory assist device (RAD). That is, if the client does not normally use supplemental oxygen, their prescribed FIO_2 is that found in room air.

"FEV1" - The forced expired volume in one second.

"FVC" - The forced vital capacity.

"Group I" - Clinical criteria, set by medicare, to identify ((~~chronic oxygen~~)) clients ((~~with obvious respiratory challenges as evidenced by low oxygen saturation. The clinical criteria for Group I include any of the following:~~

~~• An arterial PaO_2 at or below fifty-five mm Hg or an arterial oxygen saturation (SaO_2) at or below eighty-eight percent taken at rest (awake); or~~

~~• An arterial PaO_2 at or below fifty-five mm Hg, or an arterial oxygen saturation at or below eighty-eight percent for at least five minutes taken during sleep for a client who demonstrates an arterial PaO_2 at or above fifty-six mm Hg or an arterial oxygen saturation at or above eighty-nine percent while awake; or~~

~~• A decrease in arterial PaO_2 more than ten mm Hg, or a decrease in arterial oxygen saturation more than five percent from baseline saturation for at least five minutes taken during sleep associated with symptoms (e.g., impairment of cognitive processes and nocturnal restlessness or insomnia) or signs (e.g., cor pulmonale, "P" pulmonale on EKG, documented pulmonary hypertension and erythrocytosis) reasonably attributable to hypoxemia; or~~

~~• An arterial PaO_2 at or below fifty-five mm Hg or an arterial oxygen saturation at or below eighty-eight percent, taken during exercise for a client who demonstrates an arterial PaO_2 at or above fifty-six mm Hg or an arterial oxygen saturation at or above eighty-nine percent during the day while at rest. In this case, oxygen is provided during exercise if it is documented that the use of oxygen improves the hypoxemia that was demonstrated during exercise when the client was breathing room air~~)) requiring oxygen. The agency follows the Group I clinical criteria listed in the Centers for Medicare and Medicaid Services National Coverage Determination for Home Use of Oxygen, which is found in the Medicare Coverage Database.

"Group II" - Clinical criteria, set by medicare, to identify ((~~borderline oxygen clients. Their blood saturation levels seem to be within the normal range, but there are additional extenuating issues that suggest a need for oxygen. The clinical criteria for Group II include any of the following:~~

~~• The presence of an arterial PaO_2 of fifty-six to fifty-nine mm Hg or an arterial blood oxygen saturation of eighty-nine percent at rest (awake), during sleep for at least five minutes, or during exercise (as described under Group I criteria); and~~

~~• Any of the following:~~

~~- Dependent edema suggesting congestive heart failure; or~~

~~- Pulmonary hypertension or cor pulmonale, determined by measurement of pulmonary artery pressure, gated blood pool scan, echocardiogram, or "P" pulmonale on EKG (P wave greater than three mm in standard leads II, III, or AVF); or~~

~~- Erythrocythemia with a hematocrit greater than fifty-six percent.~~)) clients who require oxygen. Their blood oxygen levels may be within normal range, however, they have complicating conditions that require supplemental oxygen use. The agency follows the Group II clinical criteria listed in the Centers for Medicare and Medicaid Services National Coverage Determination for Home Use of Oxygen, which is found in the Medicare Coverage Database.

"Group III" - Clients for whom intermittent home oxygen therapy is considered medically necessary to treat cluster headaches. These clients also have a documented clinical history that includes all of the following:

• At least five attacks of severe, strictly unilateral pain that is orbital, supraorbital, temporal, or in any combination of these sites, lasting 15 to 180 minutes, and occurring at least once every other day up to eight times a day;

• At least one of the following symptoms or signs, ipsilateral to the headache:

- Conjunctival injection and/or lacrimation;
- Nasal congestion and/or rhinorrhea;
- Eyelid edema;
- Forehead and facial sweating; or
- Miosis and/or ptosis;

• Occurring with a frequency at least once every other day up to eight times per day;

• Not better accounted for by another ICHD-3 diagnosis;

• Prevents ability to function in all activities; and

• Other treatment has failed.

"Home and community residential settings" - In-home, adult family home, or boarding home.

"Hypopnea" - A temporary reduction of airflow lasting at least ten seconds and accompanied with a ((~~thirty~~)) 30 percent reduction in thoracoabdominal movement or airflow as compared to baseline, and with at least a four percent decrease in oxygen saturation. The AHI is the average number of episodes of apnea and hypopnea per hour of sleep without the use of a positive airway pressure device.

"Hypoxemia" - Less than normal level of oxygen in the blood.

"Maximum allowable" - The maximum dollar amount the medicaid agency reimburses a provider for a specific service, supply, or piece of equipment.

"Month" - For the purposes of this chapter, means ((~~thirty~~)) 30 days.

"Nebulizer" - A medical device which administers drugs for inhalation therapy for clients with respiratory conditions such as asthma or emphysema.

"Obstructive sleep apnea (OSA)" - This syndrome refers to the interruption of breathing during sleep, due to obstructive tissue in the upper airway that collapses into the air passage with respiration.

"Oxygen" - Medical grade liquid or gaseous oxygen.

"Oxygen concentrator" - A medical device that removes nitrogen from room air and retains almost pure oxygen (((~~eighty-seven~~)) 87 percent to ((~~ninety-five~~)) 95 percent) for delivery to a client.

"Oxygen system" - All equipment necessary to provide oxygen to a client.

"Portable oxygen system" - A system which allows the client to be independent of the stationary system for several hours, thereby providing mobility for the client.

"Pulmonary hypertension" - High blood pressure in the vessels that feed through the lungs, causing the right side of the heart to work harder to oxygenate blood.

"Respiratory care" - The care of a client with respiratory needs and all related equipment, oxygen, services, and supplies.

((~~**"Respiratory care medicaid provider guide"** - A manual containing procedures for billing, which is available online at http://maa.dshs.wa.gov/download.~~))

"Respiratory care practitioner" - A person licensed by the department of health according to chapter 18.89 RCW and chapter 246-928 WAC as a respiratory therapist (RT) or respiratory care practitioner (RCP).

"Respiratory effort related arousals (RERA)" - These occur when there is a sequence of breaths that lasts at least ((~~ten~~)) 10 seconds, characterized by increasing respiratory effort or flattening of the nasal pressure waveform, which lead to an arousal from sleep. However, they do not meet the criteria of an apnea or hypopnea.

"Restrictive thoracic disorders" - This refers to a variety of neuromuscular and anatomical anomalies of the chest/rib cage area that may result in hypoventilation, particularly while the client sleeps at night.

"Reasonable useful lifetime (RUL)" - For ((~~thirty-six~~)) 36 month capped oxygen equipment, the RUL is five years. The RUL is not based on the chronological age of the equipment. It starts on the initial date of the rental and runs for five years from that date.

"Stationary oxygen system" - Equipment designed to be used in one location, generally for the purpose of continuous use or frequent intermittent use.

[Statutory Authority: RCW 41.05.021. WSR 12-14-022, § 182-552-0005, filed 6/25/12, effective 8/1/12.]

AMENDATORY SECTION (Amending WSR 12-14-022, filed 6/25/12, effective 8/1/12)

WAC 182-552-0200 Respiratory care—Provider requirements. (1) To receive payment for respiratory care equipment and supplies under this chapter, a provider must:

(a) Meet the general provider requirements in chapter 182-502 WAC;

(b) Obtain prior authorization from the medicaid agency, if required, before delivery to the client and before billing the agency;

(c) Keep initial and subsequent prescriptions according to the requirements within this chapter;

(d) Provide instructions to the client and/or caregiver on the safe and proper use of equipment provided;

(e) Have a licensed health care professional whose scope of practice allows for the provision of respiratory care. The licensed health care professional must also:

(i) Check equipment and ensure equipment settings continue to meet the client's needs; and

(ii) Communicate with the client's authorized prescriber if there are any concerns or recommendations.

(f) Verify that the client has a valid prescription.

(i) To be valid, a prescription must:

(A) Be written, and signed and dated by a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PAC); and

(B) State the specific items or services requested, including the quantity, frequency, and duration/length of need. Prescriptions that only state "as needed" or "PRN" are not sufficient; and

(C) For an initial prescription, not be older than three months from the date the prescriber signed the prescription; or

(D) For subsequent prescriptions, not be older than one year from the date the ((~~prescriber signs the~~)) initial prescription ((~~(see WAC 182-552-0800 for exception to this time frame for oxygen).~~

~~(ii) If oxygen is prescribed:~~

~~(A) The following additional information is required:~~

~~(I) Flow rate of oxygen;~~

~~(II) Estimated length of need;~~

~~(III) Frequency and duration of oxygen use; and~~

~~(IV) The client's oxygen saturation level.~~

~~(B) For clients who meet:~~

~~(I) Group I clinical criteria, recertification is required one year after initial certification.~~

~~(II) Group II clinical criteria, recertification is required three months after the initial certification and annually thereafter.~~

~~(C) Providers may use the client's oxygen saturation or laboratory values to meet recertification requirements.~~)) was signed. (See WAC 182-552-0800 for exceptions.)

(2) The medicaid agency does not pay for respiratory care equipment and/or supplies furnished to the agency's clients when:

(a) The authorized prescriber who provides medical justification to the agency for the item provided to the client is an employee of, has a contract with, or has any financial relationship with the provider of the item; or

(b) The authorized prescriber who performs a client evaluation is an employee of, has a contract with, or has any financial relationship with a provider of respiratory care equipment, supplies, and related items.

[Statutory Authority: RCW 41.05.021. WSR 12-14-022, § 182-552-0200, filed 6/25/12, effective 8/1/12.]

AMENDATORY SECTION (Amending WSR 12-14-022, filed 6/25/12, effective 8/1/12)

WAC 182-552-0800 Respiratory care—Covered—Oxygen and oxygen equipment. ((~~The medicaid agency follows medicare clinical guidelines for respiratory care, unless otherwise described in this chapter.~~))

(1) The medicaid agency covers((~~, without prior authorization,~~)) oxygen and oxygen equipment as provided in this chapter.

(2) The agency pays for the rental of a stationary oxygen system and/or a portable oxygen system, as follows:

(a) For clients, ((~~twenty years of~~)) age 20 and younger, when prescribed by the client's treating practitioner; or

(b) For clients, ((~~twenty-one years of~~)) age 21 and older, when prescribed by a practitioner and the client meets ((~~medicare~~)):

(i) Medicare's Group I or Group II clinical criteria ((~~as defined in WAC 182-552-005.~~)); or

(ii) The Group III clinical criteria described in WAC 182-552-0005.

(c) If a client age 21 and older does not meet the clinical criteria in this subsection, prior authorization is required ((~~for clients, twenty-one years of age and older, who do not meet medicare clinical criteria.~~

~~(2)~~)). The agency reviews requests for prior authorization under WAC 182-501-0165.

(3) Oxygen and oxygen equipment - Capped rental:

(a) Capped rental applies to in-home oxygen use ((~~by medical assistance clients~~)) only;

(b) The medicaid agency's payment for stationary oxygen system equipment and/or portable oxygen system equipment is limited to ((~~thirty-six~~)) 36-monthly rental payments. During the rental period, the medicaid agency's payment includes any supplies, accessories, oxygen contents, delivery and associated costs, instructions, maintenance, servicing, and repairs;

(c) Oxygen systems are deemed capped rental (provider continues to own the equipment) after ((~~thirty-six~~)) 36 months.

(i) The supplier who provides the oxygen equipment for the first month must continue to provide any necessary oxygen equipment and related items and services through the ((~~thirty-six~~)) 36-month rental period unless one of the exceptions in (e) of this subsection is met.

(ii) The same provider is required to continue to provide the client with properly functioning oxygen equipment (including maintenance and repair), and associated supplies for the remaining ((~~twenty-four~~)) 24 months of the equipment's reasonable useful lifetime (RUL).

(iii) The same provider may bill the medicaid agency for oxygen contents, disposable supplies, and maintenance fees only. Maintenance fee payment is limited to one every six months.

(d) At any time after the end of the five-year RUL for the oxygen equipment, the provider may replace the equipment, thus beginning a new ((~~thirty-six~~)) 36-month rental period.

(e) A ((~~thirty-six~~)) 36-month rental period may restart before the end of the five-year RUL in the following situations only. Providers must follow the medicaid agency's expedited prior authorization process, see WAC 182-552-1300, Respiratory care—Authorization.

(i) The initial provider is no longer providing oxygen equipment or services;

(ii) The initial provider's core provider agreement with the medicaid agency is terminated or expires;

(iii) The client moves to an area which is not part of the provider's service area (this applies to medicaid only clients);

(iv) The client moves into a permanent residential setting; or

(v) The pediatric client is transferred to an adult provider.

(f) The medicaid agency may ((~~authorize a~~)) restart ((~~of~~)) the ((~~thirty-six~~)) 36-month rental period when ((~~extenuating circumstances exist that result in a loss or destruction of oxygen equipment that occurred while the client was exercising reasonable care under the circumstances (e.g., fire, flood, etc.) (see~~)) equipment is replaced

under WAC 182-501-0050(7)((~~)~~)). Providers must obtain prior authorization from the medicaid agency.

((~~(3)~~)) (4) Stationary oxygen systems/contents.

(a) The medicaid agency pays a maximum of one rental payment for stationary oxygen systems including contents, per client, every ((~~thirty~~)) 30 days. The medicaid agency considers a stationary oxygen system as one of the following:

(i) Compressed gaseous oxygen;

(ii) Stationary liquid oxygen; or

(iii) A concentrator.

(b) Contents only: The medicaid agency pays a maximum of one payment for stationary oxygen contents, per client, every ((~~thirty~~)) 30 days, when the client owns the stationary oxygen system or the capped monthly rental period is met.

(c) Maintenance: The medicaid agency pays for one maintenance fee of 50 percent of the monthly rental rate for a stationary oxygen concentrator and oxygen transfilling equipment every six months only when the capped rental period is met or the client owns the stationary oxygen concentrator((~~. The maintenance fee is fifty percent of the monthly rental rate~~)).

((~~(4)~~)) (5) Portable oxygen systems/oxygen contents:

(a) The medicaid agency pays a maximum of one rental payment for portable oxygen systems including oxygen contents, per client, every ((~~thirty~~)) 30 days. The medicaid agency considers a portable oxygen system to be either gas or liquid.

(b) Contents only: The medicaid agency pays a maximum of one payment for portable oxygen contents, per client, every ((~~thirty~~)) 30 days, when the client owns the portable oxygen system or when the capped monthly rental period is met.

(c) Maintenance: The medicaid agency pays for one maintenance fee of 50 percent of the monthly rental rate for a portable oxygen concentrator and oxygen transfilling equipment every six months only when the capped rental period is met or the client owns the portable oxygen concentrator((~~. The maintenance fee is fifty percent of the monthly rental rate~~)).

((~~(5)~~)) (6) The medicaid agency does not pay for oxygen therapy and related services, equipment or supplies for clients ((~~twenty-one~~)) 21 years of age and older, with, but not limited to, the following conditions:

(a) Angina pectoris in the absence of hypoxemia;

(b) Dyspnea without cor pulmonale or evidence of hypoxemia; and

(c) Severe peripheral vascular disease resulting in clinically evident desaturation in one or more extremities but in the absence of systemic hypoxemia.

((~~(6)~~)) (7) The medicaid agency does not pay separately for humidifiers with rented oxygen equipment. All accessories, such as humidifiers necessary for the effective use of oxygen equipment are included in the monthly rental payment.

((~~(7)~~)) (8) The medicaid agency does not pay separately for spare tanks of oxygen and related supplies as backup or for travel.

((~~(8)~~)) (9) The medicaid agency requires a valid prescription for oxygen in accordance with WAC 182-552-200. ((~~In addition,~~))

(a) For both initial and ongoing prescriptions for the use of oxygen, the medicaid agency requires ((~~the following:~~

~~(a) For clients who meet medicare's group I criteria (chronic oxygen clients):~~

~~(i) A prescription for the initial twelve months or the authorized prescriber's specified length of need, whichever is shorter, and a renewed prescription at least every twelve months thereafter; and~~

~~(ii)~~)) documented verification((~~, at least every twelve months,~~)) that oxygen saturations or lab values substantiate the need for continued oxygen use for each client((~~. For ongoing coverage, the provider may perform the oxygen saturation measurements~~)).

(b) The medicaid agency does not accept lifetime certificates of medical need (CMNs).

((~~(b) For clients who meet medicare's group II criteria (borderline oxygen clients):~~

~~(i) A prescription for the initial three months or the authorized prescriber's specified length of need, whichever is shorter and a renewed prescription is required three months after the initial certification and annually thereafter.~~

~~(ii) Verification that oxygen saturations or lab values substantiate the need for continued oxygen use must be documented in the client's file. For ongoing coverage, the provider may perform the oxygen saturation measurements. The medicaid agency does not accept lifetime CMNs.~~

~~(9)~~)) (10) The medicaid agency requires that documentation of oxygen saturation and lab values taken to substantiate the medical necessity of continued oxygen be kept in the client's record.

((~~(10)~~)) (11) Oxygen supplies - Replacement. The medicaid agency pays for replacement oxygen supplies after the ((~~thirty-six~~)) 36 month capped rental period or if the client owns the equipment as follows:

(a) Nasal cannula, limited to two per client every ((~~thirty~~)) 30 days;

(b) Tubing (oxygen), limited to one replacement per client every ((~~thirty~~)) 30 days; and

(c) Variable concentration mask, limited to two per client every ((~~thirty~~)) 30 days.

((~~(11)~~)) (12) See WAC 182-552-1200, Respiratory care—Noncovered services.

[Statutory Authority: RCW 41.05.021. WSR 12-14-022, § 182-552-0800, filed 6/25/12, effective 8/1/12.]

WSR 23-14-072
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed June 29, 2023, 6:55 a.m., effective July 30, 2023]

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

Purpose: The agency amended this rule to remove the website link referencing where the qualified medicare beneficiary (QMB) resource standards for an individual and a couple are listed. Under recent legislation, ESSB 5693, section 205(26), chapter 297, Laws of 2022, countable resources are no longer required for other eligibility programs. As a result, the health care authority (HCA) removed the QMB resource standards chart from its website. There is still a resource standard for the kidney disease program (KDP) and since QMB no longer has a resource standard as of January 1, 2023, HCA amended the rule to include that the KDP resource standard is based on the federal low-income subsidy program with a hyperlink to HCA's program standard for income and resources website.

Citation of Rules Affected by this Order: Amending WAC 182-540-030.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-11-123 on May 22, 2023.

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

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

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

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

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

Date Adopted: June 29, 2023.

Wendy Barcus
Rules Coordinator

OTS-4458.2

AMENDATORY SECTION (Amending WSR 16-01-033, filed 12/8/15, effective 1/8/16)

WAC 182-540-030 Kidney disease program (KDP)—Resource eligibility. (1) The person's household must have countable resources at or below the limits established ((~~for the qualified medicare beneficiary (QMB)~~)) in the federal low-income subsidy (LIS) program for the person to be eligible for the kidney disease program. ((~~QMB resource standards for an individual and a couple are listed at: http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx.~~)) LIS resource standards are listed at https://www.hca.wa.gov/free-or-low-

cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

(2) See WAC 182-540-021 to determine who must be included in the household when making a determination of whose resources count.

(3) The following resources are not counted:

(a) A home, defined as real property owned by a client as their principal place of residence together with surrounding and contiguous property;

(b) Household furnishings;

(c) One burial plot per household member or irrevocable burial plans with a mortuary;

(d) Up to ((~~one thousand five hundred dollars~~)) $1,500 for a person or ((~~three thousand dollars~~)) $3,000 for a couple set aside in a revocable burial account;

(e) Any resource which is specifically excluded by federal law.

(4) The agency follows rules for SSI-related medicaid determinations described in WAC 182-512-0200 through 182-512-0550 when determining whether any other resources are countable with the exception of subsection (5) of this section.

(5) The agency follows rules in chapter 182-516 WAC when a person owns a trust, an annuity, or a life estate.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-01-033, § 182-540-030, filed 12/8/15, effective 1/8/16. Statutory Authority: RCW 41.05.021. WSR 13-23-065, § 182-540-030, filed 11/18/13, effective 1/1/14.]

WSR 23-14-073
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed June 29, 2023, 7:01 a.m., effective August 1, 2023]

Effective Date of Rule: August 1, 2023.

Purpose: The health care authority (HCA) is amending WAC 182-501-0135 to: (a) Add clarity between fee-for-service clients and managed care organization enrollees being reviewed for or placed on the patient review and coordination (PRC) program; (b) state that HCA may determine on a case-by-case basis that a client may obtain certain prescription items at any pharmacy; and (c) add that HCA may remove a client from PRC placement if the client has successfully stabilized due to the utilization of treatment medications including, but not limited to, buprenorphine.

Citation of Rules Affected by this Order: Amending WAC 182-501-0135.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-11-096 on May 18, 2023.

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

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

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

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

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

Date Adopted: June 29, 2023.

Wendy Barcus
Rules Coordinator

OTS-4327.2

AMENDATORY SECTION (Amending WSR 21-08-090, filed 4/7/21, effective 5/8/21)

WAC 182-501-0135 Patient review and coordination (PRC). (1) **Patient review and coordination (PRC)** is a health and safety program that coordinates care and ensures clients enrolled in PRC use services appropriately and in accordance with agency rules and policies.

(a) PRC applies to medical assistance fee-for-service (FFS) clients and managed care ((~~clients~~)) organization (MCO) enrollees.

(b) PRC is authorized under federal medicaid law by 42 U.S.C. 1396n (a)(2) and 42 C.F.R. 431.54.

(2) **Definitions.** Definitions found in chapter 182-500 WAC and WAC 182-526-0010 apply to this section. The following definitions apply to this section ((~~only~~)):

"Agency's designee" – See WAC 182-500-0010.

"Appropriate use" - Use of health care services that are safe and effective for a client's health care needs.

"Assigned provider" - An agency-enrolled health care provider or one participating with an agency-contracted managed care organization (MCO) who agrees to be assigned as a primary provider and coordinator of services for ((~~a fee-for-service~~)) an FFS client or ((~~managed care client~~)) MCO enrollee in the PRC program. Assigned providers can include a primary care provider (PCP), a pharmacy, a prescriber of controlled substances, and a hospital for nonemergency services.

"At-risk" - A term used to describe one or more of the following:

(a) A client with a medical history of:

(i) Seeking and obtaining health care services at a frequency or amount that is not medically necessary; or

(ii) Potential life-threatening events or life-threatening conditions that required or may require medical intervention.

(b) Behaviors or practices that could jeopardize a client's medical treatment or health including, but not limited to:

(i) Indications of forging or altering prescriptions;

(ii) Referrals from medical personnel, social services personnel, or MCO personnel about inappropriate behaviors or practices that place the client at risk;

(iii) Noncompliance with medical or drug and alcohol treatment;

(iv) Paying cash for medical services that result in a controlled substance prescription or paying cash for controlled substances;

(v) Arrests for diverting controlled substance prescriptions;

(vi) Positive urine drug screen for illicit street drugs or nonprescribed controlled substances;

(vii) Negative urine drug screen for prescribed controlled substances; or

(viii) Unauthorized use of a client's services card for an unauthorized purpose.

"Care management" - Services provided to ((~~clients~~)) MCO enrollees with multiple health, behavioral, and social needs to improve care coordination, client education, and client self-management skills.

"Client" - See WAC 182-500-0020.

"Conflicting" - Drugs or health care services that are incompatible or unsuitable for use together because of undesirable chemical or physiological effects.

"Contraindicated" - A medical treatment, procedure, or medication that is inadvisable or not recommended or warranted.

"Duplicative" - Applies to the use of the same or similar drugs and health care services without due medical justification. Example: A client receives health care services from two or more providers for the same or similar condition(s) in an overlapping time frame, or the client receives two or more similarly acting drugs in an overlapping time frame, which could result in a harmful drug interaction or an adverse reaction.

"Emergency department information exchange (EDIE)" - An internet-delivered service that enables health care providers to better identify and treat high users of the emergency department and special needs patients. When patients enter the emergency room, EDIE can proactively alert health care providers through different venues such as fax, phone, email, or integration with a facility's current electronic medical records.

"Emergency medical condition" - See WAC 182-500-0030.

"Emergency services" - See 42 C.F.R. 438.114.

"Fee-for-service" or **"FFS"** - See WAC 182-500-0035.

"**Fee-for-service client**" or "**FFS client**" - A client not enrolled in an agency-contracted MCO.

"**Just cause**" - A legitimate reason to justify the action taken((~~,~~)) including, but not limited to, protecting the health and safety of the client.

"**Managed care ((~~client~~)) organization (MCO) enrollee**" - A medical assistance client enrolled in, and receiving health care services from, an agency-contracted managed care organization (MCO).

"**Prescriber of controlled substances**" - Any of the following health care professionals who, within their scope of professional practice, are licensed to prescribe and administer controlled substances (see chapter 69.50 RCW, Uniform Controlled Substance Act) for a legitimate medical purpose:

(a) A physician under chapter 18.71 RCW;

(b) A physician assistant under chapter 18.71A RCW;

(c) An osteopathic physician under chapter 18.57 RCW;

(d) An osteopathic physician assistant under chapter 18.57A RCW; and

(e) An advanced registered nurse practitioner under chapter 18.79 RCW.

"**Primary care provider**" or "**PCP**" - A person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), or a physician assistant (PA) who supervises, coordinates, and provides health care services to a client, initiates referrals for specialty and ancillary care, and maintains the client's continuity of care.

(3) **Clients selected for PRC review.** The agency or ((~~MCO~~)) agency's designee selects a client for PRC review when either or both of the following occur:

(a) ((~~A usage~~)) An agency or MCO claims utilization review report indicates the client has not used health care services appropriately; or

(b) Medical providers, social service agencies, or other concerned parties have provided direct referrals to the agency or MCO.

(4) **Clients not selected for PRC review.** Clients ((~~who have comprehensive, private medical insurance (not casualty)~~)) are not reviewed or placed into the PRC program when they:

(a) Are in foster care;

(b) Are covered under state-only funded programs;

(c) Do not have medicaid as the primary payor; or

(d) Are covered under the alien emergency medical (AEM) program, according to WAC 182-507-0115.

(5) **Prior authorization.** When ((~~a fee-for-service~~)) an FFS client is selected for PRC review, the prior authorization process as defined in WAC 182-500-0085 may be required:

(a) ((~~Prior to~~)) Before or during a PRC review; or

(b) When the FFS client is currently in the PRC program.

(6) **Review for placement in the PRC program.** When the agency or MCO selects a client for PRC review, the agency or MCO staff, with clinical oversight, reviews either the client's medical history or billing history, or both, to determine if the client has used health care services at a frequency or amount that is not medically necessary (42 C.F.R. 431.54(e)).

(7) **Usage guidelines for PRC placement.** Agency or MCO staff use the following usage guidelines to initiate review for PRC placement. A client may be ((~~placed~~)) reviewed for placement in the PRC program when the review shows the usage is not medically necessary and either

the client's medical history or billing history, or both, documents any of the following:

(a) Any two or more of the following conditions occurred in a period of ((~~ninety~~)) 90 consecutive calendar days in the previous ((~~twelve~~)) 12 months. The client:

(i) Received services from four or more different providers, including physicians, ARNPs, and PAs not located in the same clinic or practice;

(ii) Had prescriptions filled by four or more different pharmacies;

(iii) Received ((~~ten~~)) 10 or more prescriptions;

(iv) Had prescriptions written by four or more different prescribers not located in the same clinic or practice;

(v) Received similar services in the same day not located in the same clinic or practice; or

(vi) Had ((~~ten~~)) 10 or more office visits;

(b) Any one of the following occurred within a period of ((~~ninety~~)) 90 consecutive calendar days in the previous ((~~twelve~~)) 12 months. The client:

(i) Made two or more emergency department visits;

(ii) Exhibits "at-risk" usage patterns;

(iii) Made repeated and documented efforts to seek health care services that are not medically necessary; or

(iv) Was counseled at least once by a health care provider, or an agency or MCO staff member with clinical oversight, about the appropriate use of health care services;

(c) The client received prescriptions for controlled substances from two or more different prescribers not located in the same clinic or practice in any one month within the ((~~ninety-day~~)) 90-day review period; or

(d) The client has either a medical history or billing history, or both, that demonstrates a pattern of the following at any time in the previous ((~~twelve~~)) 12 months:

(i) Using health care services in a manner that is duplicative, excessive, or contraindicated; or

(ii) Seeking conflicting health care services, drugs, or supplies that are not within acceptable medical practice.

(8) **PRC review results.** As a result of the PRC review, the agency or MCO may take any of the following steps:

(a) Determine that no action is needed and close the client's file;

(b) Send the client and, if applicable, the client's authorized representative a one-time only written notice of concern with information on specific findings and notice of potential placement in the PRC program; or

(c) Determine that the usage guidelines for PRC placement establish that the client has used health care services at an amount or frequency that is not medically necessary, in which case ((~~the agency or MCO will take~~)) one or more of the following actions take place:

(i) The MCO:

(A) Refers the ((~~client~~)) MCO enrollee:

(I) For education on appropriate use of health care services; or

((~~(ii) Refer the client~~)) (II) To other support services or agencies; or

((~~(iii)~~)) (B) Places the MCO enrollee into the PRC program for an initial placement period of no less than 24 months. For MCO enrollees

younger than 18 years of age, the MCO must get agency approval before placing the MCO enrollee into the PRC program; or

(ii) The agency places the FFS client into the PRC program for an initial placement period of no less than ((~~twenty-four~~)) 24 months. ((~~For clients younger than eighteen years of age, the MCO must get agency approval prior to placing the client into the PRC program.~~))

(9) **Initial placement in the PRC program.**

(a) When ((~~a~~)) an FFS client is initially placed in the PRC program((~~:~~

~~(a)~~)), the agency ((~~or MCO~~)) places the FFS client for no less than ((~~twenty-four~~)) 24 months with a primary care provider (PCP) for care coordination and a pharmacy for all medication prescriptions and one or more of the following types of health care providers:

(i) ((~~Primary care provider (PCP);~~

~~(ii) Pharmacy for all prescriptions;~~

~~(iii)~~)) Prescriber of controlled substances if different than PCP;

((~~(iv)~~)) (ii) Hospital for nonemergency services unless referred by the assigned PCP or a specialist. ((~~A~~)) An FFS client may receive covered emergency services from any hospital; ((~~or~~

~~(v)~~)) (iii) Another qualified provider type, as determined by agency ((~~or MCO~~)) program staff on a case-by-case basis((~~.~~

~~(b) The managed care client will~~)); or

(iv) Additional pharmacies on a case-by-case basis.

(b) Based on a medical necessity determination, the agency may make an exception to PRC rules when in the best interest of the client. See WAC 182-501-0165 and 182-501-0160.

(c) When an MCO enrollee is initially placed in the PRC program, the MCO restricts the MCO enrollee for no less than 24 months with a primary care provider (PCP) for care coordination and a primary pharmacy for all medication prescriptions and one or more of the following types of health care providers:

(i) Prescriber of controlled substances if different than PCP;

(ii) Hospital for nonemergency services unless referred by the assigned PCP or a specialist. An MCO enrollee may receive covered emergency services from any hospital;

(iii) Another qualified provider type, as determined by MCO program staff on a case-by-case basis; or

(iv) Additional pharmacies on a case-by-case basis.

(10) **MCO enrollees changing MCOs.** MCO enrollees:

(a) Remain in the same MCO for no less than ((~~twelve~~)) 12 months for initial placement and whenever the enrollee changes MCOs, unless:

(i) The ((~~client~~)) MCO enrollee moves to a residence outside the MCO's service area and the MCO is not available in the new location; ((~~or~~))

(ii) The ((~~client's~~)) MCO enrollee's assigned PCP no longer participates with the MCO and is available in another MCO, and the ((~~client~~)) MCO enrollee wishes to remain with the current provider;

(iii) The ((~~client~~)) MCO enrollee is in a voluntary enrollment program or a voluntary enrollment county;

(iv) The ((~~client~~)) MCO enrollee is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507; or

(v) The ((~~client~~)) MCO enrollee is an American Indian/Alaska Native.

((~~(c) A managed care client~~)) (b) Placed in the PRC program must remain in the PRC program for no less than ((~~twenty-four~~)) 24 months

regardless of whether the ((~~client~~)) MCO enrollee changes MCOs or becomes ((~~a fee-for-service~~)) an FFS client.

((~~(10)~~)) (11) **Notifying the client about placement in the PRC program.** When the client is initially placed in the PRC program, the agency or the MCO sends the client and, if applicable, the client's authorized representative, a written notice that:

(a) Informs the client of the reason for the PRC program placement;

(b) ((~~Directs the client to respond to the agency or MCO within ten calendar days of the date of the written notice;~~)) Informs the client of the providers the client has been assigned to;

(c) Directs the client to respond to the agency or MCO to take the following actions if applicable:

(i) ((~~Select~~)) Change assigned providers, subject to agency or MCO approval;

(ii) Submit additional health care information, justifying the client's use of health care services; or

(iii) Request assistance, if needed, from ((~~the~~)) agency or MCO program staff((~~.~~)); and

(d) Informs the client of administrative hearing or appeal rights (see subsection ((~~(15)~~)) (16) of this section).

((~~(e) Informs the client that if a response is not received within ten calendar days of the date of the written notice, the client will be assigned a provider(s) by the agency or MCO.~~

~~(11)~~)) (12) **Selection and role of assigned provider.** A client ((~~will have~~)) has a limited choice of providers.

(a) The following providers are not available:

(i) A provider who is being reviewed by the agency or licensing authority regarding quality of care;

(ii) A provider who has been suspended or disqualified from participating as an agency-enrolled or MCO-contracted provider; or

(iii) A provider whose business license is suspended or revoked by the licensing authority.

(b) For a client placed in the PRC program, the assigned:

(i) Provider(s) must be located in the client's local geographic area, in the client's selected MCO, and be reasonably accessible to the client.

(ii) PCP supervises and coordinates health care services for the client, including continuity of care and referrals to specialists when necessary.

(A) The PCP:

(I) Provides the plan of care for clients that have documented use of the emergency department for a reason that is not deemed to be an emergency medical condition;

(II) Files the plan of care with each emergency department that the client is using or with the emergency department information exchange; and

(III) ((~~Makes referrals to substance abuse treatment for clients who are using the emergency department for substance abuse issues; and~~

~~(IV)~~)) Makes referrals to ((~~mental~~)) behavioral health treatment for clients who are using the emergency department for ((~~mental~~)) behavioral health treatment issues.

(B) The assigned PCP must be one of the following:

(I) A physician;

(II) An advanced registered nurse practitioner (ARNP); or

(III) A licensed physician assistant (PA), practicing with a supervising physician.

(iii) Prescriber of controlled substances prescribes all controlled substances for the client;

(iv) Pharmacy fills all prescriptions for the client; and

(v) Hospital provides all hospital nonemergency services.

(c) A client placed in the PRC program must remain with the assigned providers for ((~~twelve~~)) 12 months after the assignments are made, unless:

(i) The client moves to a residence outside the provider's geographic area;

(ii) The provider moves out of the client's local geographic area and is no longer reasonably accessible to the client;

(iii) The provider refuses to continue to serve the client;

(iv) The client did not select the provider. The client may request to change an assigned provider once within ((~~thirty~~)) 30 calendar days of the assignment;

(v) The ((~~client's~~)) MCO enrollee's assigned PCP no longer participates with the MCO. In this case, the ((~~client~~)) MCO enrollee may select a new provider from the list of available providers in the MCO network or follow the assigned provider to the new MCO; or

(vi) The client is in the address confidentiality program (ACP), indicated by P.O. Box 257, Olympia, WA 98507.

(d) When an assigned prescribing provider no longer contracts with the agency or the MCO:

(i) All prescriptions from the provider are invalid ((~~thirty~~)) 30 calendar days following the date the contract ends; and

(ii) ((~~All prescriptions from the provider are subject to applicable prescription drugs (outpatient) rules in chapter 182-530 WAC or appropriate MCO rules; and~~

~~(iii)~~)) The client must choose or be assigned another provider according to the requirements in this section.

((~~(12)~~)) (13) **PRC placement.**

(a) The initial PRC placement is no less than ((~~twenty-four~~)) 24 consecutive months.

(b) The second PRC placement is no less than an additional ((~~thirty-six~~)) 36 consecutive months.

(c) Each subsequent PRC placement is no less than ((~~seventy-two~~)) 72 consecutive months.

((~~(13)~~)) (14) **Agency or MCO review of a PRC placement period.** The agency or MCO reviews a client's use of health care services ((~~prior to~~)) before the end of each PRC placement period described in subsection ((~~(12)~~)) (13) of this section using the guidelines in subsection (7) of this section.

(a) The agency or MCO assigns the next PRC placement if the usage guidelines for PRC placement in subsection (7) of this section apply to the client.

(b) When the agency or MCO assigns a subsequent PRC placement, the agency or MCO sends the client and, if applicable, the client's authorized representative, a written notice informing the client:

(i) Of the reason for the subsequent PRC program placement;

(ii) Of the length of the subsequent PRC placement;

(iii) That the current providers assigned to the client continue to be assigned to the client during the subsequent PRC placement;

(iv) That all PRC program rules continue to apply;

(v) Of administrative hearing or appeal rights (see subsection ((~~(15)~~)) (16) of this section); and

(vi) Of the rules that support the decision.

(c) The agency or MCO may remove a client from PRC placement if the client:

(i) Successfully completes a treatment program that is provided by a substance use disorder (SUD) service provider certified by the agency under chapter 182-538D WAC;

(ii) Submits documentation of completion of the approved treatment program to the agency; and

(iii) Maintains appropriate use of health care services within the usage guidelines described in subsection (7) of this section for six consecutive months after the date the treatment ends; or

(iv) Successfully stabilizes due to the usage of treatment medications including, but not limited to, Buprenorphine.

(d) The agency or MCO determines the appropriate placement for a client who has been placed back into the program.

(e) A client ((~~will~~)) remains placed in the PRC program regardless of change in eligibility program type or change in address.

((~~(14)~~)) (15) **Client financial responsibility.** A client placed in the PRC program may be billed by a provider and held financially responsible for nonemergency health care services obtained from a nonpharmacy provider when the provider is not an assigned or appropriately referred provider as described in subsection ((~~(11)~~)) (12) of this section. See WAC 182-502-0160.

((~~(15)~~)) (16) **Right to administrative hearing or appeal.**

(a) ((~~A fee-for-service~~)) An FFS client who disagrees with an agency decision regarding placement or continued placement in the PRC program has the right to an administrative hearing regarding this placement. ((~~A~~)) An FFS client must request an administrative hearing from the agency within ((~~ninety~~)) 90 days of the written notice of placement or continued placement to exercise this right.

(b) ((~~A managed care client~~)) An MCO enrollee who disagrees with an MCO decision regarding placement or continued placement in the PRC program has a right to appeal this decision in the same manner as an adverse benefit determination under ((~~WAC 182-538-110~~)) chapter 182-538 WAC.

((~~(i) An appeal must be filed with the MCO within sixty calendar days of the written notice of the MCO's decision.~~

~~(ii) A client must exhaust the right to appeal through the MCO prior to requesting an administrative hearing.~~

~~(iii) A client who disagrees with the resolution of the appeal by the MCO may request an administrative hearing.~~

~~(iv) A client may exercise the right to an administrative hearing by filing a request within one hundred twenty calendar days from the written notice of resolution of the appeal by the MCO.~~

~~(c) A client enrolled in an MCO cannot change MCOs until the MCO appeal and any administrative hearing process has been completed and a final order entered.~~

~~(d)~~)) (c) The agency conducts an administrative hearing according to chapter 182-526 WAC.

((~~(e)~~)) (d) A client who requests an administrative hearing or appeal within ((~~ten~~)) 10 calendar days from the date of the written notice of an initial PRC placement will not be placed in the PRC program until ordered by an administrative law judge (ALJ) or review judge.

((~~(f)~~)) (e) A client who requests an administrative hearing or appeal more than ((~~ten~~)) 10 calendar days from the date of the written notice of initial PRC placement will remain placed in the PRC program

until a final administrative order is entered that orders the client's removal from the program.

((~~(g)~~)) (f) A client who requests an administrative hearing or appeal in all other cases and who has already been assigned providers will remain placed in the PRC program unless a final administrative order is entered that orders the client's removal from the program.

((~~(h)~~)) (g) An ALJ may rule the client be placed in the PRC program prior to the date the record is closed and ((~~prior to~~)) before the date the initial order is issued based on a showing of just cause.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-08-090, § 182-501-0135, filed 4/7/21, effective 5/8/21; WSR 18-08-075, § 182-501-0135, filed 4/3/18, effective 5/4/18. Statutory Authority: RCW 41.05.021 and 2011 1st sp.s. c 50. WSR 13-05-006, § 182-501-0135, filed 2/6/13, effective 3/9/13. WSR 11-14-075, recodified as § 182-501-0135, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 10-19-057, § 388-501-0135, filed 9/14/10, effective 10/15/10. Statutory Authority: RCW 74.08.090 and 42 C.F.R. 431.51, 431.54(e) and 456.1; 42 U.S.C. 1396n. WSR 08-05-010, § 388-501-0135, filed 2/7/08, effective 3/9/08. Statutory Authority: RCW 74.08.090, 74.09.520, 74.04.055, and 42 C.F.R. 431.54. WSR 06-14-062, § 388-501-0135, filed 6/30/06, effective 7/31/06. Statutory Authority: RCW 74.08.090, 74.04.055, and 42 C.F.R. Subpart B 431.51, 431.54 (e) and (3), and 456.1. WSR 04-01-099, § 388-501-0135, filed 12/16/03, effective 1/16/04. Statutory Authority: RCW 74.08.090. WSR 01-02-076, § 388-501-0135, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-501-0135, filed 7/31/98, effective 9/1/98. Statutory Authority: RCW 74.08.090 and 74.09.522. WSR 97-03-038, § 388-501-0135, filed 1/9/97, effective 2/9/97. Statutory Authority: RCW 74.08.090. WSR 94-10-065 (Order 3732), § 388-501-0135, filed 5/3/94, effective 6/3/94. Formerly WAC 388-81-100.]

WSR 23-14-076
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed June 29, 2023, 8:52 a.m., effective July 30, 2023]

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

Purpose: The agency is amending WAC 182-509-0320 and 182-512-0860 to include the working families' tax credit under RCW 82.08.0206 as income that the agency excludes when determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health and Washington apple health SSI-related medical programs.

Citation of Rules Affected by this Order: Amending WAC 182-509-0320 and 182-512-0860.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-11-006 on May 4, 2023.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, 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 29, 2023.

Wendy Barcus
Rules Coordinator

OTS-4498.1

AMENDATORY SECTION (Amending WSR 20-17-136, filed 8/18/20, effective 9/18/20)

WAC 182-509-0320 MAGI income—Noncountable income. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (see WAC 182-509-0300):

(1) Some types of income are not counted when determining eligibility for MAGI-based apple health. Under the MAGI income methodology described in WAC 182-509-0300, income is not counted if the Internal Revenue Service (IRS) permits it to be excluded or deducted for purposes of determining the tax liability of a person. (See 26 U.S.C. Sections 62(a) and 101-140.)

(2) Examples of income that are not counted include, but are not limited to:

(a) Bona fide loans, except certain student loans as specified under WAC 182-509-0335;

(b) Federal income tax refunds and earned income tax credit payments for up to ((~~twelve~~)) 12 months from the date received;

(c) Child support payments received by any person included in household size under WAC 182-506-0010;

(d) Nontaxable time loss benefits or other compensation received for sickness or injury, such as benefits from the department of labor and industries (L&I) or a private insurance company;

(e) Title IV-E and state foster care and adoption support maintenance payments;

(f) Veteran's benefits including, but not limited to, disability compensation and pension payments for disabilities paid to the veteran or family members; education, training and subsistence; benefits under a dependent-care assistance program for veterans, housebound allowance and aid and attendance benefits;

(g) Money withheld from a benefit to repay an overpayment from the same income source;

(h) One-time payments issued under the Department of State or Department of Justice reception and replacement programs, such as Voluntary Agency (VOLAG) payments;

(i) Nontaxable income from employment and training programs;

(j) Any portion of income used to repay the cost of obtaining that income source;

(k) Insurance proceeds or other income received as a result of being a Holocaust survivor;

(l) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(m) Income from a sponsor given to a sponsored immigrant;

(n) Fringe benefits provided on a pretax basis by an employer, such as transportation benefits or moving expenses;

(o) Employer contributions to certain pretax benefits funded by an employee's elective salary reduction, such as amounts for a flexible spending account;

(p) Distribution of pension payments paid by the employee (such as premiums or contributions) that were previously subject to tax;

(q) Gifts as described in IRS *Publication 559: Survivors, Executors, and Administrators*;

(r) Cash or noncash inheritances, except that the agency counts income produced by an inheritance;

(s) Death benefits from life insurance and certain benefits paid for deaths that occur in the line of duty; ((~~and~~))

(t) Working families' tax credit payments under RCW 82.08.0206; and

(u) Other payments that are excluded from income under state or federal law.

(3) Income received from other agencies or organizations as needs-based assistance is not countable income under this section.

(a) "Needs-based" means eligibility for the program is based on having limited income, or resources, or both. Examples of needs-based assistance are:

(i) Clothing;

(ii) Food;

(iii) Household supplies;

(iv) Medical supplies (nonprescription);

(v) Personal care items;

(vi) Shelter;

(vii) Transportation; and

(viii) Utilities (e.g., lights, cooking fuel, the cost of heating or heating fuel).

(b) Needs-based cash programs include, but are not limited to, the following apple health programs:

(i) Diversion cash assistance (DCA);

(ii) Temporary assistance for needy families (TANF);

(iii) State family assistance (SFA);

(iv) Pregnant women's assistance (PWA);

(v) Refugee cash assistance (RCA);

(vi) Aged, blind, disabled cash assistance (ABD); and

(vii) Supplemental security income (SSI).

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-17-136, § 182-509-0320, filed 8/18/20, effective 9/18/20. Statutory Authority: RCW 41.05.021, Patient Protection and Affordable Care Act (P.L. 111-148), 42 C.F.R. §§ 431, 435, 457, and 45 C.F.R. § 155. WSR 14-01-021, § 182-509-0320, filed 12/9/13, effective 1/9/14.]

OTS-4499.1

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0860 SSI-related medical—Income exclusions under federal statute or other state laws. The Social Security Act and other federal statutes or state laws list income that the agency excludes when determining eligibility for Washington apple health (WAH) SSI-related medical programs. These exclusions include, but are not limited to:

(1) Income tax refunds;

(2) Federal earned income tax credit (EITC) payments for ((~~twelve~~)) 12 months after the month of receipt;

(3) Compensation provided to volunteers in the Corporation for National and Community Service (CNCS), formerly known as ACTION programs established by the Domestic Volunteer Service Act of 1973. P.L. 93-113;

(4) Assistance to a person (other than wages or salaries) under the Older Americans Act of 1965, as amended by section 102 (h)(1) of Pub. L. 95-478 (92 Stat. 1515, 42 U.S.C. 3020a);

(5) Federal, state and local government payments including assistance provided in cash or in-kind under any government program that provides medical or social services;

(6) Certain cash or in-kind payments a person receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(7) Value of food provided through a federal or nonprofit food program such as WIC, donated food program, school lunch program;

(8) Assistance based on need, including:

(a) Any federal SSI income or state supplement payment (SSP) based on financial need;

(b) Basic Food;

(c) State-funded cash assistance;

(d) CEAP;

(e) TANF; and

(f) Bureau of Indian Affairs (BIA) general assistance.

(9) Housing assistance from a federal program such as HUD if paid under:

(a) United States Housing Act of 1937 (section 1437 et seq. of 42 U.S.C.);

(b) National Housing Act (section 1701 et seq. of 12 U.S.C.);

(c) Section 101 of the Housing and Urban Development Act of 1965 (section 1701s of 12 U.S.C., section 1451 of 42 U.S.C.);

(d) Title V of the Housing Act of 1949 (section 1471 et seq. of 42 U.S.C.);

(e) Section 202(h) of the Housing Act of 1959; or

(f) Weatherization provided to low-income homeowners by programs that consider income in the eligibility determinations.

(10) Energy assistance payments including:

(a) Those to prevent fuel cutoffs; and

(b) Those to promote energy efficiency.

(11) Income from employment and training programs as specified in WAC 182-512-0780.

(12) Foster grandparents program;

(13) Title IV-E and state foster care maintenance payments if the foster child is not included in the assistance unit;

(14) The value of any childcare provided or arranged (or any payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act, as amended by section 8(b) of P.L. 102-586 (106 Stat. 5035);

(15) Educational assistance as specified in WAC 182-512-0760;

(16) The excluded income described in WAC 182-512-0770 and other income received by American Indians/Alaska Natives that is excluded by federal law;

(17) Payments from Susan Walker v. Bayer Corporation, et al., 96-c-5024 (N.D. Ill) (May 8, 1997) settlement funds;

(18) Payments from Ricky Ray Hemophilia Relief Fund Act of 1998, P.L. 105-369;

(19) Disaster assistance paid under Federal Disaster Relief P.L. 100-387 and Emergency Assistance Act, P.L. 93-288 amended by P.L. 100-707 and for farmers P.L. 100-387;

(20) Payments to certain survivors of the Holocaust as victims of Nazi persecution; payments excluded pursuant to section 1(a) of the Victims of Nazi Persecution Act of 1994, P.L. 103-286 (108 Stat. 1450);

(21) Payments made under section 500 through 506 of the Austrian General Social Insurance Act;

(22) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

(23) Restitution payments and interest earned to Japanese Americans or their survivors, and Aleuts interned during World War II, established by P.L. 100-383;

(24) Payments made from the Agent Orange Settlement Funds or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

(25) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426; ((~~and~~))

(26) Any interest or dividend is excluded as income, except for the community spouse of an institutionalized person; and

(27) Working families' tax credit payments under RCW 82.08.0206.

[Statutory Authority: RCW 41.05.021 and Patient Protection and Affordable Care Act (Public Law 111-148), 42 C.F.R. §§ 431, 435, 457 and 45 C.F.R. § 155. WSR 14-07-059, § 182-512-0860, filed 3/14/14, effective 4/14/14. WSR 11-24-018, recodified as § 182-512-0860, filed 11/29/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, chapter 74.12 RCW, and The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. WSR 11-21-025, § 388-475-0860, filed 10/11/11, effective 10/29/11. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500, and Social Security Act as amended by P.L. 108-203. WSR 06-04-046, § 388-475-0860, filed 1/26/06, effective 2/26/06. Statutory Authority: RCW 74.04.050, 74.08.090. WSR 04-09-005, § 388-475-0860, filed 4/7/04, effective 6/1/04.]

WSR 23-14-079
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 22-03—Filed June 29, 2023, 1:34 p.m., effective July 30, 2023]

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

Purpose: Chapter 173-224 WAC, Water quality permit fees; the purpose of this chapter is to establish a permit fee system for state waste discharge and National Pollutant Discharge Elimination System (NPDES) permits issued by ecology pursuant to RCW 90.48.160, 90.48.162, or 90.48.260.

Chapter 173-224 WAC implements RCW 90.48.465 that requires ecology to establish, by rule, annual fees to recover the cost of administering the wastewater and stormwater permit programs. The rule amendment considers the economic impact on small discharges and public entities and provides appropriate adjustments where applicable.

Below is a brief explanation of the specific sections in chapter 173-224 WAC that will be updated for this rule making:

- WAC 173-224-030 Definitions, definitions are updated to align with current water quality permit terminology and to reflect changes in the permit fee schedule.
- WAC 173-224-040 Permit fee schedule, adjusts fees to reflect an increase in fees for underpayer fee categories, rounding of fee amounts, and expanding tiers to certain fee categories. Aligns fees for concentrated animal feeding operation (CAFO) permits with new CAFO general permit and creates fees for CAFO individual permits. Creates minimum permit fees. The fees for municipal wastewater treatment plants that are based on residential equivalents are increased based on the recommendation of the municipal wastewater permit fees advisory committee.
- WAC 173-224-050 Permit fee computation and payments, removes the waiver of lesser permit fees when a facility has a discharge permit and stormwater general permit. Makes other technical corrections.
- WAC 173-224-060 Permits issued by other governmental agencies, technical corrections.
- WAC 173-224-080 Transfer of permit coverage, technical corrections.
- WAC 173-224-090 Permit fee reductions, clarifies requirements for an extreme hardship fee reduction. Adds a new fee reduction category for hazardous waste cleanup. Makes other technical corrections.
- WAC 173-224-100 Administrative appeals to the department, technical corrections.

Citation of Rules Affected by this Order: Amending chapter 173-224 WAC.

Statutory Authority for Adoption: RCW 90.48.465.

Adopted under notice filed as WSR 22-13-046 [23-07-137] on March 22, 2023.

A final cost-benefit analysis is available by contacting Ligeia Heagy, Department of Ecology, Water Quality Permit Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-280-3697, for Washington relay service or TTY call 711 or 877-833-6341, email wqfeeunit@ecy.wa.gov, website https://apps.ecology.wa.gov/publications/SummaryPages/2310024.html, https://apps.ecology.wa.gov/publications/SummaryPages/2310025.html.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 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 29, 2023.

Heather R. Bartlett
Deputy Director

OTS-4280.5

AMENDATORY SECTION (Amending WSR 92-03-131, filed 1/21/92, effective 2/21/92)

WAC 173-224-015 Purpose. The purpose of this chapter is to establish a fee system for state waste discharge and NPDES permits issued by the department pursuant to RCW 90.48.160, 90.48.162, or 90.48.260. RCW 90.48.465 ((~~authorizes~~)) directs the department to base fees on factors related to the complexity of permit issuance and compliance and to ((~~charge~~)) assess fees to fully recover, but not exceed the costs of the permit program based on expenses incurred in the issuance and comprehensive administration of state waste discharge and NPDES permits. Fee amounts contained in this chapter represent the department's true estimate of fee eligible permit program costs and reflect the department's commitment to fully recover all eligible expenses. Fee amounts in this chapter for fiscal year 2025 remain in effect for subsequent fiscal years until this chapter is amended. The department shall continue to examine the feasibility of adopting((~~, when applicable,~~)) alternative permit fee systems. Any alternative fee system, such as variable permit fees, shall ensure continued full recovery of eligible program costs and may be based on pollutant loading and toxicity and may be designed to encourage recycling and reduction of the quantity of pollutants.

[Statutory Authority: Chapter 90.48 RCW. WSR 92-03-131 (Order 91-45), § 173-224-015, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-015, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 19-14-040, filed 6/26/19, effective 7/27/19)

WAC 173-224-020 Applicability. This chapter applies to all persons holding or applying for a state waste discharge or NPDES permit issued by the department pursuant to RCW 90.48.160, 90.48.162, ((~~90.48.200~~)) or 90.48.260, including persons holding permits that remain in effect under WAC 173-216-040, 173-220-180((~~(5)~~)), or 173-226-050. This chapter does not apply when a wastewater discharge permit is written for a state conducted remedial action under the Model Toxics Control Act. That is, ecology may not charge itself for wastewater discharge permits written for sites where the agency is conducting a cleanup.

[Statutory Authority: RCW 90.48.465. WSR 19-14-040 (Order 18-01), § 173-224-020, filed 6/26/19, effective 7/27/19. Statutory Authority: Chapter 90.48 RCW. WSR 94-10-027 (Order 93-08), § 173-224-020, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-020, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-020, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 21-13-150, filed 6/22/21, effective 7/23/21)

WAC 173-224-030 Definitions. The following definitions apply to this chapter.

(1) "Administrative expenses" means those costs associated with issuing and administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

(2) "Aluminum forming" means the deformation of aluminum or aluminum alloys into specific shapes by hot or cold rolling, drawing, extruding, or forging.

(3) "Aluminum and magnesium reduction mills" means the electrolytic reduction of alumina or magnesium salts to produce aluminum or magnesium metal.

(4) "Animal unit" means the following:

((~~Animal Type~~	~~Number of Animals per Animal Unit~~
~~Dairy Cows~~	
~~Jersey Breed~~	
~~Milking Cow~~	~~0.900~~
~~Dry Cow~~	~~0.900~~
~~Heifer~~	~~0.220~~
~~Calf~~	~~0.220~~
~~Other Breeds~~	
~~Milking Cow~~	~~1.400~~
~~Dry Cow~~	~~1.000~~
~~Heifer~~	~~0.800~~
~~Calf~~	~~0.500~~
~~Feedlot Beef~~	~~0.877~~
~~Horses~~	~~0.500~~

((~~Animal Type~~	~~Number of Animals per Animal Unit~~
~~Sheep~~	~~0.100~~
~~Swine for breeding~~	~~0.375~~
~~Swine for slaughter~~	~~0.110~~
~~Laying hens & pullets > 3 months~~	~~0.004~~
~~Broilers & pullets < 3 months~~	~~0.002~~

~~For those concentrated animal feeding operations not listed on the above table, the department will use 1,000 pounds of live animal weight and the weight of the type of animal in determining the number of animal units.~~))

DAIRY ANIMAL TYPE	ANIMAL UNIT MULTIPLIER
The number of animal units equals the number of animals multiplied by the animal unit multiplier. *Example: 10 milk cows multiplied by 1.4 = 14 animal units*	
Dairy Cows	
Milk cow	1.40
Dry cow	1.00
Heifer	0.80

(5) "Annual permit fee" means the fee ((~~charged~~)) assessed by the department for annual expenses associated with activities specified in RCW 90.48.465. This annual fee is ((~~based on~~)) assessed in alignment with the state's fiscal year (July 1 - June 30).

((~~"bbls/d"~~)) (6) "bbls" means barrels of product in storage for fuel and chemical storage facilities.

(7) "bbls per day" means barrels per day of ((~~feedstock~~)) oil for petroleum refineries.

((~~"bins/yr"~~)) (8) "bins per year" means total standard bins used during the last complete calendar year by a facility in the fruit packing industry. The bins measure approximately 47.5 inches × 47.4 inches × 29.5 inches and hold approximately 870 pounds of fruit.

(9) "Chemical pulp mill ((~~w/chlorine~~)) with chlorine bleaching" means any pulp mill that uses chlorine or chlorine compounds in their bleaching process.

(10) "Coal mining and preparation" means extracting coal from underground or surface mines using machinery or explosives. Coal preparation plants may use chemical and physical processes such as leaching, distillation, retorting, slurry mining, solution mining, borehole mining, fluid recovery mining, washing and concentrating. Coal handling may include sorting, screening, crushing, storing, or transporting.

(11) "Combined food processing waste treatment facility" means a facility that treats wastewater from more than one separately permitted food processor and receives no domestic wastewater or waste from industrial sources other than food processing.

(12) "Combined industrial waste treatment" means a facility ((~~which~~)) that treats wastewater from more than one industry in any of the following categories: Inorganic chemicals, metal finishing, ore concentration, organic chemicals, or photofinishers.

(13) "Combined sewer overflow (CSO) system" means ((~~the event during which excess combined sewage flow caused by inflow is discharged from a combined sewer, rather than conveyed to the sewage treatment plant because either the capacity of the treatment plant or the combined sewer is exceeded~~)) a system that conveys combined wastewater and stormwater to a domestic wastewater facility for treatment, but may also discharge wastewater prior to the treatment facility.

(14) "Concentrated animal feeding operation (CAFO)" means an ((~~"~~))animal feeding operation((~~"~~)) that meets the criteria in Appendix ((~~B~~)) C of 40 C.F.R. 122 as presently enacted and any subsequent modifications thereto.

(15) "Contaminants of concern" means a chemical for which an effluent limit is established (this does not include pH, flow, temperature, or other "nonchemical parameters"). Petroleum constituents are considered as one contaminant of concern even if more than one effluent limit is established (e.g., Total Petroleum Hydrocarbons and benzene, toluene, ethylbenzene, and xylene (BTEX)).

(16) "Crane" means a machine used for hoisting and lifting ship hulls.

((~~"cu. yds/yr"~~)) (17) "Cubic yards per year" means the cubic yards per year for total production from a sand and gravel facility during the most recent completed calendar year.

(18) "Department" means the department of ecology.

(19) "Director" means the director of the department of ecology.

(20) "Disturbed acres" means the total area ((~~which will be disturbed during all phases of the construction project or common plan of development or sale~~)) of disturbance for a construction site over the life of a construction project. This includes all clearing, grading, and excavating, and any other activity which disturbs the surface of the land.

(21) "Domestic wastewater" means water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places, together with any groundwater infiltration or surface waters that may be present.

(22) "Domestic wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim or dispose of domestic wastewater together with ((~~such~~)) industrial waste ((~~as~~)) that may be present.

(23) "EPA" means the United States Environmental Protection Agency.

((~~"Fin fish rearing and hatching" means the raising of fin fish for fisheries enhancement or sale, by means of hatcheries, net pens, or other confined fish facilities.~~))

(24) "Facilities not otherwise classified" means an industrial wastewater facility that does not meet the definition of other permit fee categories and the discharge in gallons per day is the best method to assess a permit fee. This fee category may include a variety of industrial facility types.

(25) "Finfish hatching and rearing" means raising (i.e., hatching, culturing, rearing, and growing) finfish. An operation to raise finfish uses confined spaces such as hatcheries, net pens, or other enclosed fish facilities or structures. The purpose for the activity can include sales or fisheries enhancement.

(26) "Federally recognized tribe" means any Indian tribe, band, nation, or other organized group or community of Indians in the Federal List Act, that is recognized as having a government-to-government relationship with the United States of America, with the responsibili-

ties, powers, limitations, and obligations to that designation, and is eligible for funding and services from the Bureau of Indian Affairs or successor agency.

(27) "Flavor extraction" means the recovery of flavors or essential oils from organic products by steam distillation.

(28) "Food processing" means the preparation of food for human or animal consumption or the preparation of animal by-products, excluding fruit packing. This category includes, but is not limited to, fruit and vegetable processing, meat and poultry products processing, dairy products processing, beer production, rendering and animal feed production. Food processing wastewater treatment plants that treat wastes from only one separately permitted food processor must be treated as one facility for billing purposes.

(29) "Fruit packing" means preparing fruit for wholesale or retail sale by washing and/or other processes in which the skin of the fruit is not broken and in which the interior part of the fruit does not come in direct contact with the wastewater.

(30) "gpd" means gallons per day.

(31) "gpy" means gallons per year ((~~and is used to calculate winery production levels~~)) of wine produced as reported annually for the most recent completed calendar year.

((~~"Gross revenue for business" means the gross income from Washington business activities.~~))

(32) "Hazardous waste ((~~clean up~~)) cleanup sites" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action other than RCRA corrective action sites.

((~~"Industrial facility" means any facility not included in the definition of municipal/domestic facility.~~))

(33) "Inactive" means that a facility is not currently discharging wastewater but maintains their permit coverage.

(34) "Inactive rate" means a fee assessment that is reduced to 25 percent of the regular assessed fee, when a site is inactive for a minimum of 18 months.

(35) "Industrial gross revenue" means the annual amount of the sales of goods and services produced using the processes regulated by the ((~~wastewater~~)) stormwater discharge permit.

(36) "Industrial stormwater" means ((~~a stormwater discharge from an operation required to be covered under ecology's NPDES and state waste discharge general permit for~~)) stormwater discharges associated with industrial activities that are regulated under either a general permit or ((~~modifications to that permit or having~~)) an individual ((~~wastewater~~)) permit for stormwater ((~~only~~)).

(37) "Industrial wastewater" means water or liquid-carried waste from industrial or commercial processes, as distinct from domestic wastewater. These wastes may result from any process or activity of industry, manufacture, trade or business, from the development of any natural resource, or from animal operations such as feed lots, poultry houses, or dairies. The term includes contaminated stormwater and, also, leachate from solid waste facilities.

(38) "Industrial wastewater facility" means all structures, equipment, or processes required to collect, carry away, treat, reclaim, or dispose of industrial wastewater. In this rule, it also means any facility not included in the definition of municipal or domestic wastewater facility.

(39) "Manufacturing" means making goods and articles by hand or machine into a manufactured product.

(40) "Median household income" means the most recent available census data, updated yearly ((~~based on inflation rates~~)) as measured by the ((~~Federal Bureau of Labor Statistics and published as the Consumer Price Index~~)) U.S. Census Bureau.

(41) "Metal finishing" means preparing metal surfaces by means of electroplating, electroless plating, anodizing, coating (chromating, phosphating and coloring), chemical etching and milling, and printed circuit board manufacture.

(42) "MGD" means million gallons per day.

((~~"Municipal/domestic~~)) (43) "Municipal or domestic wastewater facility" means a publicly owned facility treating domestic wastewater together with any industrial ((~~wastes~~)) wastewaters that may be present, or a privately owned facility treating solely domestic wastewater.

((~~"Municipal gross revenue" means gross receipts from monthly, bimonthly, and/or quarterly user charges for sewer services received from all classes of customers;~~

~~Included in these user charges are user charges and fees based on wastewater constituents' strengths and characteristics including high-strength surcharges and charges based on biochemical oxygen demand, suspended solids, oil and grease, toxicants, heavy metals, and flow, etc.~~

~~Municipal gross revenue includes charges for receipt and treatment of septic tank wastes, holding tank wastes, chemical toilet wastes, etc.~~

~~Municipal gross revenue includes all amounts received from other municipalities for sewage interception, treatment, collection, or disposal.~~

~~Gross revenue excludes:~~

~~Amounts derived by municipalities directly from taxes levied for the support or maintenance of sewer services.~~

~~Late charges, penalties for nontimely payment by customers, interest on late payments, and all other penalties and fines.~~

~~Permit fees and compliance monitoring fees for wastewater discharge permits issued by municipalities with local pretreatment programs. Permit fees which are charged to cover the cost of providing sewer service are not excluded from municipal gross revenue.~~

~~Receipts by a municipality of special assessments or installments thereof and interests and penalties thereon, and charges in lieu of assessments.~~

~~Connection charges.~~

~~Revenues from sales of by-products such as sludge, processed wastewater, etc.~~))

(44) "Municipal sewerage system" or "publicly owned treatment works (POTW)" means a publicly owned domestic wastewater facility or a privately owned domestic wastewater facility.

(45) "Municipality" means a city, town, county, district, association, or other public body created by or in accordance with state law and that has jurisdiction over disposal of sewage, industrial wastes, or other wastes, ((~~or an Indian tribe or an authorized Indian tribal organization,~~)) or a designated and approved management agency under 33 U.S.C. Sec. 1288. State government agencies are not included in this definition.

(46) "Noncontact cooling water with additives" means water used for cooling that does not come into direct contact with any raw materials, intermediate product, waste product or finished product, but

((~~which~~)) may contain chemicals or additives ((~~added by the permittee~~)) to control corrosion or fouling of the cooling system.

(47) "Noncontact cooling water without additives" means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product or finished product, ((~~and which~~)) that does not contain chemicals ((~~added by the permittee~~)) or additives. The noncontact cooling water fee without additives category applies to those facilities ((~~which~~)) that discharge only noncontact cooling water and ((~~which~~)) that have no other wastewater discharges required to be permitted under RCW 90.48.160, 90.48.162, and 90.48.260.

(48) "Nonferrous metals forming" means manufacturing semifinished products from pure metal or metal alloys other than iron or steel or of metals not otherwise classified in WAC 173-224-040(2).

(49) "Nonfinfish hatching and rearing" means raising (i.e., hatching culturing, rearing, and growing) aquatic animals, such as shellfish, other aquatic invertebrates, or other aquatic species, that are not exclusively finfish. An operation to raise these species uses confined spaces to grow the animals and includes feeding and cleaning activities to maintain the animals. The purposes for the activity can include sales and harvest enhancement.

(50) "Nonoperating ((~~sand and gravel~~)) site" means a location where previous sand and gravel mining or processing has occurred; that has not been fully reclaimed; that conducts mining or processing fewer than ((~~ninety~~)) 90 days per year, and that may include stockpiles of raw materials or finished products. The permittee may add or withdraw raw materials or finished products from the stockpiles for transportation off-site for processing, use, or sale and still be considered a nonoperating site.

(51) "NPDES permit" means a National Pollutant Discharge Elimination System permit issued by the department under Section 402 of the federal Clean Water Act and RCW 90.48.260.

(52) "Ore mining" refers to mine operators who extract ores (metal-bearing rock) from underground or surface mines using machinery, explosives, or chemicals. Extraction processes include dressing (picking, sorting, washing of ores), milling (crushing, grinding, etc.), and beneficiation (processing to improve purity/quality).

(53) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, partnership, association, firm, individual, or any other entity whatever.

(54) "Portable facility" means a facility or equipment that is designed for mobility and is moved from site to site for short term operations. A portable facility or equipment applies only to an asphalt batch plant, portable concrete batch plant and portable rock crusher.

(55) "RCRA corrective action sites" means Resource Conservation Recovery Act ((~~clean up~~)) cleanup sites required to have a wastewater discharge permit resulting from a corrective action under relevant federal authorities or under chapters 70A.300 and 70A.305 RCW including chapters 173-303 and 173-340 WAC, and are not subject to cost recovery.

(56) "Residential equivalent (RE)" means a single-family residence or a unit of sewer service that yields an amount of gross revenue equal to the annual user charge for a single-family residence. In cases where the permit holder does not maintain data on gross revenue, user charges, and/or the number of single-family residences that it

serves, "residential equivalent" means an influent flow of ((~~two hundred fifty~~)) 250 gallons per day.

(57) "Sand and gravel" means mining or quarrying sand, gravel, or rock, or producing concrete, asphalt, or a combination thereof.

(58) "Seafood processing" means:

(a) Preparing fresh, cooked, canned, smoked, preserved, or frozen seafoods, including marine and freshwater animals (fish, shellfish, crustaceans, etc.) and plants, for human or animal consumption; or

(b) Washing, shucking, and/or packaging of mollusks or crustaceans.

(59) "Sewer service" means receiving sewage deposited into and transported by a system of sewers, drains, and pipes to a common point, or points, for disposal or for transfer to treatment for disposal, and activities involving the interception, transfer, storage, treatment, and/or disposal of sewage, or any of these activities.

(60) "State waste discharge permit" means a permit required under RCW 90.48.160 or 90.48.162.

(61) "Stormwater" means precipitation that flows from an industrial operation or construction activity discharging stormwater runoff as defined in 40 C.F.R. 122.26 (b)(14) or facilities that are permitted as a significant contributor of pollutants as allowed in the federal Clean Water Act at Section 402 (p)((~~(2)(E)~~)).

((~~"Tons/yr."~~)) (62) "Tons per year" means the total annual production in tons from an asphalt production facility ((~~in tons~~)) during the most recent completed calendar year, or the average tons per year of coal mining and preparation production.

((~~"Vegetable/bulb~~)) (63) "Vegetable or bulb washing" means washing, packing, ((~~and/or~~)) or shipping fresh vegetables and bulbs when there is no cooking or cutting of the product before packing.

[Statutory Authority: RCW 90.48.465. WSR 21-13-150 (Order 19-10), § 173-224-030, filed 6/22/21, effective 7/23/21; WSR 19-14-040 (Order 18-01), § 173-224-030, filed 6/26/19, effective 7/27/19; WSR 17-16-005 (Order 16-11), § 173-224-030, filed 7/20/17, effective 8/20/17; WSR 13-22-051 (Order 13-02), § 173-224-030, filed 11/1/13, effective 12/2/13. Statutory Authority: Chapter 90.48 RCW. WSR 08-16-109 (Order 08-05), § 173-224-030, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 90.48.465. WSR 04-15-046, § 173-224-030, filed 7/13/04, effective 8/13/04. Statutory Authority: Chapter 90.48 RCW. WSR 02-12-059, § 173-224-030, filed 5/30/02, effective 6/30/02; WSR 00-02-031 (Order 99-03), § 173-224-030, filed 12/28/99, effective 1/28/00; WSR 98-03-046 (Order 97-27), § 173-224-030, filed 1/15/98, effective 2/15/98; WSR 94-10-027 (Order 93-08), § 173-224-030, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-030, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-030, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 21-13-150, filed 6/22/21, effective 7/23/21)

WAC 173-224-040 Permit fee schedule. ((~~(1) Application fee. In addition to the annual fee, first time applicants (except those applying for coverage under a general permit) will pay a one time application fee of twenty-five percent of the annual permit fee, or $250.00,~~

~~whichever is greater. An application fee is assessed for RCRA sites regardless of whether a new permit is issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is modified.~~

~~(2) INDUSTRIAL FACILITY CATEGORIES.~~

~~INDUSTRIAL FACILITY CATEGORIES~~	~~FY 2022 ANNUAL PERMIT FEE~~	~~FY 2023 ANNUAL PERMIT FEE & BEYOND~~
~~Aluminum Alloys~~	~~$22,950.00~~	~~$22,950.00~~
~~Aluminum and Magnesium Reduction Mills~~		
~~a. NPDES Permit~~	~~115,785.00~~	~~115,785.00~~
~~b. State Permit~~	~~57,895.00~~	~~57,895.00~~
~~Aluminum Forming~~	~~68,850.00~~	~~68,850.00~~
~~Aquaculture~~		
~~a. Finfish hatching and rearing - Individual Permit~~	~~5,889.00~~	~~5,889.00~~
~~b. Finfish hatching and rearing - General Permit Coverage~~	~~4,125.00~~	~~4,125.00~~
~~c. Shellfish hatching~~	~~223.00~~	~~223.00~~
~~Aquatic Pest Control~~		
~~a. Irrigation Districts~~	~~682.00~~	~~682.00~~
~~b. Mosquito Control Districts~~	~~682.00~~	~~682.00~~
~~c. Invasive Moth Control~~	~~682.00~~	~~682.00~~
~~d. Aquatic Species Control & Eradication~~	~~682.00~~	~~682.00~~
~~e. Oyster Growers~~	~~682.00~~	~~682.00~~
~~f. Rotenone Control~~	~~682.00~~	~~682.00~~
~~Boat Yards - Individual Permit Coverage~~		
~~a. With stormwater only discharge~~	~~588.00~~	~~588.00~~
~~b. All others~~	~~1,173.00~~	~~1,173.00~~
~~Boat Yards - General Permit Coverage~~		
~~a. With stormwater only discharge~~	~~537.00~~	~~537.00~~
~~b. All others~~	~~1,087.00~~	~~1,087.00~~
~~Bridge Washing~~		
~~a. Single-site Permit~~	~~4,047.00~~	~~4,047.00~~
~~b. WSDOT Annual Fee~~	~~13,450.00~~	~~13,450.00~~
~~Coal Mining and Preparation~~		
~~a. < 200,000 tons per year~~	~~9,175.00~~	~~9,175.00~~
~~b. 200,000 - < 500,000 tons per year~~	~~20,657.00~~	~~20,657.00~~
~~c. 500,000 - < 1,000,000 tons per year~~	~~36,718.00~~	~~36,718.00~~
~~d. 1,000,000 tons per year and greater~~	~~68,850.00~~	~~68,850.00~~
~~Combined Industrial Waste Treatment~~		
~~a. < 10,000 gpd~~	~~3,972.00~~	~~3,972.00~~
~~b. 10,000 - < 50,000 gpd~~	~~9,816.00~~	~~9,816.00~~
~~c. 50,000 - < 100,000 gpd~~	~~19,636.00~~	~~19,636.00~~
~~d. 100,000 - < 500,000 gpd~~	~~39,266.00~~	~~39,266.00~~
~~e. 500,000 gpd and greater~~	~~58,901.00~~	~~58,901.00~~
~~Combined Food Processing Waste Treatment Facilities~~	~~18,797.00~~	~~18,797.00~~
~~Combined Sewer Overflow System~~		
~~a. < 50 acres~~	~~3,927.00~~	~~3,927.00~~
~~b. 50 - < 100 acres~~	~~9,816.00~~	~~9,816.00~~
~~c. 100 - < 500 acres~~	~~11,783.00~~	~~11,783.00~~

INDUSTRIAL FACILITY CATEGORIES	FY 2022 ANNUAL PERMIT FEE	FY 2023 ANNUAL PERMIT FEE & BEYOND
d. 500 acres and greater	15,704.00	15,704.00
Commercial Laundry	555.00	555.00
Concentrated Animal Feeding Operation		
a. Nondairy CAFOs		
1. < 200 Animal Units	308.00	308.00
2. 200 - < 400 Animal Units	772.00	772.00
3. 400 - < 600 Animal Units	1,546.00	1,546.00
4. 600 - < 800 Animal Units	2,317.00	2,317.00
5. 800 Animal Units and greater	3,094.00	3,094.00
b. Dairy CAFOs $.50 per Animal Unit for FY 2022, FY 2023 and beyond, not to exceed $2,076.00		
Facilities Not Otherwise Classified - Individual Permit Coverage		
a. < 1,000 gpd	1,963.00	1,963.00
b. 1,000 - < 10,000 gpd	3,927.00	3,927.00
c. 10,000 - < 50,000 gpd	9,817.00	9,817.00
d. 50,000 - < 100,000 gpd	15,704.00	15,704.00
e. 100,000 - < 500,000 gpd	31,258.00	31,258.00
f. 500,000 - < 1,000,000 gpd	39,266.00	39,266.00
g. 1,000,000 gpd and greater	58,900.00	58,900.00
Flavor Extraction		
a. Steam Distillation	202.00	202.00
Food Processing		
a. < 1,000 gpd	1,961.00	1,961.00
b. 1,000 - < 10,000 gpd	5,003.00	5,003.00
c. 10,000 - < 50,000 gpd	8,934.00	8,934.00
d. 50,000 - < 100,000 gpd	14,036.00	14,036.00
e. 100,000 - < 250,000 gpd	19,633.00	19,633.00
f. 250,000 - < 500,000 gpd	25,819.00	25,819.00
g. 500,000 - < 750,000 gpd	32,393.00	32,393.00
h. 750,000 - < 1,000,000 gpd	39,266.00	39,266.00
i. 1,000,000 - < 2,500,000 gpd	48,374.00	48,374.00
j. 2,500,000 - < 5,000,000 gpd	53,993.00	53,993.00
k. 5,000,000 gpd and greater	58,901.00	58,901.00
Fruit Packing - Individual Permit Coverage		
a. 0 - < 1,000 bins/yr.	392.00	392.00
b. 1,000 - < 5,000 bins/yr.	786.00	786.00
c. 5,000 - < 10,000 bins/yr.	1,570.00	1,570.00
d. 10,000 - < 15,000 bins/yr.	3,144.00	3,144.00
e. 15,000 - < 20,000 bins/yr.	5,199.00	5,199.00
f. 20,000 - < 25,000 bins/yr.	7,264.00	7,264.00
g. 25,000 - < 50,000 bins/yr.	9,717.00	9,717.00
h. 50,000 - < 75,000 bins/yr.	10,800.00	10,800.00
i. 75,000 - < 100,000 bins/yr.	12,564.00	12,564.00
j. 100,000 - < 125,000 bins/yr.	15,704.00	15,704.00
k. 125,000 - < 150,000 bins/yr.	19,633.00	19,633.00

INDUSTRIAL FACILITY CATEGORIES	FY 2022 ANNUAL PERMIT FEE	FY 2023 ANNUAL PERMIT FEE & BEYOND
l. 150,000 bins/yr. and greater	23,524.00	23,524.00
Fruit Packing - General Permit Coverage		
a. 0 - < 1,000 bins/yr.	274.00	274.00
b. 1,000 - < 5,000 bins/yr.	550.00	550.00
c. 5,000 - < 10,000 bins/yr.	1,100.00	1,100.00
d. 10,000 - < 15,000 bins/yr.	2,201.00	2,201.00
e. 15,000 - < 20,000 bins/yr.	3,643.00	3,643.00
f. 20,000 - < 25,000 bins/yr.	5,085.00	5,085.00
g. 25,000 - < 50,000 bins/yr.	6,800.00	6,800.00
h. 50,000 - < 75,000 bins/yr.	7,557.00	7,557.00
i. 75,000 - < 100,000 bins/yr.	8,788.00	8,788.00
j. 100,000 - < 125,000 bins/yr.	10,997.00	10,997.00
k. 125,000 - < 150,000 bins/yr.	13,744.00	13,744.00
l. 150,000 bins/yr. and greater	16,491.00	16,491.00
Fuel and Chemical Storage		
a. < 50,000 bbls	1,963.00	1,963.00
b. 50,000 - < 100,000 bbls	3,927.00	3,927.00
c. 100,000 - < 500,000 bbls	9,816.00	9,816.00
d. 500,000 bbls and greater	19,636.00	19,636.00
Hazardous Waste Clean Up Sites		
a. Leaking Underground Storage Tanks (LUST)		
1. State Permit	5,149.00	5,149.00
2. NPDES Permit Issued pre 7/1/94	5,148.00	5,148.00
3. NPDES Permit Issued post 7/1/94	10,298.00	10,298.00
b. Non-LUST Sites		
1. 1 or 2 Contaminants of concern	10,069.00	10,069.00
2. > 2 Contaminants of concern	20,137.00	20,137.00
Ink Formulation and Printing		
a. Commercial Print Shops	3,021.00	3,021.00
b. Newspapers	5,035.00	5,035.00
c. Box Plants	8,055.00	8,055.00
d. Ink Formulation	10,070.00	10,070.00
Inorganic Chemicals Manufacturing		
a. Lime Produets	9,816.00	9,816.00
b. Fertilizer	11,816.00	11,816.00
c. Peroxide	15,704.00	15,704.00
d. Alkaline Earth Salts	19,636.00	19,636.00
e. Metal Salts	27,482.00	27,482.00
f. Acid Manufacturing	38,942.00	38,942.00
g. Chlor-alkali	78,533.00	78,533.00
Iron and Steel		
a. Foundries	22,950.00	22,950.00
b. Mills	45,939.00	45,939.00
Metal Finishing		
a. < 1,000 gpd	2,751.00	2,751.00

INDUSTRIAL FACILITY CATEGORIES	FY 2022 ANNUAL PERMIT FEE	FY 2023 ANNUAL PERMIT FEE & BEYOND
b. 1,000 - < 10,000 gpd	4,587.00	4,587.00
c. 10,000 - < 50,000 gpd	11,470.00	11,470.00
d. 50,000 - < 100,000 gpd	22,949.00	22,949.00
e. 100,000 - < 500,000 gpd	45,894.00	45,894.00
f. 500,000 gpd and greater	68,845.00	68,845.00
Noncontact Cooling Water With Additives - Individual Permit Coverage		
a. < 1,000 gpd	1,229.00	1,229.00
b. 1,000 - < 10,000 gpd	1,716.00	1,716.00
c. 10,000 - < 50,000 gpd	3,685.00	3,685.00
d. 50,000 - < 100,000 gpd	8,593.00	8,593.00
e. 100,000 - < 500,000 gpd	14,721.00	14,721.00
f. 500,000 - < 1,000,000 gpd	20,863.00	20,863.00
g. 1,000,000 - < 2,500,000 gpd	27,001.00	27,001.00
h. 2,500,000 - < 5,000,000 gpd	32,993.00	32,993.00
i. 5,000,000 gpd and greater	39,266.00	39,266.00
Noncontact Cooling Water With Additives - General Permit Coverage		
a. < 1,000 gpd	861.00	861.00
b. 1,000 - < 10,000 gpd	1,716.00	1,716.00
c. 10,000 - < 50,000 gpd	2,579.00	2,579.00
d. 50,000 - < 100,000 gpd	6,015.00	6,015.00
e. 100,000 - < 500,000 gpd	10,307.00	10,307.00
f. 500,000 - < 1,000,000 gpd	14,606.00	14,606.00
g. 1,000,000 - < 2,500,000 gpd	18,899.00	18,899.00
h. 2,500,000 - < 5,000,000 gpd	23,191.00	23,191.00
i. 5,000,000 gpd and greater	27,484.00	27,484.00
Noncontact Cooling Water Without Additives - Individual Permit Coverage		
a. < 1,000 gpd	984.00	984.00
b. 1,000 - < 10,000 gpd	1,963.00	1,963.00
c. 10,000 - < 50,000 gpd	2,948.00	2,948.00
d. 50,000 - < 100,000 gpd	6,874.00	6,874.00
e. 100,000 - < 500,000 gpd	11,783.00	11,783.00
f. 500,000 - < 1,000,000 gpd	16,687.00	16,687.00
g. 1,000,000 - < 2,500,000 gpd	21,511.00	21,511.00
h. 2,500,000 - < 5,000,000 gpd	26,503.00	26,503.00
i. 5,000,000 gpd and greater	31,414.00	31,414.00
Noncontact Cooling Water Without Additives - General Permit Coverage		
a. < 1,000 gpd	688.00	688.00
b. 1,000 - < 10,000 gpd	1,377.00	1,377.00
c. 10,000 - < 50,000 gpd	2,064.00	2,064.00
d. 50,000 - < 100,000 gpd	4,811.00	4,811.00
e. 100,000 - < 500,000 gpd	8,246.00	8,246.00
f. 500,000 - < 1,000,000 gpd	11,683.00	11,683.00
g. 1,000,000 - < 2,500,000 gpd	15,117.00	15,117.00
h. 2,500,000 - < 5,000,000 gpd	18,554.00	18,554.00
i. 5,000,000 gpd and greater	21,987.00	21,987.00

INDUSTRIAL FACILITY CATEGORIES	FY 2022 ANNUAL PERMIT FEE	FY 2023 ANNUAL PERMIT FEE & BEYOND
Nonferrous Metals Forming	22,950.00	22,950.00
Ore Mining		
a. Ore Mining	4,588.00	4,588.00
b. Ore mining with physical concentration processes	9,177.00	9,177.00
c. Ore mining with physical and chemical concentration processes	36,718.00	36,718.00
Organic Chemicals Manufacturing		
a. Fertilizer	19,636.00	19,636.00
b. Aliphatic	39,266.00	39,266.00
c. Aromatic	58,901.00	58,901.00
Petroleum Refining		
a. < 10,000 bbls/d	39,266.00	39,266.00
b. 10,000 - < 50,000 bbls/d	77,853.00	77,853.00
c. 50,000 bbls/d and greater	157,075.00	157,075.00
Photofinishers		
a. < 1,000 gpd	1,570.00	1,570.00
b. 1,000 gpd and greater	3,927.00	3,927.00
Power and/or Steam Plants		
a. Steam Generation - Nonelectric	7,924.00	7,924.00
b. Hydroelectric	7,924.00	7,924.00
c. Nonfossil Fuel	11,781.00	11,781.00
d. Fossil Fuel	31,414.00	31,414.00
Pulp, Paper and Paper Board		
a. Fiber Recyclers/Nonwood Pulp Mills	19,632.00	19,632.00
b. Paper Mills	39,266.00	39,266.00
c. Groundwood Pulp Mills		
1. < 300 tons per day	58,901.00	58,901.00
2. > 300 tons per day	117,813.00	117,813.00
d. Chemical Pulp Mills w/o Chlorine Bleaching	157,068.00	157,068.00
e. Chemical Pulp Mills w/Chlorine Bleaching	176,697.00	176,697.00
Radioactive Effluents and Discharges (RED)		
a. < 3 waste streams	37,986.00	37,986.00
b. 3 - < 8 waste streams	65,965.00	65,965.00
c. 8 waste streams and greater	108,648.00	108,648.00
RCRA Corrective Action Sites	27,597.00	27,597.00
Sand and Gravel - Individual Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	3,581.00	3,581.00
2. Nonoperating site (fee per site)	147.00	147.00
b. Asphalt Production		
1. 1 - < 50,000 tons/yr.	1,492.00	1,492.00
2. 50,000 - < 300,000 tons/yr.	3,582.00	3,582.00
3. 300,000 tons/yr. and greater	4,480.00	4,480.00

INDUSTRIAL FACILITY CATEGORIES	FY 2022 ANNUAL PERMIT FEE	FY 2023 ANNUAL PERMIT FEE & BEYOND
4. Nonoperating Asphalt	147.00	147.00
c. Concrete Production		
1. 1 - < 25,000 cu. yds/yr.	1,492.00	1,492.00
2. 25,000 - < 200,000 cu. yds/yr.	3,582.00	3,582.00
3. 200,000 cu. yds/yr. and greater	4,480.00	4,480.00
4. Nonoperating Concrete	147.00	147.00
The fee for a facility in the sand and gravel production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	3,581.00	3,581.00
2. Asphalt	3,581.00	3,581.00
3. Concrete	3,581.00	3,581.00
4. Nonoperating Site	147.00	147.00
Sand and Gravel - General Permit Coverage		
a. Mining Activities		
1. Mining, screening, washing and/or crushing	2,505.00	2,505.00
2. Nonoperating site (fee per site)	103.00	103.00
b. Asphalt Production		
1. 0 - < 50,000 tons/yr.	1,046.00	1,046.00
2. 50,000 - < 300,000 tons/yr.	2,507.00	2,507.00
3. 300,000 tons/yr. and greater	3,135.00	3,135.00
4. Nonoperating Asphalt	103.00	103.00
c. Concrete Production		
1. 0 - < 25,000 cu. yds/yr.	1,046.00	1,046.00
2. 25,000 - < 200,000 cu. yds/yr.	2,507.00	2,507.00
3. 200,000 cu. yds/yr. and greater	3,135.00	3,135.00
4. Nonoperating Concrete	103.00	103.00
The fee for a facility in the sand and gravel production category is the sum of the applicable fees in the mining activities and concrete and asphalt production categories.		
d. Portable Operations		
1. Rock Crushing	2,507.00	2,507.00
2. Asphalt	2,507.00	2,507.00
3. Concrete	2,507.00	2,507.00
4. Nonoperating	103.00	103.00
Seafood Processing		
a. < 1,000 gpd	1,963.00	1,963.00
b. 1,000 - < 10,000 gpd	5,003.00	5,003.00
c. 10,000 - < 50,000 gpd	8,934.00	8,934.00
d. 50,000 - < 100,000 gpd	14,036.00	14,036.00
e. 100,000 gpd and greater	19,636.00	19,636.00
Shipyards		
a. Per crane, travel lift, small boat lift	4,588.00	4,588.00
b. Per drydock under 250 ft in length	4,588.00	4,588.00
c. Per graving dock	4,588.00	4,588.00

INDUSTRIAL FACILITY CATEGORIES	FY 2022 ANNUAL PERMIT FEE	FY 2023 ANNUAL PERMIT FEE & BEYOND
d. Per marine way/ramp	6,882.00	6,882.00
e. Per syncrolift	6,882.00	6,882.00
f. Per drydock 250 ft and over in length	9,177.00	9,177.00
g. In-water vessel maintenance	9,177.00	9,177.00
The fee for a facility in the shipyard category is the sum of the fees for the applicable units in the facility.		
Solid Waste Sites (nonstormwater)		
a. Nonputrescible	7,850.00	7,850.00
b. < 50 acres	15,703.00	15,703.00
c. 50 - < 100 acres	31,414.00	31,414.00
d. 100 - < 250 acres	39,266.00	39,266.00
e. 250 acres and greater	58,901.00	58,901.00
Textile Mills	78,533.00	78,533.00
Timber Products		
a. Log Storage	3,927.00	3,927.00
b. Veneer	7,850.00	7,850.00
c. Sawmills	15,704.00	15,704.00
d. Hardwood, Plywood	27,482.00	27,482.00
e. Wood Preserving	37,706.00	37,706.00
Vegetable/Bulb Washing Facilities		
a. < 1,000 gpd	130.00	130.00
b. 1,000 - < 5,000 gpd	262.00	262.00
c. 5,000 - < 10,000 gpd	517.00	517.00
d. 10,000 - < 20,000 gpd	1,042.00	1,042.00
e. 20,000 and greater	1,721.00	1,721.00
Vehicle Maintenance and Freight Transfer		
a. < 0.5 acre	3,927.00	3,927.00
b. 0.5 - < 1.0 acre	7,850.00	7,850.00
c. 1.0 acre and greater	11,781.00	11,781.00
Vessel Deconstruction		
a. Base fee	3,100.00	3,100.00
b. On land (per project)	3,500.00	3,500.00
c. On barge or drydock (per project)	4,800.00	4,800.00
d. In-water (per project)	18,700.00	18,700.00
The fee for a facility in the vessel deconstruction category is the sum of the base fee and number and type of projects completed in the previous calendar year.		
Water Plants - Individual Permit Coverage	5,359.00	5,359.00
Water Plants - General Permit Coverage	3,752.00	3,752.00
Wineries - Individual Permit Coverage		
a. < 24,999 gallons per year (gpy)	423.00	423.00
b. 25,000 - < 39,999 gpy	621.00	621.00
c. 40,000 - < 54,999 gpy	960.00	960.00
d. 55,000 - < 69,999 gpy	1,297.00	1,297.00
e. 70,000 - < 99,999 gpy	1,636.00	1,636.00
f. 100,000 - < 299,999 gpy	2,370.00	2,370.00

INDUSTRIAL FACILITY CATEGORIES	FY 2022 ANNUAL PERMIT FEE	FY 2023 ANNUAL PERMIT FEE & BEYOND
g. 300,000 - < 699,999 gpy	7,111.00	7,111.00
h. 700,000 - < 999,999 gpy	16,594.00	16,594.00
i. 1,000,000 - < 1,999,999 gpy	23,762.00	23,762.00
j. 2,000,000 gpy and greater	47,470.00	47,470.00
Wineries - General Permit Coverage		
a. < 24,999 gpy	296.00	296.00
b. 25,000 - < 39,999 gpy	434.00	434.00
c. 40,000 - < 54,999 gpy	671.00	671.00
d. 55,000 - < 69,999 gpy	907.00	907.00
e. 70,000 - < 99,999 gpy	1,144.00	1,144.00
f. 100,000 - < 299,999 gpy	1,657.00	1,657.00
g. 300,000 - < 699,999 gpy	4,973.00	4,973.00
h. 700,000 - < 999,999 gpy	11,604.00	11,604.00
i. 1,000,000 - < 1,999,999 gpy	16,617.00	16,617.00
j. 2,000,000 gpy and greater	33,196.00	33,196.00

(a) Facilities other than those in the sand and gravel, shipyard, or RCRA categories that operate within several fee categories or subcategories, shall be charged from that category or subcategory with the highest fee.

(b) The total annual permit fee for a water treatment plant that primarily serves residential customers may not exceed three dollars per residential equivalent. The number of residential equivalents is determined by dividing the facility's annual gross revenue in the previous calendar year by the annual user charge for a single family residence that uses nine hundred cubic feet of water per month.

(c) Fruit packer, sand and gravel, and winery permit holders are required to submit information to the department certifying annual production (calendar year) or unit processes. The permit holder shall submit the information to the department by the required due date. Failure to provide this information results in a fee determination based on the highest subcategory the facility has received permit coverage in.

(i) Information submitted shall bear a certification of correctness and be signed:

(A) In the case of a corporation, by an authorized corporate officer;

(B) In the case of a limited partnership, by an authorized partner;

(C) In the case of a general partnership, by an authorized general partner; or

(D) In the case of a sole proprietorship, by the proprietor.

(ii) The department may verify information submitted and, if it determines that false or inaccurate statements have been made, it may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.

(d) Fees for fruit packers discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the fruit packing or noncontact cooling water without additives categories.

~~(e) Where no clear industrial facility category exists for placement of a permit holder, the department may elect to place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes and/or a category which contains similar permitting complexities to the department.~~

~~(f) Hazardous waste cleanup sites and EPA authorized RCRA corrective action sites with whom the department has begun cost recovery through chapter 70A.305 RCW shall not pay a permit fee under chapter 173-224 WAC until such time as the cost recovery under chapter 70A.305 RCW ceases.~~

~~(g) Any permit holder, with the exception of nonoperating sand and gravel operations or a permitted portable facility, who has not been in continuous operation within a consecutive eighteen-month period or who commits to not being in operation for a consecutive eighteen-month period or longer can have their permit fee reduced to twenty-five percent of the fee that they would be otherwise assessed. This nonoperating mode may be verified by the appropriate ecology staff. Once operations resume, the permit fee returns to the full amount.~~

~~Facilities who commit to the minimum eighteen-month nonoperating mode but go back into operation during the same eighteen-month period are assessed permit fees as if they were active during the entire period.~~

~~(h) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.~~

~~(i) RCRA corrective action sites requiring a waste discharge permit are assessed a separate permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.~~

~~(3) MUNICIPAL/DOMESTIC FACILITIES~~

~~(a) The annual permit fee for a permit held by a municipality for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:~~

~~Residential Equivalents (RE)~~	~~FY 2022 Annual Permit Fee~~	~~FY 2023 Annual Permit Fee & Beyond~~
~~< 250,000~~	~~$2.16~~	~~$2.16~~
~~> 250,000~~	~~2.16~~	~~2.16~~

~~(b) The annual permit fee under RCW 90.48.162 or 90.48.260 that is held by a municipality which:~~

~~(i) Holds more than one permit for domestic wastewater facilities; and~~

~~(ii) Treats each domestic wastewater facility as a separate accounting entity, is determined as in (a) of this subsection.~~

~~A separate accounting entity is one that maintains separate funds or accounts for each domestic wastewater facility. Revenues are received from the users to pay for the costs of operating that facility.~~

~~(c) The sum of the annual permit fees for permits held by a municipality that:~~

~~(i) Holds more than one permit for domestic wastewater facilities issued under RCW 90.48.162 or 90.48.260; and~~

(ii) Does not treat each domestic wastewater facility as a separate accounting entity, as described in (b) of this subsection, is determined as in (a) of this subsection.

(d) The permit fee for a privately owned and public-owned domestic wastewater facility that primarily serves residential customers is determined as in (a) of this subsection. Residential customers are those whose lot, parcel or real estate, or building is primarily used for domestic dwelling purposes.

(e) The annual permit fee for privately owned or public-owned domestic wastewater facilities must be determined by using the maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. Permit fees for privately owned or public-owned domestic wastewater facilities that do not serve primarily residential customers and for state-owned domestic wastewater facilities are the following:

Permitted Flows	FY 2022 Annual Permit Fee	FY 2023 Annual Permit Fee & Beyond
.1 MGD and Greater	$15,075.00	$15,075.00
.05 MGD to < .1 MGD	6,032.00	6,032.00
.0008 MGD to < .05 MGD	3,016.00	3,016.00
< .0008 MGD	910.00	910.00

(f) The number of residential equivalents is calculated in the following manner:

(i) If the facility serves only single-family residences, the number of residential equivalents is the number of single-family residences that it served on January 1 of the previous calendar year.

(ii) If the facility serves both single-family residences and other classes of customers, the number of residential equivalents is calculated in the following manner:

(A) Calculation of the number of residential equivalents that the facility serves in its own service area. Subtract from the previous calendar year's gross revenue:

(I) Any amounts received from other municipalities for sewage interception, treatment, collection, or disposal; and

(II) Any user charges received from customers for whom the permit holder pays amounts to other municipalities for sewage treatment or disposal services. Divide the resulting figure by the annual user charge for a single-family residence.

(B) Calculation of the number of residential equivalents that the facility serves in other municipalities which pay amounts to the facility for sewage interception, treatment, collection, or disposal:

(I) Divide any amounts received from other municipalities during the previous calendar year by the annual user charge for a single-family residence. In this case "annual user charge for a single-family residence" means the annual user charge that the facility charges other municipalities for sewage interception, treatment, collection, or disposal services for a single-family residence. If the facility charges different municipalities different single-family residential user fees, then the charge used in these calculations must be that which applies to the largest number of single-family residential customers. Alternatively, if the facility charges different municipali-

~~ties different single-family residential user fees, the permit holder may divide the amount received from each municipality by the annual user charge that it charges that municipality for a single-family residence and sum the resulting figures.~~

~~(II) If the facility does not charge the other municipality on the basis of a fee per single-family residence, the number of residential equivalents in the other municipality is calculated by dividing its previous calendar year's gross revenue by its annual user fee for a single-family residence. If the other municipality does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, the number of residential equivalents is calculated as in (f)(iv) of this subsection.~~

~~(III) If the other municipality serves only single-family residences, the number of residential equivalents may be calculated as in (f)(i) of this subsection.~~

~~The sum of the resulting figures is the number of residential equivalents that the facility serves in other municipalities.~~

~~(C) The number of residential equivalents is the sum of the number of residential equivalents calculated in (f)(ii)(A) and (B) of this subsection.~~

~~(iii) The annual user fee for a single-family residence is calculated by either of the following methods, at the choice of the permit holder:~~

~~(A) The annual user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed monthly, this is calculated by multiplying by twelve the monthly user fee for a single-family residence using nine hundred cubic feet of water per month. If users are billed bimonthly, the annual user fee is calculated by multiplying by six the bimonthly user fee for a single-family residence using one thousand eight hundred cubic feet of water per two-month period. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the fee used in these calculations must be that which applies to the largest number of single-family residential customers.~~

~~(B) The average annual user fee for a single-family residence. This average is calculated by dividing the previous calendar year's gross revenue from provision of sewer services to single-family residences by the number of single-family residences served on January 1 of the previous calendar year. If the user fee for a single-family residence varies, depending on age, income, location, etc., then the gross revenue and number of single-family residences used in making this calculation must be those for all the single-family residential customers.~~

~~In either case, (f)(iii)(A) or (B) of this subsection, the permit holder must provide the department with a copy of its complete sewer rate schedule for all classes of customers.~~

~~(iv) If a permit holder does not maintain data on its gross revenue, user fees, and/or the number of single-family residences that it serves, and therefore cannot use the methods described in (f)(i) or (ii) of this subsection to calculate the number of residential equivalents that it serves, then the number of residential equivalents that it serves is calculated by dividing the average daily influent flow to its facility for the previous calendar year by two hundred fifty gallons. This average is calculated by summing all the daily flow measurements taken during the previous calendar year and then dividing the resulting sum by the number of days on which flow was measured. Data for this calculation must be taken from the permit holder's discharge~~

~~monitoring reports. Permit holders using this means of calculating the number of their residential equivalents must submit with their application a complete set of copies of their discharge monitoring reports for the previous calendar year.~~

~~(g) Fee calculation procedures for holders of permits for domestic wastewater facilities.~~

~~(i) Municipalities holding permits for domestic wastewater facilities issued under RCW 90.48.162 and 90.48.260, and holders of permits for privately owned domestic wastewater facilities that primarily serve residential customers must complete a form certifying the number of residential equivalents served by their domestic wastewater system. The form must be completed and returned to the department within thirty days after it is mailed to the permit holder by the department. Failure to return the form could result in permit termination.~~

~~(ii) The form shall bear a certification of correctness and be signed:~~

~~(A) In the case of a corporation, by an authorized corporate officer;~~

~~(B) In the case of a limited partnership, by an authorized partner;~~

~~(C) In the case of a general partnership, by an authorized partner;~~

~~(D) In the case of a sole proprietorship, by the proprietor; or~~

~~(E) In the case of a municipal or other public facility, by either a ranking elected official or a principal executive officer.~~

~~(iii) The department may verify the information contained in the form and, if it determines that the permit holder has made false statements, may, in addition to taking other actions provided by law, revise both current and previously granted fee determinations.~~

~~(h) The annual permit fee for a domestic wastewater facility with a Puget Sound nutrient general permit will be calculated at the rate of $0.31 per residential equivalent per year. The number of residential equivalents will be calculated as described in (g) of this subsection. The permit fee in this subsection will not be assessed for municipal domestic wastewater treatment facilities unless the legislature amends RCW 90.48.465(2) to authorize this fee.~~

~~(4) STORMWATER PERMIT COVERAGES (UNLESS SPECIFICALLY CATEGORIZED ELSEWHERE IN WAC 173-224-040(2))~~

		~~FY 2022 Annual Permit Fee~~	~~FY 2023 Annual Permit Fee & Beyond~~
~~a.~~	~~Individual Construction or Industrial Stormwater Permits~~		
	~~1. < 50 acres~~	~~$6,032.00~~	~~$6,032.00~~
	~~2. 50 -< 100 acres~~	~~12,054.00~~	~~12,054.00~~
	~~3. 100 -< 500 acres~~	~~18,095.00~~	~~18,095.00~~
	~~4. 500 acres and greater~~	~~24,122.00~~	~~24,122.00~~
~~b.~~	~~Facilities Covered Under the Industrial Stormwater General Permit~~		
	~~1. Municipalities and state agencies~~	~~1,976.00~~	~~1,976.00~~
	~~2. New permit holders without historical gross revenue information~~	~~1,035.00~~	~~1,035.00~~
	~~3. The permit fee for all other permit holders shall be based on the gross revenue of the business for the previous calendar year~~		
	~~Gross Revenue~~		

	FY 2022 Annual Permit Fee	FY 2023 Annual Permit Fee & Beyond
Less than $100,000	192.00	192.00
$100,000 -< $1,000,000	832.00	832.00
$1,000,000 -< $2,500,000	995.00	995.00
$2,500,000 -< $5,000,000	1,663.00	1,663.00
$5,000,000 -< $10,000,000	2,493.00	2,493.00
$10,000,000 and greater	3,012.00	3,012.00

To be eligible for less than the maximum permit fee, the permit holder must provide documentation to substantiate the gross revenue claims. Documentation shall be provided annually in a manner prescribed by the department. The documentation shall bear a certification of correctness and be signed:

(a) In the case of a corporation, by an authorized corporate officer;

(b) In the case of a limited partnership, by an authorized general partner;

(c) In the case of a general partnership, by an authorized partner; or

(d) In the case of a sole proprietorship, by the proprietor.

The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, may deny the adjustment, revoke previously granted fee adjustments, and/or take such other actions deemed appropriate or required under state or federal law.

Permitted Amount of Disturbed Acreage	FY 2022 Annual Permit Fee	FY 2023 Annual Permit Fee & Beyond
c. Construction Activities Covered Under the Construction Stormwater General Permit(s)		
1. Less than 5 acres disturbed area	$780.00	$780.00
2. 5 -< 7 acres of disturbed area	1,268.00	1,268.00
3. 7 -< 10 acres of disturbed area	1,712.00	1,712.00
4. 10 -< 20 acres of disturbed area	2,336.00	2,336.00
5. 20 acres and greater of disturbed area	2,906.00	2,906.00

(5) MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Except as provided for in (d) of this subsection, the municipal stormwater permit annual fee for the entities listed below is:

Name of Entity	FY 2022 Annual Permit Fee	FY 2023 Annual Permit Fee & Beyond
King County	$68,695.00	$68,695.00
Snohomish County	68,695.00	68,695.00
Pierce County	68,695.00	68,695.00
Tacoma, City of	68,695.00	68,695.00
Seattle, City of	68,695.00	68,695.00
Washington Department of Transportation	68,695.00	68,695.00
Clark County	68,695.00	68,695.00

~~(b) Municipal stormwater general permit fees for cities and counties, except as otherwise provided for in (a), (c), and (d) of this subsection, are determined in the following manner: For fiscal years 2022 and 2023 and beyond, ecology will charge $1.99 per housing unit inside the geographic area covered by the permit for those cities and counties whose median household income exceeds the state average. Cities and counties whose median household income is less than the state average will have their fee per housing unit reduced to $.98 per housing unit inside the geographic area covered by the permit. Fees will not exceed $68,695.00 for fiscal years 2022 and 2023 and beyond. The minimum annual fee will not be lower than $2,856.00 for fiscal years 2022 and 2023 and beyond unless the permitted city or county has a median household income less than the state average. In this case, the city or county will pay a fee totaling $.98 per housing unit for fiscal years 2022 and 2023 and beyond.~~

~~(c) Other entities required to have permit coverage under a municipal stormwater general permit will pay an annual fee based on the entities' previous year's annual operating budget as follows:~~

~~Annual Operating Budget~~	~~FY 2022 Annual Permit Fee~~	~~FY 2023 Annual Permit Fee & Beyond~~
~~Less than $100,000~~	~~$199.00~~	~~$199.00~~
~~$100,000 - < $1,000,000~~	~~805.00~~	~~805.00~~
~~$1,000,000 - < $5,000,000~~	~~2,009.00~~	~~2,009.00~~
~~$5,000,000 - < $10,000,000~~	~~3,015.00~~	~~3,015.00~~
~~$10,000,000 and greater~~	~~5,024.00~~	~~5,024.00~~

~~For the purposes of determining the annual permit fee category, the annual operating budget shall be the entities' annual operating budget for the entities' previous fiscal year and shall be determined as follows:~~

~~(i) For diking, drainage, irrigation, and flood control districts, the district's annual operating budget.~~

~~(ii) For ports, the annual operating budget for the port district.~~

~~(iii) For colleges, schools, and universities, the portion of the operating budget related to plant or facilities operation and maintenance for the site or sites subject to the permit.~~

~~(iv) For state agencies, the annual operating budget for the site or sites subject to the permit.~~

~~(v) For other entities not listed, ecology will consider annual revenue, and the noncapital operating budget for the site subject to the permit.~~

~~(d) Municipal stormwater permits written specifically for a single entity, such as a single city, county, or agency, issued after the effective date of this rule will have its annual fee determined in the following manner:~~

~~(i) For cities and counties listed in (a) of this subsection, the fee shall be five times the amount identified.~~

~~(ii) For cities and counties whose median household income exceeds the state average, the fee shall be the higher of either five times the otherwise applicable general permit fee or $30,000. For municipalities whose median household income is less than the state average, the fee shall be the higher of 2.5 times the otherwise applicable general permit fee or $15,000.~~

~~(iii) For entities that would otherwise be covered under a municipal stormwater general permit as determined in (c) of this subsection, the fiscal years 2022 and 2023 annual fee and beyond for a permit written for a specific entity is $14,290.00.~~

~~(c) Ecology will assess a single permit fee for entities which apply only as copermittees or coapplicants. The permit fee shall be equal to the highest single permit fee which would have been assessed if the copermittees had applied separately.~~))

(1) Application fee. In addition to an annual fee, first time individual permit applicants must pay a nonrefundable application fee of 25 percent of the annual permit fee, or $250, whichever is greater. An application fee is assessed for RCRA corrective action sites regardless of whether a new permit is issued or an existing permit for other than the discharge resulting from the RCRA corrective action, is modified.

(2) Minimum fee. The minimum water quality annual permit fee is $150.00, unless specified elsewhere in this section. The department may elect, at its discretion, to assess this minimum fee when no better permit fee category applies, or when a prorated annual permit fee falls below the minimum fee amount.

(3) INDUSTRIAL FACILITY ANNUAL PERMIT FEE SCHEDULE

The following industrial facilities must pay an annual permit fee as follows:

INDUSTRIAL FACILITY CATEGORIES	FY2024 ANNUAL PERMIT FEE	FY2025 ANNUAL PERMIT FEE
Aluminum Alloys	$22,950	$22,950
Aluminum and Magnesium Reduction Mills		
a. NPDES Permit	115,780	115,780
b. State Permit	57,900	57,900
Aluminum Forming	72,830	77,100
Aquaculture		
a. Finfish hatching and rearing - General Permit	4,126	4,126
b. Finfish hatching and rearing - Individual Permit	5,900	5,900
c. Nonfinfish hatching and rearing - Individual Permit	5,900	5,900
Aquatic Pest Control Permits		
a. Aquatic & Invasive Species Control (State agencies permits)	8,000	8,000
b. Aquatic Plant & Algae Management	500	500
c. Irrigation System Aquatic Weed Control	710	710
d. Mosquito Control	500	500
e. Noxious Weed Control (State agencies permits)	8,000	8,000
f. Oyster Growers	500	500
Boatyards - General Permit		
a. With stormwater only discharge	570	600
b. All others	1,150	1,210
Boatyards - Individual Permit		
a. With stormwater only discharge	650	700
b. All others	1,200	1,250
Bridge and Ferry Terminals Washing		
a. Single site Permit	4,200	4,200
b. Multi site Permit		

INDUSTRIAL FACILITY CATEGORIES	FY2024 ANNUAL PERMIT FEE	FY2025 ANNUAL PERMIT FEE
1. 1 - 5 Facilities	6,200	6,200
2. 6 - 10 Facilities	8,200	8,200
3. 11 - 20 Facilities	10,500	10,500
c. WSDOT Annual Fee	13,500	13,500
Coal Mining and Preparation		
a. < 200,000 tons per year	9,000	9,000
b. 200,000 - < 500,000 tons per year	20,500	20,500
c. 500,000 - < 1,000,000 tons per year	36,500	36,500
d. 1,000,000 tons per year and greater	68,500	68,500
Combined Industrial Waste Treatment		
a. < 10,000 gpd	3,970	3,970
b. 10,000 - < 50,000 gpd	9,800	9,800
c. 50,000 - < 100,000 gpd	19,600	19,600
d. 100,000 - < 500,000 gpd	39,200	39,200
e. 500,000 gpd and greater	58,800	58,800
Combined Food Processing Waste Treatment Facilities	19,800	21,000
Combined Sewer Overflow System		
a. < 50 acres	3,900	3,900
b. 50 - < 100 acres	9,800	9,800
c. 100 - < 500 acres	11,780	11,780
d. 500 acres and greater	15,700	15,700
Commercial Laundry	575	575
Concentrated Animal Feeding Operation (CAFO) - Dairy GP	$0.52 per animal unit, not to exceed $2,190	$0.54 per animal unit, not to exceed $2,320
Concentrated Animal Feeding Operation (CAFO) - Dairy IP	$0.66 per animal unit, not to exceed $2,850	$0.70 per animal unit, not to exceed $3,020

Concentrated Animal Feeding Operation (CAFO) - General Permit			
Size of CAFO by Animal Type and Animal Count	SMALL	MEDIUM	LARGE
FY2024 and FY2025 Annual Fee	**$350**	**$1,500**	**$3,500**
a. Veal Calves	< 300	300 - 999	1,000 and greater
b. Other Cattle	< 300	300 - 999	1,000 and greater
c. Swine (55 lbs or more)	< 700	700 - 2,499	2,500 and greater
d. Swine (less than 55 lbs)	< 3,000	3,000 - 9,999	10,000 and greater
e. Horses	< 150	150 - 499	500 and greater
f. Sheep and Lambs	< 3,000	3,000 - 9,999	10,000 and greater
g. Turkeys	< 16,500	16,500 - 54,999	55,000 and greater
h. Chickens, including laying hens or broilers, with liquid waste system	< 9,000	9,000 - 29,999	30,000 and greater
i. Chickens, other than layers, with dry waste system	< 25,000	25,000 - 81,999	82,000 and greater
j. Laying Hens, with dry waste system	< 25,000	25,000 - 81,999	82,000 and greater
k. Ducks, with liquid waste system	< 1,500	1,500 - 4,999	5,000 and greater
l. Ducks, with dry waste system	< 10,000	10,000 - 29,999	30,000 and greater

INDUSTRIAL FACILITY CATEGORIES		FY2024 ANNUAL PERMIT FEE	FY2025 ANNUAL PERMIT FEE
m. Other Species	As determined by Department	As determined by Department	As determined by Department
Concentrated Animal Feeding Operation (CAFO) - Individual Permit		$5,000	$5,000
Facilities Not Otherwise Classified			
a. < 1,000 gpd		1,960	1,960
b. 1,000 - < 10,000 gpd		3,930	3,930
c. 10,000 - < 50,000 gpd		9,820	9,820
d. 50,000 - < 100,000 gpd		15,700	15,700
e. 100,000 - < 500,000 gpd		31,260	31,260
f. 500,000 - < 1,000,000 gpd		39,270	39,270
g. 1,000,000 gpd and greater		58,900	58,900
Flavor Extraction			
a. Steam Distillation		215	230
Food Processing			
a. < 1,000 gpd		1,960	1,960
b. 1,000 - < 10,000 gpd		5,000	5,000
c. 10,000 - < 50,000 gpd		8,930	8,930
d. 50,000 - < 100,000 gpd		14,040	14,040
e. 100,000 - < 250,000 gpd		19,630	19,630
f. 250,000 - < 500,000 gpd		25,820	25,820
g. 500,000 - < 750,000 gpd		32,400	32,400
h. 750,000 - < 1,000,000 gpd		39,270	39,270
i. 1,000,000 - < 2,500,000 gpd		48,370	48,370
j. 2,500,000 - < 5,000,000 gpd		53,990	53,990
k. 5,000,000 gpd and greater		58,900	58,900
Fruit Packing - General Permit			
a. 0 - < 1,000 bins per year		275	275
b. 1,000 - < 5,000 bins per year		550	550
c. 5,000 - < 10,000 bins per year		1,100	1,100
d. 10,000 - < 15,000 bins per year		2,200	2,200
e. 15,000 - < 20,000 bins per year		3,640	3,640
f. 20,000 - < 25,000 bins per year		5,080	5,080
g. 25,000 - < 50,000 bins per year		6,800	6,800
h. 50,000 - < 75,000 bins per year		7,560	7,560
i. 75,000 - < 100,000 bins per year		8,790	8,790
j. 100,000 - < 125,000 bins per year		10,990	10,990
k. 125,000 - < 150,000 bins per year		13,740	13,740
l. 150,000 bins per year and greater		16,490	16,490
Fruit Packing - Individual Permit			
a. 0 - < 1,000 bins per year		390	390
b. 1,000 - < 5,000 bins per year		790	790
c. 5,000 - < 10,000 bins per year		1,570	1,570
d. 10,000 - < 15,000 bins per year		3,140	3,140
e. 15,000 - < 20,000 bins per year		5,200	5,200

INDUSTRIAL FACILITY CATEGORIES	FY2024 ANNUAL PERMIT FEE	FY2025 ANNUAL PERMIT FEE
f. 20,000 - < 25,000 bins per year	7,260	7,260
g. 25,000 - < 50,000 bins per year	9,720	9,720
h. 50,000 - < 75,000 bins per year	10,800	10,800
i. 75,000 - < 100,000 bins per year	12,560	12,560
j. 100,000 - < 125,000 bins per year	15,700	15,700
k. 125,000 - < 150,000 bins per year	19,630	19,630
l. 150,000 bins per year and greater	23,520	23,520
Fuel and Chemical Storage		
a. < 50,000 bbls	2,080	2,180
b. 50,000 - < 100,000 bbls	4,150	4,300
c. 100,000 - < 500,000 bbls	10,400	11,000
d. 500,000 bbls and greater	20,700	21,800
Hazardous Waste Cleanup Sites		
a. Leaking Underground Storage Tanks (LUST)		
1. State Permit	5,150	5,150
2. NPDES Permit issued pre 7/1/1994	5,150	5,150
3. NPDES Permit issued post 7/1/1994	10,300	10,300
b. Non-LUST Sites		
1. 1 or 2 contaminants of concern	10,070	10,070
2. > 2 contaminants of concern	20,140	20,140
Ink Formulation and Printing		
a. Commercial Print Shops	3,020	3,020
b. Newspapers	5,040	5,040
c. Package Printing	8,060	8,060
d. Ink Formulation	10,070	10,070
Inorganic Chemicals Manufacturing		
a. Lime Products	9,820	9,820
b. Fertilizer	11,820	11,820
c. Peroxide	15,700	15,700
d. Alkaline Earth Salts	19,640	19,640
e. Metal Salts	27,480	27,480
f. Acid Manufacturing	38,940	38,940
g. Chlor-alkali	78,530	78,530
Iron and Steel		
a. Foundries	22,900	22,900
b. Mills	45,940	45,940
Metal Finishing		
a. < 1,000 gpd	2,750	2,750
b. 1,000 - < 10,000 gpd	4,590	4,590
c. 10,000 - < 50,000 gpd	11,470	11,470
d. 50,000 - < 100,000 gpd	22,950	22,950
e. 100,000 - < 500,000 gpd	45,900	45,900
f. 500,000 gpd and greater	68,840	68,840
Noncontact Cooling Water with Additives - General Permit		

INDUSTRIAL FACILITY CATEGORIES	FY2024 ANNUAL PERMIT FEE	FY2025 ANNUAL PERMIT FEE
a. < 1,000 gpd	860	860
b. 1,000 - < 10,000 gpd	1,720	1,720
c. 10,000 - < 50,000 gpd	2,580	2,580
d. 50,000 - < 100,000 gpd	6,010	6,010
e. 100,000 - < 500,000 gpd	10,300	10,300
f. 500,000 - < 1,000,000 gpd	14,600	14,600
g. 1,000,000 - < 2,500,000 gpd	18,900	18,900
h. 2,500,000 - < 5,000,000 gpd	23,190	23,190
i. 5,000,000 gpd and greater	27,480	27,480
Noncontact Cooling Water without Additives - General Permit		
a. < 1,000 gpd	690	690
b. 1,000 - < 10,000 gpd	1,380	1,380
c. 10,000 - < 50,000 gpd	2,060	2,060
d. 50,000 - < 100,000 gpd	4,810	4,810
e. 100,000 - < 500,000 gpd	8,250	8,250
f. 500,000 - < 1,000,000 gpd	11,680	11,680
g. 1,000,000 - < 2,500,000 gpd	15,120	15,120
h. 2,500,000 - < 5,000,000 gpd	18,550	18,550
i. 5,000,000 gpd and greater	21,990	21,990
Noncontact Cooling Water with Additives - Individual Permit		
a. < 1,000 gpd	1,230	1,230
b. 1,000 - < 10,000 gpd	2,000	2,000
c. 10,000 - < 50,000 gpd	3,680	3,680
d. 50,000 - < 100,000 gpd	8,590	8,590
e. 100,000 - < 500,000 gpd	14,720	14,720
f. 500,000 - < 1,000,000 gpd	20,860	20,860
g. 1,000,000 - < 2,500,000 gpd	27,000	27,000
h. 2,500,000 - < 5,000,000 gpd	32,990	32,990
i. 5,000,000 gpd and greater	39,270	39,270
Noncontact Cooling Water without Additives - Individual Permit		
a. < 1,000 gpd	980	980
b. 1,000 - < 10,000 gpd	1,960	1,960
c. 10,000 - < 50,000 gpd	2,950	2,950
d. 50,000 - < 100,000 gpd	6,870	6,870
e. 100,000 - < 500,000 gpd	11,780	11,780
f. 500,000 - < 1,000,000 gpd	16,690	16,690
g. 1,000,000 - < 2,500,000 gpd	21,510	21,510
h. 2,500,000 - < 5,000,000 gpd	26,500	26,500
i. 5,000,000 gpd and greater	31,410	31,410
Nonferrous Metals Forming	22,950	22,950
Ore Mining		
a. Ore mining	4,800	4,800
b. Ore mining with physical concentration processes	9,600	9,600
c. Ore mining with physical and chemical concentration processes	38,300	38,300

INDUSTRIAL FACILITY CATEGORIES	FY2024 ANNUAL PERMIT FEE	FY2025 ANNUAL PERMIT FEE
Organic Chemicals Manufacturing		
a. Fertilizer	19,640	19,640
b. Aliphatic	39,260	39,260
c. Aromatic	58,900	58,900
Petroleum Refining		
a. < 10,000 bbls per day	39,260	39,260
b. 10,000 - < 50,000 bbls per day	77,850	77,850
c. 50,000 bbls per day and greater	157,000	157,000
Photofinishers		
a. < 1,000 gpd	1,570	1,570
b. 1,000 and greater	3,930	3,900
Power and/or Steam Plants		
a. Steam generation - nonelectric	8,300	8,300
b. Hydroelectric	8,300	8,300
c. Nonfossil fuel	12,400	12,400
d. Fossil fuel	33,000	33,000
Pulp, Paper, and Paper Board		
a. Fiber Recyclers/Nonwood Pulp Mills	19,600	19,600
b. Paper Mills	39,250	39,250
c. Groundwood Pulp Mills		
1. < 300 tons per day	58,900	58,900
2. > 300 tons per day	117,800	117,800
d. Chemical Pulps Mills w/o chlorine bleaching	157,070	157,070
e. Chemical Pulp Mills with chlorine bleaching	176,700	176,700
Radioactive Effluents and Discharges (RED)		
a. < 3 waste streams	38,000	38,000
b. 3 - < 8 waste streams	66,000	66,000
c. 8 waste streams and more	108,500	108,500
RCRA Corrective Action Sites	27,600	27,600
Sand and Gravel - General Permit		
a. Mining Activities		
1. Mining, screening, washing, and/or crushing	2,550	2,550
2. Nonoperating	150	150
b. Asphalt Production and Recycling		
1. 0 - < 50,000 tons per year	1,070	1,070
2. 50,000 - < 300,000 tons per year	2,550	2,550
3. 300,000 tons per year and greater	3,180	3,180
4. Nonoperating	150	150
c. Concrete Production and Recycling		
1. 0 - < 25,000 cubic yards per year	1,070	1,070
2. 25,000 - < 200,000 cubic yards per year	2,550	2,550
3. 200,000 cubic yards per year and greater	3,180	3,180
4. Nonoperating	150	150

INDUSTRIAL FACILITY CATEGORIES	FY2024 ANNUAL PERMIT FEE	FY2025 ANNUAL PERMIT FEE
d. Portable Facility		
1. Rock crushing	2,700	2,700
2. Asphalt	2,700	2,700
3. Concrete	2,700	2,700
4. Nonoperating	165	165
Sand and Gravel - Individual Permit		
a. Mining Activities		
1. Mining, screening, washing, and/or crushing	3,580	3,580
2. Nonoperating	175	175
b. Asphalt Production and Recycling		
1. 0 - < 50,000 tons per year	1,550	1,550
2. 50,000 - < 300,000 tons per year	3,580	3,580
3. 300,000 tons per year and greater	4,480	4,480
4. Nonoperating	175	175
c. Concrete Production and Recycling		
1. 0 - < 25,000 cubic yards per year	1,550	1,550
2. 25,000 - < 200,000 cubic yards per year	3,580	3,580
3. 200,000 cubic yards per year and greater	4,480	4,480
4. Nonoperating	175	175
d. Portable Facility		
1. Rock crushing	3,700	3,700
2. Asphalt	3,700	3,700
3. Concrete	3,700	3,700
4. Nonoperating	200	200
The sand and gravel annual fee is the sum of the applicable fees for the permitted activities.		
Seafood Processing		
a. < 1,000 gpd	1,960	1,960
b. 1,000 - < 10,000 gpd	5,000	5,000
c. 10,000 - < 50,000 gpd	8,930	8,930
d. 50,000 - < 100,000 gpd	14,040	14,040
e. 100,000 gpd or greater	19,640	19,640
Shipyards		
a. Per crane, travel lift, small boat lift	4,820	4,820
b. Per drydock under 250 feet in length	4,820	4,820
c. Per graving dock	4,820	4,800
d. Per marine way/ramp	7,230	7,230
e. Per syncolift	7,230	7,230
f. Per drydock 250 feet and over in length	9,640	9,640
g. In-water vessel maintenance	9,640	9,640
The shipyard annual fee is the sum of the fees for applicable subcategories.		
Solid Waste Sites (nonstormwater)		
a. Nonputrescible	7,850	7,850
b. < 50 acres	15,700	15,700

INDUSTRIAL FACILITY CATEGORIES	FY2024 ANNUAL PERMIT FEE	FY2025 ANNUAL PERMIT FEE
c. 50 - < 100 acres	31,410	31,410
d. 100 - < 250 acres	39,260	39,260
e. 250 acres and greater	58,900	58,900
Textile Mills	78,500	78,500
Timber Products		
a. Log Storage	3,930	3,930
b. Veneer	7,850	7,850
c. Sawmills	15,700	15,700
d. Hardwood, Plywood	27,480	27,480
e. Wood Preserving	37,700	37,700
Vegetable/Bulb Washing Facilities		
a. < 1,000 gpd	150	200
b. 1,000 - < 5,000 gpd	280	300
c. 5,000 - < 10,000 gpd	550	600
d. 10,000 - < 20,000 gpd	1,100	1,180
e. 20,000 gpd and greater	1,830	1,930
Vehicle Maintenance and Freight Transfer		
a. < 0.5 acre	3,930	3,930
b. 0.5 - < 1.0 acre	7,850	7,850
c. 1.0 acre and greater	11,780	11,780
Vessel Deconstruction		
a. Base Fee	3,160	3,160
b. On land (per project)	3,550	3,550
c. On barge or drydock (per project)	4,850	4,850
d. In-Water (per project)	18,700	18,700
The vessel deconstruction annual fee is the sum of the base fee and applicable subcategories.		
Water Plants - General Permit	3,700	3,700
Water Plants - Individual Permit	5,300	5,300
Wineries - General Permit		
a. < 24,999 gpy	300	300
b. 25,000 - < 39,999 gpy	440	440
c. 40,000 - < 54,999 gpy	680	680
d. 55,000 - < 69,999 gpy	910	910
e. 70,000 - < 99,999 gpy	1,150	1,150
f. 100,000 - < 299,999 gpy	1,660	1,660
g. 300,000 - < 699,999 gpy	4,970	4,970
h. 700,000 - < 999,999 gpy	11,600	11,600
i. 1,000,000 - < 1,999,999 gpy	16,600	16,600
j. 2,000,000 gpy and greater	33,200	33,200
Wineries - Individual Permit		
a. < 24,999 gpy	430	430
b. 25,000 - < 39,999 gpy	630	630
c. 40,000 - < 54,999 gpy	960	960
d. 55,000 - < 69,999 gpy	1,300	1,300

INDUSTRIAL FACILITY CATEGORIES	FY2024 ANNUAL PERMIT FEE	FY2025 ANNUAL PERMIT FEE
e. 70,000 - < 99,999 gpy	1,650	1,650
f. 100,000 - < 299,999 gpy	2,370	2,370
g. 300,000 - < 699,999 gpy	7,110	7,110
h. 700,000 - < 999,999 gpy	16,600	16,600
i. 1,000,000 - < 1,999,999 gpy	23,760	23,760
j. 2,000,000 gpy and greater	47,000	47,000

(a) Facilities are assessed a fee or fees that best aligns with the category and subcategory relevant to their water quality discharge. Except for CAFO, RCRA, sand and gravel, shipyard, and vessel deconstruction that operate within multiple fee subcategories, if the facility fits within several categories or subcategories, then the permit holder is assessed the highest fee.

(b) CAFO, fruit packing, sand and gravel, vessel deconstruction and winery permit holders must submit information to the department certifying annual unit amounts or production during the previous calendar year. The permit holder must submit the information to the department by the required due date. Failure to provide this information will result in a fee determination based on the highest subcategory for which the facility has received permit coverage.

(c) Information submitted on the required form must include a signature certifying the information is correct:

(i) For a corporation, by an authorized corporate officer;

(ii) For a limited partnership, by an authorized partner;

(iii) For a general partnership, by an authorized general partner; or

(iv) For a sole proprietorship, by the proprietor.

(d) The department may verify information submitted and, if it determines that false statements have been made, it will, revise both current and previously granted fee determinations as appropriate, in addition to taking other actions provided by law.

(e) Fees for fruit packing facilities discharging only noncontact cooling water without additives shall pay the lesser of the applicable fee in the fruit packing or noncontact cooling water without additives categories. Any inactive fruit packing facility shall be assessed the lowest bin per year fee or lowest noncontact cooling water fee, as determined by the department.

(f) Where no clear industrial facility category exists for placement of a permit holder, the department will place the permit holder in a category with dischargers or permit holders that contain or use similar properties or processes or a category that contains similar permitting complexities. If no such category exists, the department will assess the minimum permit fee as specified in this section, until an appropriate permit fee category can be added to the rule.

(g) Hazardous waste cleanup sites and EPA authorized RCRA corrective action sites where the department has begun cost recovery through chapter 70A.305 RCW shall not pay an annual permit fee under this chapter until such time as the cost recovery under chapter 70A.305 RCW ceases.

(h) Any permit holder (with the exception of nonoperating portable facilities and fruit packing operations), who has not been in continuous operation within a consecutive 18-month period to include the assessed fiscal year or who commits to not being in operation for a

consecutive 18-month period or longer may request their annual permit fee be reduced to the inactive rate by submitting the required request form. The inactive rate is 25 percent of the annual permit fee that would otherwise be assessed. The inactive status may be verified by the appropriate department staff. After the inactive status for the 18-month period ends, the permit fee returns to the full amount. The permit holder must submit another form to extend the inactive rate for another 18 months.

If a permit holder resumes operations during the 18-month inactive status, the full permit fee is due for that fiscal year. The inactive rate fee paid, will be applied to the full fee due.

(i) Facilities with subcategories based on gallons per day (gpd) shall have their annual permit fee determined by using the maximum daily flow or maximum monthly average permitted flow in gallons per day as specified in the waste discharge permit, whichever is greater.

(j) RCRA corrective action sites requiring a waste discharge permit are assessed a separate annual permit fee regardless of whether the discharge is authorized by a separate permit or by a modification to an existing permit for a discharge other than that resulting from the corrective action.

(4) MUNICIPAL AND DOMESTIC WASTEWATER FACILITIES ANNUAL PERMIT FEE SCHEDULE

The following municipal and domestic wastewater facilities must pay an annual permit fee as follows:

(a) The annual permit fee for a permit held by a municipality or federally recognized tribe for a domestic wastewater facility issued under RCW 90.48.162 or 90.48.260 is determined as follows:

Residential Equivalents (RE)	FY2024 Permit Fee	FY2025 Permit Fee
The annual fee is calculated by multiplying the number of REs by the FY per RE rate, for permit holders with 100 or more REs *For permit holders with less than 100 REs, a flat fee will be assessed*		
Less than 100 REs (Minimum Muni WW Fee)	$250 flat fee	$250 flat fee
100 and more REs		
< 250,000 REs	$3.43 per RE	$3.43 per RE
Greater than 250,000 REs	$3.43 per RE	$3.43 per RE

(b) The annual permit fee for privately owned or public-owned domestic wastewater facilities that do not primarily serve residential customers and for state-owned domestic wastewater facilities is determined by using the design flow, or maximum daily flow or maximum monthly average permitted flow in million gallons per day, whichever is greater, as specified in the waste discharge permit. The annual fees for flow-based facilities are as follows:

Tiered Flow-Based Fee	FY2024 Annual Permit Fee	FY2025 Annual Permit Fee
.1 MGD and greater	$12,000	$12,000
.05 MGD - < .1 MGD	$6,000	$6,000
.01 MGD - < .05 MGD	$3,000	$3,000
.005 MGD - < .01 MGD	$1,500	$1,500
.001 MGD - < .005 MGD	$750	$750
Less than .001 MGD	$375	$375

(c) Instructions for calculating residential equivalents and reporting flow are provided on annual forms sent by the department to permit holders each year. Permit holders are required to complete and

return the forms and any required back-up documentation to the department by the specified due date. Failure to return the annual form and any required back-up documentation will result in a permit fee as determined by the department.

(i) The annual forms must include a signature certifying the provided information is correct:

(A) For a corporation, by an authorized corporate officer;

(B) For a limited partnership, by an authorized partner;

(C) For a general partnership, by an authorized partner;

(D) For a sole proprietorship, by the proprietor; or

(E) For a municipal or other public facility, by either a ranking elected official or a principal executive officer.

(ii) The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, will, revise both current and previously granted fee determinations as appropriate, in addition to taking other actions provided by law.

(d) The annual permit fee for a domestic wastewater facility with a Puget Sound nutrient general permit will be calculated at the rate of $0.31 per residential equivalent per year or the $250 minimum wastewater fee described in this section, as determined by the department. The number of residential equivalents will be calculated based on information provided on the forms required in this section.

(5) CONSTRUCTION AND INDUSTRIAL STORMWATER ANNUAL PERMIT FEE SCHEDULE

(a) Unless specifically addressed elsewhere in this section, the following construction and industrial stormwater permit holders must pay an annual permit fee as follows:

	FY204 Annual Permit Fee	FY2025 Annual Permit Fee
a. Construction and Industrial Stormwater - Individual Permits		
1. < 50 acres	$6,250	$6,350
2. 50 - < 100 acres	12,500	12,750
3. 100 - < 500 acres	18,730	19,030
4. 500 acres and greater	25,500	26,000
b. Industrial Stormwater General Permit (ISGP)		
1. Municipalities and state agencies	2,100	2,100
2. New permit holders who have not previously submitted an annual gross revenue form	1,100	1,100
3. All other ISGP permit holders will have a fee based on the annual gross revenue reporting		
Gross Revenue Subcategories		
Less than $100,000	200	200
$100,000 - < $500,000	500	500
$500,000 - < $1,000,000	750	750
$1,000,000 - < $2,500,000	1,020	1,020
$2,500,000 - < $5,000,000	1,700	1,700
$5,000,000 - < $10,000,000	2,540	2,540
$10,000,000 - < $15,000,000	3,020	3,020
$15,000,000 - < $20,000,000	3,250	3,250
$20,000,000 and greater	3,400	3,400
c. Construction Stormwater General Permit (CSWGP)		

	FY204 Annual Permit Fee	FY2025 Annual Permit Fee
1. Less than 1 acre	500	500
2. 1 - < 5 acres	780	780
3. 5 - < 7 acres	1,280	1,280
4. 7 - < 10 acres	1,720	1,720
5. 10 - < 20 acres	2,350	2,350
6. 20 - < 50 acres	2,920	2,920
7. 50 - < 100 acres	3,100	3,100
8. 100 - < 500 acres	3,300	3,300
9. 500 - < 1,000 acres	3,500	3,500
10. 1,000 and more acres	3,700	3,700

(b) For industrial stormwater general permit holders assessed fees based on gross revenue, the permit holder must provide gross revenue information on the required form annually. Forms will be provided annually by the department and with a specified due date. Failure to provide this information will result in a fee determination based on the highest subcategory for which the facility has permit coverage. Submitted forms must include a signature certifying the provided information is correct:

(i) For a corporation, by an authorized corporate officer;

(ii) For a limited partnership, by an authorized general partner;

(iii) For a general partnership, by an authorized partner; or

(iv) For a sole proprietorship, by the proprietor.

(c) The department may verify the information contained in the submitted documentation and, if it determines that the permit holder has made false statements, will revise both current and previous granted fee determinations as appropriate in addition to taking other actions provided by law.

(6) MUNICIPAL STORMWATER ANNUAL PERMIT FEE SCHEDULE

(a) Municipal stormwater phase 1 general permit holders must pay an annual permit fee as follows:

Name of Entity	FY2024 Annual Permit Fee	FY2025 Annual Permit Fee
Clark County	$72,665	$76,916
King County	72,665	76,916
Pierce County	72,665	76,916
Seattle, City of	72,665	76,916
Snohomish County	72,665	76,916
Tacoma, City of	72,665	76,916
WSDOT	72,665	76,916

(b) Municipal stormwater phase 2 general permit holders pay a fee for fiscal year 2024 and 2025 based on the most recently available census estimations for median household income for cities and counties as follows:

(i) For cities and counties with a median household income level above the state average, the annual permit fee is $2.04 per housing unit inside the geographic area covered by the permit, with a not-to-exceed amount of $72,665 in fiscal year 2024, and $76,916 in fiscal year 2025. The minimum annual permit fee is $3,000.

(ii) For cities and counties with a median household income level below the state average, the annual permit fee is $1.04 per housing unit inside the geographic area covered by the permit. The minimum annual permit fee is $150.

(c) Other entities (phase 1 and 2 secondary facilities) with a municipal stormwater general permit must pay an annual permit fee based on the entities' previous calendar year annual operating budget for the facilities covered under the stormwater permit as follows:

Other Entities' Annual Stormwater Facility Operating Budget	FY2024 Annual Permit Fee	FY2025 Annual Permit Fee
Less than $100,000	$200	$200
$100,000 - < $1,000,000	805	805
$1,000,000 - < $5,000,000	2,010	2,010
$5,000,000 - < $10,000,000	3,020	3,020
$10,000,000 and greater	5,024	5,024

(d) Stormwater permit holders assessed fees under (b) of this subsection must complete an annual form provided by department, certifying the number of housing units served by their system. Permit holders under (c) of this subsection must complete an annual form provided by the department supplying their annual operating budget. The forms must be completed and returned to the department annually within the time frame specified on the forms. Failure to return the form will result in an annual permit fee as determined by the department.

(e) One annual permit fee will be assessed for entities that apply as copermittees or coapplicants and are assigned one permit number. The annual permit fee will be equal to the highest single permit fee that would have been assessed if the copermittees had applied separately. The copermittee responsible for paying annual permit fees will be identified in the permit.

[Statutory Authority: RCW 90.48.465. WSR 21-13-150 (Order 19-10), § 173-224-040, filed 6/22/21, effective 7/23/21; WSR 19-14-040 (Order 18-01), § 173-224-040, filed 6/26/19, effective 7/27/19; WSR 17-16-005 (Order 16-11), § 173-224-040, filed 7/20/17, effective 8/20/17; WSR 15-23-110 (Order 15-02), § 173-224-040, filed 11/18/15, effective 12/19/15; WSR 13-22-051 (Order 13-02), § 173-224-040, filed 11/1/13, effective 12/2/13. Statutory Authority: RCW 90.48.465 and 2011 c 50 § 302(2). WSR 11-20-035 (Order 11-02), § 173-224-040, filed 9/27/11, effective 10/28/11. Statutory Authority: RCW 90.48.465. WSR 09-20-020 (Order 09-06), § 173-224-040, filed 9/28/09, effective 10/29/09. Statutory Authority: Chapter 90.48 RCW. WSR 08-16-109 (Order 08-05), § 173-224-040, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 90.48.465. WSR 06-12-028 (Order 05-17), § 173-224-040, filed 5/30/06, effective 6/30/06; WSR 04-15-046, § 173-224-040, filed 7/13/04, effective 8/13/04. Statutory Authority: Chapter 90.48 RCW. WSR 02-12-059, § 173-224-040, filed 5/30/02, effective 6/30/02; WSR 00-13-010 (Order 00-06), § 173-224-040, filed 6/9/00, effective 7/10/00; WSR 00-02-031 (Order 99-03), § 173-224-040, filed 12/28/99, effective 1/28/00; WSR 98-03-046 (Order 97-27), § 173-224-040, filed 1/15/98, effective 2/15/98; WSR 96-03-041 (Order 94-21), § 173-224-040, filed 1/10/96, effective 2/10/96; WSR 94-10-027 (Order 93-08), § 173-224-040, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-040, filed 1/21/92, effective 2/21/92. Statutory Authority:

Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-040, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 21-13-150, filed 6/22/21, effective 7/23/21)

WAC 173-224-050 Permit fee computation and payments. (1) The department ((~~shall charge~~)) assesses annual permit fees based on the permit fee schedule ((~~contained~~)) in WAC 173-224-040. The department ((~~may charge fees~~)) issues invoices at the beginning of the fiscal year to which they apply. The department ((~~shall~~)) will notify permit holders of annual permit fee charges by either sending an invoice to the ((~~permittee~~)) permit holder on record or making the invoice available online. ((~~The department must receive permit fee~~)) Payments are due by the date on the invoice, which is typically within ((~~forty-five~~)) 45 days ((~~after the department sends a billing statement~~)) of the invoice issue date. The department may elect to ((~~bill~~)) invoice the annual permit fee to permit holders ((~~a prorated portion of the annual fee~~)) on a monthly, quarterly, or other periodic basis. It is the permit holder's responsibility to ensure that the department has the correct billing address on file.

(2) Permit fee computation ((~~shall~~)) begins on the first day of each fiscal year. ((~~In the case of facilities or activities not previously covered by~~)) For newly issued permits, fee computation begins on the permit issuance date and shall not fall below the minimum permit fee as specified in WAC 173-224-040(2). In the case of applicants for state waste discharge permits who are deemed to have a temporary permit under RCW 90.48.200, computation shall begin on the ((~~sixty-first~~)) 61st day after the department accepts a completed application. ((~~In the case of~~))

(3) For existing NPDES permit holders who submit a ((~~new, updated~~)) renewal permit application or a permit modification request containing information that ((~~could~~)) may change their assigned permit fee, computation and permit fee category reassignment begins ((~~upon~~)) on the date the department ((~~accepts the application~~)) issues the renewed permit or permit modification.

(4) Any facility that obtains permit coverage but fails to operate ((~~will~~)) is still ((~~be~~)) obligated to pay the annual permit fee assessment in this chapter until the department terminates permit coverage. Permits terminated during the fiscal year will pay the full annual fee assessment regardless of the permit termination date.

((~~(3)~~)) (5) Annual permit fees for sand and gravel general permit holders are assessed as in ((~~subsection (2) of this section~~)) WAC 173-224-040(3) and:

(a) Nonoperating sites. A facility conducting mining, screening, washing ((~~and/or~~)) or crushing activities, excluding portable rock crushing operations, is considered nonoperating for fee purposes if they are conducting these activities for less than ((~~ninety~~)) 90 cumulative days during a calendar year. A facility producing or recycling no asphalt ((~~and/or~~)) or concrete during the calendar year is also considered nonoperating for fee purposes.

(b) Nonoperating sites that become active for only concrete ((~~and/or~~)) or asphalt production or recycling are assessed a prorated fee for the actual time ((~~inactive~~)) nonoperational. For the actual time a concrete ((~~and/or~~)) or asphalt facility is active, excluding

asphalt portable batch plants and concrete portable batch plants, fees are based on total production or recycled amount of concrete ((~~and/or~~)) or asphalt.

(c) Fees for continuously active sites that produce or recycle concrete ((~~and/or~~)) or asphalt, excluding asphalt portable batch plants and concrete portable batch plants, are based on the previous calendar year production totals. Existing facilities must provide the department with the production or recycled totals for concrete ((~~and/or~~)) or asphalt produced or recycled during the previous calendar year. New facilities with no historical asphalt ((~~and/or~~)) or concrete production or recycling data will have their first year fee based on the production or recycling levels reported ((~~on~~)) in the permit application ((~~for coverage under the National Pollutant Discharge Elimination System and State Waste Discharge Permit for Process Water, Stormwater, and Mine Dewatering Water Discharges Associated with Sand and Gravel Operations, Rock Quarries and Similar Mining Facilities including Stockpiles of Mined Materials, Concrete Batch Operations and Asphalt Batch Operations general permit~~)).

((~~(4)~~)) (6) Fees for fruit ((~~packer~~)) packing general permit holders are assessed as in ((~~subsection (2) of this section~~)) WAC 173-224-040(3) and are computed based on the three previous calendar years production totals. Existing facilities must provide the department with the production totals in the manner described in WAC 173-224-040 ((~~(2)(c)~~)) (3)(b). New facilities with no historical production data will have their first year fee based on the estimated production level for that year. The second year fee is determined based on the actual production during the first year. Fee calculation for subsequent years will be based on the average production values of previous years.

((~~(5)~~)) (7) Facilities with construction and industrial stormwater general permit coverage will have their annual permit fees begin on the permit issuance date.

((~~(6) Permit fee accrual will~~)) (8) Annual permit fees continue until the permit has been terminated by the department regardless ((~~if~~)) of whether the activity covered under the permit has already ceased.

((~~(7) Facilities with an existing NPDES and/or state wastewater discharge permit who also have obtained industrial and/or construction stormwater general permit coverage shall only pay an annual fee based on the permit with the highest permit fee category assessment.~~

~~(8)~~)) (9) Computation of fees shall end on June 30th, the last day of the state's fiscal year regardless of the permit termination date.

((~~(9)~~)) (10) The applicable permit fee shall be paid using ((~~ecology's~~)) the department's online payment ((~~software~~)) system or by check or money order payable to the "Department of Ecology" and mailed to the ((~~Water Quality Permit Fee Program~~)) Cashiering Office, P.O. Box 47611, Olympia, Washington 98504-7611.

((~~(10)~~)) (11) In the event a check is returned due to insufficient funds, the department shall consider the permit fee to be unpaid.

((~~(11) Delinquent accounts.~~)) (12) Permit holders are considered delinquent in the payment of annual permit fees if the fees are not received by the first invoice ((~~billing~~)) due date. Delinquent accounts are processed in the following manner:

(a) Municipal and government entities ((~~shall~~)) and Native American tribes will be notified by regular mail or email that they have

((~~forty-five~~)) 45 days to ((~~bring the delinquent account up-to-date~~)) pay outstanding invoices. Accounts that remain delinquent after ((~~forty-five~~)) 45 days may receive a ((~~permit revocation letter~~)) notice of penalty for nonpayment of fees.

(b) Nonmunicipal or nongovernment permit holders ((~~shall~~)) will be notified by the department by regular mail or email that they have ((~~forty-five~~)) 45 days to ((~~bring the delinquent account up-to-date~~)) pay outstanding invoices. Accounts that remain delinquent after ((~~forty-five~~)) 45 days may receive a notice of penalty and may be ((~~turned over for~~)) referred to a collections agency. In addition to the amount owed, the collection agent may add a fee to the delinquent amount owed as authorized by RCW 19.16.500. If the collection agency fails to recover the delinquent fees ((~~after twelve months~~)), the permit holder may receive a permit revocation letter for nonpayment of fees.

[Statutory Authority: RCW 90.48.465. WSR 21-13-150 (Order 19-10), § 173-224-050, filed 6/22/21, effective 7/23/21; WSR 19-14-040 (Order 18-01), § 173-224-050, filed 6/26/19, effective 7/27/19; WSR 17-16-005 (Order 16-11), § 173-224-050, filed 7/20/17, effective 8/20/17; WSR 13-22-051 (Order 13-02), § 173-224-050, filed 11/1/13, effective 12/2/13; WSR 09-20-020 (Order 09-06), § 173-224-050, filed 9/28/09, effective 10/29/09. Statutory Authority: Chapter 90.48 RCW. WSR 08-16-109 (Order 08-05), § 173-224-050, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 90.48.465. WSR 04-15-046, § 173-224-050, filed 7/13/04, effective 8/13/04. Statutory Authority: Chapter 90.48 RCW. WSR 02-12-059, § 173-224-050, filed 5/30/02, effective 6/30/02; WSR 00-02-031 (Order 99-03), § 173-224-050, filed 12/28/99, effective 1/28/00; WSR 98-03-046 (Order 97-27), § 173-224-050, filed 1/15/98, effective 2/15/98; WSR 96-03-041 (Order 94-21), § 173-224-050, filed 1/10/96, effective 2/10/96; WSR 94-10-027 (Order 93-08), § 173-224-050, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-050, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-050, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 89-12-027 and 90-07-015, filed 5/31/89 and 3/13/90, effective 4/13/90)

WAC 173-224-060 Permits issued by other governmental agencies. The department shall not charge permit fees for:

(1) Permits issued by a city, town, or municipal corporation under RCW 90.48.165;

(2) Permits issued by the energy facilities site evaluation council under RCW 80.50.071;

(3) Permits administered by the EPA under 33 U.S.C. 1251 et seq.

(4) Nothing herein shall restrict the department from ((~~charging~~)) assessing fees to recover administrative expenses of permits it issues under RCW 90.48.160 for discharges into municipal sewer systems, nor for charging fees to recover administrative expenses related to monitoring compliance with delegated pretreatment programs.

[Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-060, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 21-13-150, filed 6/22/21, effective 7/23/21)

WAC 173-224-080 Transfer of permit coverage. In the event ((~~that~~)) a permit is transferred, the department shall not refund permit fees. Fees paid by a previous permit holder shall be applied to the corresponding fee payment requirements of a new permit holder. Unpaid permit fees owed by a previous permit holder are the liability of a new permit holder. Fee agreements between a new and previous permit holder are not binding on the department.

[Statutory Authority: RCW 90.48.465. WSR 21-13-150 (Order 19-10), § 173-224-080, filed 6/22/21, effective 7/23/21. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-080, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 21-13-150, filed 6/22/21, effective 7/23/21)

WAC 173-224-090 Permit fee reductions. ((~~With the exception of facilities covered under the construction and industrial stormwater general permits who are not eligible to apply for a fee reduction, any business required to pay a fee may receive a reduction of its permit fee.~~)) Facilities covered under the construction stormwater general and individual permits, and the industrial stormwater general permits are not eligible to apply for a fee reduction under this section.

(1) Market research and development.

(a) To qualify for the market research and development fee reduction, the ((~~operation under~~)) permit holder must be:

(i) A research facility with the primary purpose of researching market viability for products ((~~and/or~~)) or processes that reduce or eliminate wastewater pollutants or wastewater pollutant generating activity;

(ii) Covered under an individual permit issued within the past three fiscal years; and

(iii) Assessed a fee under an established fee category, excluding facility not otherwise classified.

(b) To receive a fee reduction, the permit holder must ((~~submit an application~~)) apply in a manner prescribed by the department demonstrating that the conditions in (a) of this subsection are met. The application ((~~shall bear a certification of correctness and be signed~~)) must include a signature certifying the provided information is correct:

(i) ((~~In the case of~~)) For a corporation, by an authorized corporate officer;

(ii) ((~~In the case of~~)) For a limited partnership, by an authorized general partner;

(iii) ((~~In the case of~~)) For a general partnership, by an authorized partner;

(iv) ((~~In the case of~~)) For a sole proprietorship, by the proprietor; or

(v) ((~~In the case of~~)) For a municipality, state, ((~~or~~)) other public entity, or Native American tribe, by either a principal executive officer or ((~~a ranking~~)) an elected official.

(c) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, ((~~may~~)) will deny the fee reduction request and revoke previously granted fee reductions.

(d) ((~~The permit fee for market research and development determined to be~~)) If the department determines a permit holder is eligible for a fee reduction under ((~~(a) of~~)) this subsection ((~~shall be~~)), the annual permit fee is reduced to ((~~twenty-five~~)) 25 percent of the assessed annual permit fee but not less than the minimum permit fee in WAC 173-224-040(2).

(e) A ((~~site~~)) permit holder can only be eligible for ((~~this~~)) a market research and development reduction for three consecutive fiscal years.

(2) Small business fee reduction.

(a) To qualify for the small business fee reduction, a business must meet all of the following conditions:

(i) Be a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit;

(ii) Be independently owned and operated from all other businesses (i.e., not a subsidiary of a parent company);

(iii) Have annual sales of ((~~one million dollars~~)) $1,000,000 or less of the goods or services produced using the processes regulated by the waste discharge or individual stormwater discharge permit; and

(iv) Have an original annual permit fee assessment totaling ((~~five hundred dollars~~)) $500 or greater.

(b) To receive a small business fee reduction, the permit holder must ((~~submit an application~~)) apply in a manner prescribed by the department demonstrating that the conditions in ((~~(a) of~~)) this subsection are met. The application ((~~shall bear a certification of correctness and be signed~~)) must include a signature certifying the information provided is correct:

(i) ((~~In the case of~~)) For a corporation, by an authorized corporate officer;

(ii) ((~~In the case of~~)) For a limited partnership, by an authorized general partner;

(iii) ((~~In the case of~~)) For a general partnership, by an authorized partner; or

(iv) ((~~In the case of~~)) For a sole proprietorship, by the proprietor.

(c) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, ((~~may~~)) will deny the fee reduction request and revoke previously granted fee reductions.

(d) ((~~The permit fee for small businesses determined to be~~)) If the department determines a permit holder is eligible under ((~~(a) of~~)) this subsection ((~~shall be~~)), the annual permit fee is reduced to ((~~fifty~~)) 50 percent of the assessed annual permit fee but not less than the minimum permit fee in WAC 173-224-040(2).

(3) Extreme hardship fee reduction.

(a) Any small business with annual gross revenue totaling ((~~one hundred thousand dollars~~)) $100,000 or less from goods and services produced using the processes regulated by the ((~~waste discharge or individual stormwater~~)) discharge permit may apply in a manner prescribed by the department for an extreme hardship fee reduction. ((~~The small business must provide sufficient evidence to support its claim of an extreme hardship. In no case will a permit fee be reduced below $128.00.~~))

(b) To receive an extreme hardship fee reduction, the permit holder must provide sufficient evidence to support its claim of hardship and demonstrate that the conditions in this subsection are met. The application must have a signature certifying that the information provided is correct and be signed:

(i) For a corporation, by an authorized corporate officer;

(ii) For a limited partnership, by an authorized general partner;

(iii) For a general partnership, by an authorized partner; or

(iv) For a sole proprietorship, by the proprietor.

(c) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, will deny the fee reduction request and revoke previously granted fee reductions.

(d) If the department determines a permit holder is eligible under this subsection, the annual permit fee is reduced to the minimum annual permit fee specified in WAC 173-224-040(2).

(4) Hazardous waste cleanup hardship reduction.

(a) Any former small business that is currently assessed a hazardous waste cleanup sites fee and no longer operates as a small business on the cleanup site, may apply in a manner prescribed by the department to have their assessed fee reduced. The permit holder must provide sufficient evidence to support its claim of hardship and demonstrate that the conditions in this subsection are met. The application must have a signature certifying the information provided is correct and be signed:

(i) For a corporation, by an authorized corporate officer;

(ii) For a limited partnership, by an authorized general partner;

(iii) For a general partnership, by an authorized partner; or

(iv) For a sole proprietorship, by the proprietor.

(b) The department may verify the information contained in the application and, if it determines that the permit holder has made false statements, will deny the fee reduction request and revoke previously granted fee reductions.

(c) If the department determines a permit holder is eligible under this subsection, the annual permit fee is reduced to $500.

[Statutory Authority: RCW 90.48.465. WSR 21-13-150 (Order 19-10), § 173-224-090, filed 6/22/21, effective 7/23/21; WSR 19-14-040 (Order 18-01), § 173-224-090, filed 6/26/19, effective 7/27/19; WSR 13-22-051 (Order 13-02), § 173-224-090, filed 11/1/13, effective 12/2/13. Statutory Authority: RCW 90.48.465 and 2011 c 50 § 302(2). WSR 11-20-035 (Order 11-02), § 173-224-090, filed 9/27/11, effective 10/28/11. Statutory Authority: RCW 90.48.465. WSR 09-20-020 (Order 09-06), § 173-224-090, filed 9/28/09, effective 10/29/09. Statutory Authority: Chapter 90.48 RCW. WSR 08-16-109 (Order 08-05), § 173-224-090, filed 8/5/08, effective 9/5/08. Statutory Authority: RCW 90.48.465. WSR 04-15-046, § 173-224-090, filed 7/13/04, effective 8/13/04. Statutory Authority: Chapter 90.48 RCW. WSR 96-03-041 (Order 94-21), § 173-224-090, filed 1/10/96, effective 2/10/96; WSR 94-10-027 (Order 93-08), § 173-224-090, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-090, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-090, filed 5/31/89 and 3/13/90, effective 4/13/90.]

AMENDATORY SECTION (Amending WSR 19-14-040, filed 6/26/19, effective 7/27/19)

WAC 173-224-100 Administrative appeals to the department. Any person aggrieved by a determination made under this chapter by the department may file a written appeal to the department no later than each fiscal year's first billing due date for payment of fees. Such appeal shall state the reasons that the aggrieved person believes that the department's determination is contrary to the requirements of RCW 90.48.465, and specific actions they are requesting that are consistent with those requirements. The department shall either issue a revised determination or a statement upholding the original determination. A revised determination shall be consistent with the requirements of RCW 90.48.465. Any person feeling aggrieved by the administrative appeals decision made by the department regarding their permit fee may obtain review thereof by filing an appeal with the pollution control hearings board, ((~~P.O. Box 40903, Olympia, Washington 98504-0903,~~)) within ((~~thirty~~)) 30 days of receipt of the department's decision. In addition, a copy of the appeal must be served on the Department of Ecology, Attention: Water Quality Program Permit Fee Unit, P.O. Box 47600, Olympia, Washington 98504-7696, within ((~~thirty~~)) 30 days of receipt. These procedures are consistent with the provisions of chapter 43.21B RCW and the rules and regulations adopted thereunder.

[Statutory Authority: RCW 90.48.465. WSR 19-14-040 (Order 18-01), § 173-224-100, filed 6/26/19, effective 7/27/19. Statutory Authority: Chapter 90.48 RCW. WSR 08-16-109 (Order 08-05), § 173-224-100, filed 8/5/08, effective 9/5/08. Statutory Authority: Chapter 90.48 RCW. WSR 94-10-027 (Order 93-08), § 173-224-100, filed 4/28/94, effective 5/29/94; WSR 92-03-131 (Order 91-45), § 173-224-100, filed 1/21/92, effective 2/21/92. Statutory Authority: Chapter 43.21A RCW. WSR 89-12-027 and 90-07-015 (Order 89-8 and 89-8A), § 173-224-100, filed 5/31/89 and 3/13/90, effective 4/13/90.]

WSR 23-14-082
PERMANENT RULES
DEPARTMENT OF HEALTH
(Nursing Care Quality Assurance Commission)
[Filed June 29, 2023, 4:37 p.m., effective July 30, 2023]

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

Purpose: The nursing care quality assurance commission (commission) is adopting amendments to WAC 246-840-463 and 246-840-4659 to clarify the application of the advanced practice pain management rules in nursing homes and long-term acute care hospitals (LTACs).

Amendments to WAC 246-840-463 and 246-840-4659 create permanent rules from an interpretive statement titled NCIS-2.00 Application of WAC 246-840-4659 to Nursing Homes and Long-Term Acute Care Hospitals. These amendments clarify that the pain management rules (WAC 246-840-460 through 246-840-4990) that apply to the treatment of patients by licensed practical nurses, registered nurses, and advanced registered nurse practitioners (ARNP) also extend to patients admitted under hospital orders to nursing homes licensed under chapter 18.51 RCW or chapter 388-97 WAC, Nursing homes, and LTACs as outlined in WAC 182-550-2565. The amendments also clarify that a discharge facility's history and physical may be considered an appropriate history and physical under WAC 246-840-4659 to allow timely prescribing of needed medications for acute nonoperative pain or acute perioperative pain.

Amendments to WAC 246-840-463 specifically state that WAC 246-840-460 through 246-840-4990 do not apply to the treatment of patients in nursing homes licensed under chapter 18.51 RCW or chapter 388-97 WAC, Nursing homes, and LTACs.

Amendments to WAC 246-840-4659 incorporate language that allow an ARNP to consider the discharge facility's appropriate history and physical examination to allow timely prescribing of needed medications for acute nonoperative pain or acute perioperative pain in nursing homes licensed under chapter 18.51 RCW or chapter 388-97 WAC, Nursing homes, and LTACs.

Citation of Rules Affected by this Order: Amending WAC 246-840-463 and 246-840-4659.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, and 18.79.250.

Adopted under notice filed as WSR 23-08-064 on April 4, 2023.

A final cost-benefit analysis is available by contacting Jessilyn Dagum, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-3538, fax 360-236-4738, TTY 711, email ncqac.rules@doh.wa.gov, website www.nursing.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: May 12, 2023.

Alison Bradywood DNP, MN/MPH, RN, NEA-BC
Executive Director
Nursing Care Quality Assurance Commission

OTS-3981.3

AMENDATORY SECTION (Amending WSR 18-20-086, filed 10/1/18, effective 11/1/18)

WAC 246-840-463 Exclusions. WAC 246-840-460 through 246-840-4990 do not apply to:

(1) The treatment of patients with cancer-related pain;

(2) The provision of palliative, hospice, or other end-of-life care;

(3) The treatment of inpatient hospital patients; or

(4) Procedural premedications.

(5) The treatment of patients in nursing homes licensed under chapter 18.51 RCW or 388-97 WAC, nursing homes and long-term acute care hospitals (LTACs).

[Statutory Authority: RCW 18.79.800 and 2017 c 297. WSR 18-20-086, § 246-840-463, filed 10/1/18, effective 11/1/18. Statutory Authority: RCW 18.79.400. WSR 11-10-064, § 246-840-463, filed 5/2/11, effective 7/1/11.]

AMENDATORY SECTION (Amending WSR 18-20-086, filed 10/1/18, effective 11/1/18)

WAC 246-840-4659 Patient evaluation and patient record—Acute. Prior to prescribing an opioid for acute nonoperative pain or acute perioperative pain, the advanced registered nurse practitioner shall:

(1) Conduct and document an appropriate history and physical examination including screening for risk factors for overdose and severe postoperative pain; or

(2) Consider the discharge facility's history and physical examination an appropriate history and physical examination to allow timely prescribing of needed medications for acute nonoperative pain or acute perioperative pain in nursing homes licensed under chapter 18.51 RCW or 388-97 WAC, nursing homes and long-term acute care hospitals (LTACs);

(3) Evaluate the nature and intensity of the pain or anticipated pain following surgery; and

((~~(3)~~)) (4) Inquire about any other medications the patient is prescribed or is taking including type, dosage, and quantity prescribed.

[Statutory Authority: RCW 18.79.800 and 2017 c 297. WSR 18-20-086, § 246-840-4659, filed 10/1/18, effective 11/1/18.]

WSR 23-14-101
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed June 30, 2023, 2:33 p.m., effective September 1, 2023]

Effective Date of Rule: September 1, 2023.

Purpose: The agency is creating new WAC 182-513-1110 to create presumptive eligibility for long-term services and supports authorized by home and community services in home and alternate living facilities.

Citation of Rules Affected by this Order: New WAC 182-513-1110.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-01-087 on December 16, 2022.

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

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

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

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

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

Date Adopted: June 30, 2023.

Wendy Barcus
Rules Coordinator

OTS-4252.1

NEW SECTION

WAC 182-513-1110 Presumptive eligibility (PE)—Long-term services and supports (LTSS) in a home setting or in an alternate living facility (ALF) authorized by home and community services (HCS). (1) A person may be determined presumptively eligible for long-term services and supports (LTSS) in their own home, as defined in WAC 388-106-0010, or in an alternate living facility, as defined in WAC 182-513-1100:

(a) Upon completion of a screening interview; and

(b) When authorized by home and community services (HCS).

(2) The screening interview described in subsection (3) of this section may be conducted by either:

(a) A HCS case manager or social worker;

(b) An area agency on aging (AAA) or their subcontractor; or

(c) A state designated tribal entity.

(3) To be presumptively eligible (PE), the person must:

(a) Be determined to meet nursing facility level of care under WAC 388-106-0355 during the screening interview; and

(b) Attest to information that meets the:

(i) Income limits at or below the average monthly state nursing facility rate;

(ii) Resource limits defined under WAC 182-513-1350;

(iii) Social security requirement under WAC 182-503-0515;

(iv) Residency requirement under WAC 182-503-0520; and

(v) Aged, blind, or disabled requirement under WAC 182-512-0050.

(4) The agency or the agency's designee determines how much client responsibility must be paid to the provider for PE home and community-based services authorized by HCS when living at home or in an alternate living facility as outlined in WAC 182-513-1215, 182-515-1507, and 182-515-1509.

(5) The client or the client's representative must submit an online application through Washington connection or an HCA 18-005 application for aged, blind, disabled/long-term care coverage to HCS within 10 calendar days of PE determination.

(6) The PE period begins on the date the screening interview is completed and:

(a) Ends on the last day of the month following the month of the PE determination if an LTSS application is not completed and submitted within 10 calendar days of PE determination; or

(b) Ends the last day of the month that the final eligibility determination is made if a LTSS application is submitted under subsection (5) of this section within 10 calendar days of PE determination.

(7) For application processing times, refer to WAC 182-503-0060.

(8) If the applicant is determined not financially eligible for LTSS under WAC 182-513-1315, there is no overpayment for services received during the PE period; however, client responsibility applies as described in WAC 182-513-1215, 182-515-1507, and 182-515-1509.

(9) People who qualify for PE under this section receive categorically needy (CN) medical coverage under WAC 182-501-0060 through the PE period. CN medical coverage begins as described in WAC 182-503-0070(1).

(10) When PE services described in WAC 388-106-1810 and 388-106-1820 are approved or denied, the agency or the agency's designee sends written notice as described in WAC 182-518-0010.

(11) A person may receive services under a PE period only once within a consecutive 24-month period.

(12) The applicant does not have a right to an administrative hearing on PE decisions under chapter 182-526 WAC.

(13) Institutional resource and income standards are found at https://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources.

(14) This section does not apply to medical assistance programs described in WAC 182-507-0125 or 182-508-0005.

[]

WSR 23-14-110
PERMANENT RULES
DEPARTMENT OF AGRICULTURE
[Filed July 5, 2023, 6:03 a.m., effective August 5, 2023]

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

Purpose: The department of agriculture (department) is amending chapter 16-610 WAC, Livestock identification, to align with recently enacted legislation. In April 2023, the Washington state legislature passed SSB 5439 (chapter 46, Laws of 2023). The department is amending chapter 16-610 WAC to align with this recently enacted legislation by adding a statement that the $20.00 call out fee is not charged by certified veterinarians and field livestock inspectors; and adding a requirement that the livestock identification advisory committee must review the costs and operations of the livestock identification program.

These changes mirror the legislation.

The department is also amending the definition of "call out fee" to clarify that it is a fee charged by department inspectors.

Citation of Rules Affected by this Order: Amending WAC 16-610-005, 16-610-010, and 16-610-065.

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

Adopted under notice filed as WSR 23-10-084 on May 3, 2023.

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 2, Repealed 0.

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

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

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

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

Date Adopted: July 5, 2023.

Derek I. Sandison
Director

OTS-4555.1

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

WAC 16-610-005 Definitions. In addition to the definitions found in RCW 16.57.010, 16.58.020, and 16.65.010, the following definitions apply to this chapter:

"Association of livestock breeders" means any properly incorporated association whose membership is made up of livestock breeders.

"Beef commission assessment point" means a person or business, as designated by the Washington state beef commission, required to col-

lect and submit the mandatory per-head beef promotional fees directly to the commission when the sale of cattle occurs.

"Beef promotion fee" means the mandatory state and/or federal beef commission assessment fee under RCW 16.67.120 and 16.67.122 that is collected on each head of cattle at the time of sale.

"Call out fee" is a trip fee charged by department inspectors for conducting livestock inspections.

"Certified veterinarian" means an individual licensed to practice veterinary medicine in Washington state under chapter 18.92 RCW who has been certified to perform livestock inspections by the director.

"Electronic official individual identification" means an official USDA approved 840 radio-frequency identification (RFID) tag. Official USDA RFID ear tags are imprinted with an official USDA animal identification number (AIN), bear the official U.S. shield, and are tamper proof.

"Farmers cooperative association" means any cooperative association of livestock producers. Farmers cooperative association does not include livestock youth organizations such as 4-H, FFA, or other junior livestock groups.

"Field livestock inspector" means an individual who has been certified by the director to perform livestock inspections.

"Legacy brand" means a brand that has been in continuous use for at least ((~~twenty-five~~)) 25 years.

"Livestock heritage brand" means a designation given to a brand that has been deactivated by the recorded owner. A heritage brand may not be applied to livestock.

"Market" means a public livestock market as defined in RCW 16.65.010(1).

"Special sale" means a public sale conducted by an individual, youth organization, livestock breeders association, or farmers cooperative association on a seasonal or occasional basis.

"USDA" means the United States Department of Agriculture.

[Statutory Authority: RCW 16.57.025, [16.57.]350, [16.57.]450(8), 16.58.030, 16.65.020, and [16.65.]350. WSR 19-20-022, § 16-610-005, filed 9/23/19, effective 10/24/19. Statutory Authority: Chapters 16.57, 16.58, 16.65 and 34.05 RCW. WSR 07-14-057, § 16-610-005, filed 6/28/07, effective 7/29/07; WSR 04-01-171, § 16-610-005, filed 12/23/03, effective 1/23/04.]

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

WAC 16-610-010 Livestock identification advisory committee. (1) The livestock identification advisory committee is established in RCW 16.57.015 for the purpose of advising the director regarding:

(a) Livestock identification programs administered under chapter 16.57 RCW and these rules;

(b) Inspection fees; and

(c) Related licensing fees.

(2) The advisory committee must review the costs and operations of the livestock identification program.

(3) The committee is appointed by the director and is composed of ((~~twelve~~)) 12 voting members as follows: Two beef producers, two live-

stock market owners, two horse producers, two dairy producers, two cattle feeders, and two meat processors.

Organizations representing the groups represented on the committee may submit nominations for these appointments to the director for the director's consideration. No more than two members at the time of their appointment or during their term may reside in the same county. Members may be reappointed and vacancies must be filled in the same manner as original appointments are made.

((~~(3)~~)) (4) The committee shall elect a member to serve as committee chair. The committee must meet at least twice a year. The committee shall meet at the call of the director, chair, or a majority of the committee. A quorum of the committee consists of a majority of members. If a member has not been designated for a position, that position may not be counted for purposes of determining a quorum. A member may appoint an alternate who meets the same qualifications as the member to serve during the member's absence. The director may remove a member from the committee if that member has two or more unexcused absences during a single calendar year.

((~~(4)~~)) (5) Livestock identification advisory committee members must be residents of the state of Washington and actively engaged in the industry they represent.

[Statutory Authority: RCW 16.57.025, [16.57.]350, [16.57.]450(8), 16.58.030, 16.65.020, and [16.65.]350. WSR 19-20-022, § 16-610-010, filed 9/23/19, effective 10/24/19. Statutory Authority: Chapters 16.57, 16.58, 16.65 and 34.05 RCW. WSR 07-14-057, § 16-610-010, filed 6/28/07, effective 7/29/07; WSR 04-01-171, § 16-610-010, filed 12/23/03, effective 1/23/04.]

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

WAC 16-610-065 Livestock identification fees. All livestock identification inspection fees charged by the director are specified in statute under RCW 16.57.220 but are reproduced in this section for ease of reference.

A call out fee of ((~~twenty dollars~~)) $20 will be charged for conducting livestock inspections in accordance with RCW 16.57.220, 16.58.130 and 16.65.090. Public livestock markets, special sales, open consignment horse sales, certified feedlots, and USDA inspected slaughter facilities will be charged a call out fee per inspector per day, with the exception of:

Special sales conducted by youth livestock organizations such as 4-H, FFA, and junior livestock groups are exempt from call out fees. No call out fee is charged for an inspection done by a certified veterinarian or field livestock inspector.

Certificate	Fees:
Inspection Certificate - Cattle	(1) The livestock inspection fee for cattle is **$4.00** per head except:

Certificate	Fees:
	The fee for livestock inspection for cattle is **$1.21** per head when cattle are identified with a valid brand recorded to the owner or identified with an electronic official individual identification tag. (2) The livestock inspection fee for cattle is **$4.40** per head for cattle delivered to a USDA inspected slaughter facility with a daily capacity of no more than five hundred head of cattle.
	(3) No inspection fee is charged for a calf that is inspected prior to moving out-of-state under an official temporary grazing permit if the calf is part of a cow-calf unit and the calf is identified with the owner's Washington state-recorded brand or identified with an electronic official individual identification tag.
Inspection Certificate - Horse	(4) The livestock inspection fee for horses is **$3.85** per head.
Inspection Certificate - Groups of thirty or more horses	(5) The livestock inspection fee for groups of thirty or more horses is **$2.20** per head, if: (a) The horses are owned by one individual; and (b) The inspection is performed on one date and at one location; and (c) Only one certificate is issued.
Inspection Certificate - Minimum fee	(6) The minimum fee for a livestock inspection is **$5.50**. The minimum fee does not apply to livestock consigned to and inspected at a public livestock market, special sale, or a cattle processing plant.
Annual individual identification certificate for individual animals	(7)(a) The livestock inspection fee for an annual individual identification certificate for cattle and horses is **$22.00** per head. (b) The livestock inspection fee for an annual individual identification certificate for groups of thirty or more horses or cattle is **$5.50** per head, if: (i) The horses or cattle are owned by one individual; (ii) The inspection is performed on one date and at one location; and (iii) Only one certificate is issued.
Lifetime individual identification certificate	(8) A livestock inspection fee for a lifetime individual identification certificate for horses and cattle is **$63.00** per head.

[Statutory Authority: RCW 16.57.025, [16.57.]350, [16.57.]450(8), 16.58.030, 16.65.020, and [16.65.]350. WSR 19-20-022, § 16-610-065, filed 9/23/19, effective 10/24/19. Statutory Authority: Chapters 16.57 and 34.05 RCW. WSR 12-21-013, § 16-610-065, filed 10/5/12, effective 11/5/12. Statutory Authority: Chapters 16.57, 16.58, 16.65, and 34.05 RCW. WSR 10-21-016, § 16-610-065, filed 10/7/10, effective 11/7/10;07-14-057, § 16-610-065, filed 6/28/07, effective 7/29/07; WSR 04-01-171, § 16-610-065, filed 12/23/03, effective 1/23/04.]

WSR 23-14-119
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed July 5, 2023, 10:19 a.m., effective July 5, 2023]

Effective Date of Rule: July 5, 2023.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The adopted amendments implement relevant sections of SSB 5448 (chapter 279, Laws of 2023) that became effective July 1, 2023, regarding liquor licensee privileges for the delivery of alcohol.

Purpose: The Washington state liquor and cannabis board (board) has adopted rule amendments to implement the statutory mandates of SSB 5448 (chapter 279, Laws of 2023), effective July 1, 2023, concerning outdoor or extended alcohol service, the extension of a temporary alcohol delivery endorsement, and an alcohol takeout endorsement.

Citation of Rules Affected by this Order: Amending WAC 314-03-200, 314-03-205, 314-03-500, 314-03-505, and 314-03-510.

Statutory Authority for Adoption: SSB 5448, (chapter 279, Laws of 2023); RCW 66.08.071, 66.08.030.

Other Authority: SSB 5448, (chapter 279, Laws of 2023).

Adopted under notice filed as WSR 23-11-163 on May 24, 2023.

A final cost-benefit analysis is available by contacting Katherine Hoffman, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1622, fax 360-664-3208, email rules@lcb.wa.gov, website www.lcb.wa.gov.

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

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

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

Date Adopted: July 5, 2023.

David Postman
Chair

OTS-4600.1

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-200 Outside or extended alcohol service. A licensee must request approval from the board's licensing division for ongoing outside or extended alcohol service. Except as provided in ((~~the temporary~~)) rules for outdoor alcohol service in WAC 314-03-205 ((~~that~~

~~are effective until July 1, 2023, unless extended by law~~)), the following conditions must be met:

(1) The area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height.

(2) There must be an interior access to the licensed premises. If the interior access is from a minor restricted area of the premises, minors are prohibited in the outside or extended alcohol service area.

(3) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present.

(4) Must have leasehold rights to the area and have and be connected to the licensed premises.

(5) Openings into and out of the outside area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet.

(6) **Exception.** For sidewalk cafe outside service, the board allows local regulations that, in conjunction with a local sidewalk cafe permit, requires a 42 inch barrier or permanent demarcation of the designated alcohol service areas for continued enforcement of the boundaries.

(a) The permanent demarcation must be at all boundaries of the outside service area;

(b) The permanent demarcation must be at least six inches in diameter;

(c) The permanent demarcation must be placed no more than 10 feet apart;

(d) There must be an attendant, wait staff, or server dedicated to the outside service area when patrons are present;

(e) This exception only applies to restaurant liquor licenses with sidewalk cafe service areas contiguous to the liquor licensed premises. "Contiguous" means touching along a boundary or at a point;

(f) This exception does not apply to beer gardens, standing room only venues, and permitted special events. Board approval is still required with respect to sidewalk cafe barrier requirements.

(7) **Limited exception.** The board may grant limited exceptions to the required 42 inch high barrier for outside alcohol service areas.

(a) The licensee must have exclusive leasehold rights to the outside service area.

(b) There must be permanent demarcations at all boundaries of the outside service area for continued enforcement of the boundaries.

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-200, filed 12/8/21, effective 1/8/22. Statutory Authority: RCW 66.08.030 and 66.44.310. WSR 20-03-180, § 314-03-200, filed 1/22/20, effective 2/22/20. Statutory Authority: RCW 66.08.030. WSR 17-12-030, § 314-03-200, filed 5/31/17, effective 7/1/17.]

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-205 ((~~Temporary rules for~~)) Outdoor alcohol service ((~~by~~)) for on-premises licensees. (1) ((~~As authorized in section 2(8), chapter 48, Laws of 2021, the temporary rules for outdoor alcohol service described in this section are effective until July 1, 2023, unless extended by law. These rules create a temporary exception~~

~~to the requirements in WAC 314-03-200. These rules apply to all on-premises licensees.~~

~~(2)~~)) **Outdoor alcohol services in privately owned spaces.** For ongoing outdoor alcohol service located in privately owned spaces, a licensee must request approval from the board's licensing division and meet the following requirements:

(a) The licensee must have legal authority to use the outdoor alcohol service area including, but not limited to, ownership or leasehold rights;

(b) The licensee must have a building that provides indoor dining or production in order to qualify for an outdoor alcohol service area;

(c) The outdoor alcohol service area must be (i) contiguous to the licensed business, or (ii) located on the same property or parcel of land as the licensed business;

(d) The outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(e) Interior access to the licensed premises from the outdoor alcohol service area is not required. However, unless there is (i) interior access to the licensed premises from the outdoor alcohol service area, or (ii) an unobstructed direct line of sight from inside the licensed premises to the outdoor alcohol service area, an employee with a mandatory alcohol server training (MAST) permit under chapter 314-17 WAC must be present in the outdoor alcohol service area at all times that patrons are present, in order to monitor alcohol consumption. This requirement is in addition to the requirement in (d) of this subsection that the outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(f) The same food service offered inside the licensed premises must also be offered in the outdoor alcohol service area;

(g) The outdoor alcohol service area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height. The board may grant limited exceptions to the required 42 inch high barrier for outdoor alcohol service areas if the licensee has permanent boundaries for the outdoor alcohol service area;

(h) Openings into and out of the outdoor alcohol service area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet; and

(i) Licensees must comply with local building codes, local health jurisdiction requirements, department of labor and industries requirements, and any other applicable laws and rules.

((~~(3)~~)) (2) **Outdoor alcohol services in public spaces.** For ongoing outdoor alcohol service located in public spaces, a licensee must request approval from the board's licensing division and meet the following requirements:

(a) The licensed business must have a permit from their local jurisdiction allowing the business to use the public space as a service area, such as a sidewalk cafe permit or other similar outdoor area permit authorized by local regulation;

(b) The licensee must have a building that provides indoor dining or production in order to qualify for an outdoor alcohol service area;

(c)(i) Except as provided in (c)(ii) of this subsection, the outdoor alcohol service area must be enclosed with a permanent or movable barrier a minimum of 42 inches in height. Openings into and out of the outdoor alcohol service area cannot exceed 10 feet. If there is more than one opening along one side, the total combined opening may not exceed 10 feet;

(ii) Licensees with outdoor alcohol service areas contiguous to the licensed premises may use a permanent demarcation of the designated alcohol service area for continued enforcement of the boundaries, instead of a permanent or movable barrier a minimum of 42 inches in height. If a permanent demarcation is used, the permanent demarcation must be at all boundaries of the outdoor alcohol service area, must be at least six inches in diameter, and must be placed no more than 10 feet apart;

(d) The outdoor alcohol service area must have an attendant, wait staff, or server dedicated to the area when patrons are present;

(e) The same food service offered inside the licensed premises must also be offered in the outdoor alcohol service area; and

(f) Licensees must comply with local building codes, local health jurisdiction requirements, department of labor and industries requirements, and any other applicable laws and rules.

((~~(4)~~)) (3) For multiple licensees to share an outdoor alcohol service area, the licensees must request approval from the board's licensing division and meet the following requirements:

(a) The licensees' property parcels or buildings must be located in direct physical proximity to one another. For the purposes of this subsection, "direct physical proximity" means that the property parcels or buildings are physically connected or touching each other along a boundary or at a point;

(b)(i) If the shared outdoor alcohol service area is located on public space, the licensees sharing the space must meet all of the requirements in subsection ((~~(3)~~)) (2) of this section and shared use of the outdoor service area must be authorized by the licensees' local jurisdiction permits; or

(ii) If the shared outdoor alcohol service area is located in a privately owned space, the licensees sharing the space must meet all of the requirements in subsection ((~~(2)~~)) (1) of this section and must have legal authority to share use of the outdoor service area including, but not limited to, ownership or leasehold rights;

(c) The licensees must maintain separate storage of products and separate financial records for the shared outdoor alcohol service area. If licensees share any point of sale system, the licensees must keep complete documentation and records for the shared point of sale system showing clear separation as to what sales items and categories belong to each respective licensee;

(d) The licensees must use distinctly marked glassware or serving containers in the shared outdoor alcohol service area to identify the source of any alcohol product being consumed. The distinctive markings may be either permanent or temporary. Any temporary markings must remain on the glassware or serving containers through the duration of use by the customer;

(e) The licensees must complete an operating plan for the shared outdoor alcohol service area. The operating plan should demonstrate in general how responsibility for the outdoor alcohol service area is shared among the licensees. Licensees are required to submit the operating plan to the board's licensing division at the time of application or alteration and must keep documentation of an up-to-date plan available for inspection on premises; and

(f) Consistent with WAC 314-11-065, a licensee may not permit the removal of alcohol in an open container from the shared outdoor alcohol service area, except to reenter the licensed premises where the alcohol was purchased. Signage prohibiting the removal of alcohol in

an open container must be visible to patrons in the shared outdoor alcohol service area.

((~~(5)~~)) (4) If multiple licensees use a shared outdoor alcohol service area as described in subsection ((~~(4)~~)) (3) of this section, all participating licensees are jointly responsible for any violation or enforcement issues unless it can be demonstrated that the violation or enforcement issue was due to one or more licensee's specific conduct or action, in which case the violation or enforcement action applies only to those identified licensees.

((~~(6)~~)) (5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol service" means service of liquor as defined in RCW 66.04.010.

(b) "Contiguous" means touching along a boundary or at a point.

(c) "Sidewalk cafe" means a designated seating area on the sidewalk, curb space, or other public space where a business provides table service and seating for their patrons during business hours.

((~~(7) This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.~~))

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-205, filed 12/8/21, effective 1/8/22.]

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-500 ((~~Temporary~~)) Endorsement for sale of manufacturer sealed alcohol products through ((~~curbside,~~)) takeout((~~,~~)) or delivery service. (1) ((~~As authorized in section 2, chapter 48, Laws of 2021, the temporary endorsement described in this section is available until July 1, 2023, unless extended by law.~~)) An endorsement for the sale of manufacturer sealed alcohol products is available through takeout and delivery service as set forth in section 1(5)(d), chapter 279, Laws of 2023. There is no fee for a licensee to apply for and obtain this endorsement.

(2)(a) ((~~Consistent with section 2(2), chapter 48, Laws of 2021,~~)) An endorsement to sell manufacturer sealed alcohol products at retail through ((~~curbside,~~)) takeout((~~,~~)) or delivery service is available to the following licensees: Beer and wine restaurants; spirits, beer, and wine restaurants; taverns; domestic wineries; domestic breweries and microbreweries; distilleries; snack bars; nonprofit arts licensees; and caterers.

(b) This endorsement is separate from the endorsements in WAC 314-03-505 and 314-03-510 that authorize the sale through ((~~curbside,~~)) takeout((~~,~~)) or delivery service of nonmanufacturer or nonfactory sealed premixed cocktails, ((~~cocktail kits,~~)) wine by the glass, premixed wine and spirits cocktails, premixed wine drinks, or growlers.

(3) In order to obtain and maintain the endorsement described in this section, licensees must meet the following requirements:

(a) Alcohol products must be sold in closed, factory or manufacturer sealed packages or containers, such as cans, bottles, and kegs. Licensees may only sell the types of manufacturer sealed alcohol products under this endorsement that they are authorized to sell under the terms of their license.

(b)(i) Except as provided in (b)(ii) of this subsection, if an alcohol product authorized for sale under this endorsement is enclosed inside a bag, box, or other packaging before the alcohol product is provided to the customer through ((~~curbside,~~)) takeout((~~,~~)) or delivery service, the exterior of the bag, box, or other packaging must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size that is legible and readily visible.

(ii) Brewery, winery, and distillery licensees are not required to mark or label the exterior of the bag, box, or other packaging as described in (b)(i) of this subsection if the alcohol product is provided to the customer through takeout service.

(c) If the alcohol products authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title. For these requirements, see WAC 314-03-020 through 314-03-040. ((~~Delivery by third-party service providers is allowed with approval by the board's licensing division of an added activity application requesting internet sales privileges.~~))

(ii) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least ((~~twenty-one~~)) 21 years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

(iii) ((~~Consistent with section 2(9), chapter 48, Laws of 2021~~)) As set forth in section 1(8), chapter 279, Laws of 2023, upon delivery of the alcohol product, the signature of the person age ((~~twenty-one~~)) 21 or over receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(iv) If no person age ((~~twenty-one~~)) 21 or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned. An alcohol product may not be left unattended at a delivery location.

(v) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(d)(i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through ((~~curbside,~~)) takeout((~~,~~)) or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout((~~, curbside,~~)) or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through ((~~curbside,~~)) takeout((~~,~~)) or delivery service that they must comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW 66.44.100 and restrictions on drinking or having an open container in a vehicle in RCW 46.61.519.

(4) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to: Keg sale requirements in WAC 314-02-115 and restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" means liquor as defined in RCW 66.04.010.

(b) "Factory sealed" or "manufacturer sealed" means that a package or container is in ((~~one hundred~~)) 100 percent resalable condition, with all manufacturer's seals intact.

(6) ((~~This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.~~)) The delivery service endorsement described in this section expires July 1, 2025, as set forth in section 1(3), chapter 279, Laws of 2023.

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-500, filed 12/8/21, effective 1/8/22.]

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-505 ((~~Temporary~~)) Endorsement for sale of premixed cocktails, ((~~cocktail kits,~~)) wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks through ((~~curbside,~~)) takeout((~~,~~)) or delivery service. (1) ((~~As authorized in section 2, chapter 48, Laws of 2021, the temporary endorsement described in this section is available until July 1, 2023, unless extended by law.~~)) An endorsement is available for the sale of premixed cocktails, wine by the glass, premixed wine and spirits cocktails, or premixed wine drinks through takeout and delivery service as set forth in section 1(3), chapter 279, Laws of 2023. There is no fee for a licensee to apply for and obtain this endorsement.

(2) ((~~Consistent with section 2(3) and (4), chapter 48, Laws of 2021~~)) As set forth in section 1 (2) and (3), chapter 279, Laws of 2023:

(a) An endorsement is available to spirits, beer, and wine restaurants to sell premixed cocktails, ((~~cocktail kits,~~)) wine by the glass, or premixed wine and spirits cocktails through ((~~curbside,~~)) takeout((~~,~~)) or delivery service. This endorsement does not authorize the sale of full bottles of spirits for off-premises consumption((~~, although mini-bottles may be sold as part of cocktail kits. Consistent with section 2(3), chapter 48, Laws of 2021, mini-bottle sales as part of cocktail kits are exempt from the spirits license issuance fee under RCW 66.24.630 (4)(a) and the tax on each retail sale of spirits under RCW 82.08.150~~)).

(b) An endorsement is also available to beer and wine restaurant licensees to sell wine or premixed wine drinks by the glass through ((~~curbside,~~)) takeout((~~,~~)) or delivery service.

(3) In order to obtain and maintain the endorsement described in this section, licensees must meet the following requirements:

(a)(i) For spirits, beer, and wine restaurants, food that qualifies as a complete meal under WAC 314-02-010 must be sold with the premixed cocktails, ((~~cocktail kits,~~)) wine by the glass, or premixed wine and spirits cocktails authorized for sale through ((~~curbside,~~)) takeout((~~,~~)) or delivery service under this endorsement. Spirits, beer, and wine restaurants can sell up to ((~~3~~)) three ounces of spirits per complete meal.

(ii) For beer and wine restaurants, a food item that qualifies as minimum food service under WAC 314-02-010 must be sold with the wine

or premixed wine drinks by the glass authorized for sale through ((~~curbside,~~)) takeout((~~,~~)) or delivery service under this endorsement.

(b) The alcohol products authorized for sale through ((~~curbside,~~)) takeout((~~,~~)) or delivery service under this endorsement must be prepared the same day they are sold.

(c) The alcohol products authorized for sale through ((~~curbside,~~)) takeout((~~,~~)) or delivery service under this endorsement must be packaged in a container that has been sealed in a manner designed to prevent consumption without removal of the tamper-evident lid, cap, or seal. For the purposes of this subsection, "tamper-evident" means a lid, cap, or seal that visibly demonstrates when a container has been opened. Tape is not a tamper-evident seal. The following list of examples is not comprehensive and is not intended to capture all of the possible types of allowed or disallowed containers:

(i) Examples of containers that are allowed:

(A) Containers with a screw top cap or lid that breaks apart when the container is opened.

(B) Containers with a plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid to form a seal that must be broken when the container is opened.

(C) Vacuum or heat-sealed pouches without holes or openings for straws.

(ii) Examples of containers that are not allowed:

(A) Containers with lids with sipping holes or openings for straws.

(B) Containers such as styrofoam, paper, or plastic cups that lack a tamper-evident lid, cap, or seal.

(d) The containers that the alcohol products authorized for sale under this endorsement are packaged in must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size and manner that is legible and readily visible. If a container of alcohol authorized for sale under this endorsement is enclosed inside a bag, box, or other packaging before it is provided to the customer through ((~~curbside,~~)) takeout((~~,~~)) or delivery service, the exterior of the bag, box, or other packaging must be clearly marked or labeled with the words "CONTAINS ALCOHOL, FOR PERSONS 21+" in a size and manner that is legible and readily visible.

(e) To deter public consumption or consumption in a vehicle of premixed cocktails, ((~~cocktail kits,~~)) wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks sold through ((~~curbside,~~)) takeout((~~,~~)) or delivery service, licensees may not put ice directly into the containers that the alcohol products authorized for sale under this endorsement are packaged in, except for frozen or blended drinks. Ice may be provided separately along with the ((~~curbside,~~)) takeout((~~,~~)) or delivery order.

(f) The premixed cocktails, ((~~cocktail kits,~~)) wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks authorized for sale through ((~~curbside,~~)) takeout((~~,~~)) or delivery service under this endorsement must be placed in the trunk of the vehicle or beyond the immediate reach of the driver or any passengers in compliance with open container requirements in RCW 46.61.519 before being transported off the licensee's premises.

(g) If the premixed cocktails, ((~~cocktail kits,~~)) wine by the glass, premixed wine and spirits cocktails, and premixed wine drinks authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title, except to the extent that those rules ((~~allow delivery by third-party service providers and~~)) prohibit the sale of nonfactory sealed containers. For these requirements, see WAC 314-03-020 through 314-03-040.

(ii) Delivery must be made by an employee of the licensed business who is at least ((~~twenty-one~~)) 21 years of age and holds a class 12 mandatory alcohol server training (MAST) permit under chapter 314-17 WAC. Delivery may not be made by third-party service providers.

(iii) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least ((~~twenty-one~~)) 21 years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

(iv) ((~~Consistent with section 2(9), chapter 48, Laws of 2021~~)) As set forth in section 1(8), chapter 279, Laws of 2023, upon delivery of the alcohol product, the signature of the person age ((~~twenty-one~~)) 21 or over receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(v) If no person age ((~~twenty-one~~)) 21 or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned. An alcohol product may not be left unattended at a delivery location.

(vi) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(h)(i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through ((~~curbside,~~)) takeout((~~,~~)) or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout((~~, curbside,~~)) or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through ((~~curbside,~~)) takeout((~~,~~)) or delivery service that they must comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW 66.44.100 and restrictions on drinking or having an open container in a vehicle in RCW 46.61.519.

(4) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to, restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" or "alcoholic beverage" means liquor as defined in RCW 66.04.010.

(b) ((~~"Mini-bottles" has the same meaning as defined in section 2(10), chapter 48, Laws of 2021: Original factory-sealed containers holding not more than 50 milliliters of a spirituous beverage.~~

~~(c)~~)) "Premixed cocktail" means a drink made by combining spirits with other alcoholic or nonalcoholic beverages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream.

((~~(d)~~)) (c) "Premixed wine and spirits cocktail" means a drink made by combining wine and spirits with other alcoholic or nonalcoholic beverages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream.

((~~(e)~~)) (d) "Premixed wine drink" means a drink made by combining wine with nonalcoholic beverages and ingredients including, but not limited to, fruit juice, carbonated beverages, flavorings, or cream. A premixed wine drink may not include alcoholic beverages other than wine.

((~~(f)~~)) (e) "Spirits" has the same meaning as defined in RCW 66.04.010.

((~~(g)~~)) (f) "Wine" has the same meaning as defined in RCW 66.04.010.

(6) ((~~This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.~~)) The delivery service endorsement described in this section expires July 1, 2025, as set forth in section 1(3), chapter 279, Laws of 2023.

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-505, filed 12/8/21, effective 1/8/22.]

AMENDATORY SECTION (Amending WSR 22-01-052, filed 12/8/21, effective 1/8/22)

WAC 314-03-510 ((~~Temporary~~)) Endorsement for sale of growlers through ((~~curbside,~~)) takeout((~~,~~)) or delivery service. (1) ((~~As authorized in section 2, chapter 48, Laws of 2021, the temporary endorsement described in this section is available until July 1, 2023, unless extended by law.~~)) An endorsement is available for the sale of growlers through takeout and delivery service as set forth in section 1(4), chapter 279, Laws of 2023. There is no fee for a licensee to apply for and obtain this endorsement.

(2) ((~~Consistent with section 2(5), chapter 48, Laws of 2021~~)) As set forth in section 1(4), chapter 279, Laws of 2023, an endorsement to sell growlers for off-premises consumption through ((~~curbside,~~)) takeout((~~,~~)) or delivery service is available to licensees that were authorized by statute or rule before January 1, 2020, to sell growlers.

(a) Licensees eligible for this endorsement include: Taverns; beer and wine restaurants; spirits, beer, and wine restaurants; grocery stores; beer and wine specialty shops; breweries; microbreweries; wineries; combination spirits, beer, and wine licensees; and hotel licensees.

(b) For a beer and wine specialty shop to be eligible for the endorsement described in this section, the beer and wine specialty shop must meet the requirement in RCW 66.24.371(3), as it existed on December 31, 2019, that the licensee's beer and/or wine sales must be more than ((~~fifty~~)) 50 percent of the licensee's total sales.

(3) In order to obtain and maintain this endorsement, licensees must meet the following requirements:

(a) Sale of growlers must meet federal alcohol and tobacco tax and trade bureau requirements.

(b)(i) Growlers must be filled at the tap by the licensee at the time of sale, except that beer and wine specialty shops licensed under RCW 66.24.371 and domestic breweries and microbreweries with this en-

dorsement may sell prefilled growlers ((~~consistent with section 2(7), chapter 48, Laws of 2021~~)) as set forth in section 1(4), chapter 279, Laws of 2023. Prefilled growlers must be sold the same day they are prepared for sale and not stored overnight for sale on future days.

(ii) Brewery and microbrewery products that meet federal alcohol and tobacco tax and trade bureau labeling requirements are not considered prefilled growlers and are not subject to the overnight storage prohibition.

(c) Growlers must be filled with alcohol products, such as beer, wine, or cider, that the licensee was authorized by statute or rule before January 1, 2020, to sell in growlers.

(d) If the growlers authorized for sale under this endorsement are sold through delivery service:

(i) Licensees must comply with the requirements in the consumer orders, internet sales, and delivery rules in this title, except to the extent that those rules allow delivery by third-party service providers and prohibit the delivery of growlers. For these requirements, see WAC 314-03-020 through 314-03-040.

(ii) Delivery must be made by an employee of the licensed business who is at least ((~~twenty-one~~)) 21 years of age. Delivery may not be made by third-party service providers.

(iii) At the time of delivery, the employee making the delivery must verify that the person receiving the delivery is at least ((~~twenty-one~~)) 21 years of age using an acceptable form of identification in WAC 314-11-025. See RCW 66.44.270.

(iv) ((~~Consistent with section 2(9), chapter 48, Laws of 2021~~)) As set forth in section 1(8), chapter 279, Laws of 2023, upon delivery of the alcohol product, the signature of the person age ((~~twenty-one~~)) 21 or over receiving the delivery must be obtained. Delivery sales records must meet the requirements in the consumer orders, internet sales, and delivery rules. For general record retention requirements, see WAC 314-11-095.

(v) If no person age ((~~twenty-one~~)) 21 or over is present to accept the alcohol product at the time of delivery, the alcohol product must be returned. An alcohol product may not be left unattended at a delivery location.

(vi) Delivery of an alcohol product may not be made to any person who shows signs of intoxication. See RCW 66.44.200.

(e)(i) In addition to the signs required by WAC 314-11-060, signs provided electronically by the board regarding public consumption and transportation of any alcohol products sold through ((~~curbside,~~)) takeout((~~,~~)) or delivery service must be posted in plain view at:

(A) The main entrance to the area of the premises where alcohol products are sold; and

(B) The areas of the premises where alcohol products are picked up for takeout((~~, curbside,~~)) or delivery service.

(ii) The signs will be designed to remind customers purchasing alcohol products through ((~~curbside,~~)) takeout((~~,~~)) or delivery service that they must comply with applicable laws and rules including, but not limited to, restrictions on consuming alcohol in public in RCW 66.44.100 and restrictions on drinking or having an open container in a vehicle in RCW 46.61.519.

(4) In addition to the requirements listed in this section, licensees must comply with all applicable requirements in Title 66 RCW, Title 314 WAC, and any other applicable laws and rules including, but not limited to, restrictions on sales to minors and intoxicated persons in chapter 66.44 RCW and WAC 314-16-150.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alcohol product" means liquor as defined in RCW 66.04.010.

(b) "Beer" has the same meaning as defined in RCW 66.04.010.

(c) "Cider" has the same meaning as defined in RCW 66.24.210.

(d) "Growlers" has the same meaning as defined in section 2(10), chapter 48, Laws of 2021: Sanitary containers brought to the premises by the purchaser or furnished by the licensee and filled by the retailer at the time of sale.

(e) "Wine" has the same meaning as defined in RCW 66.04.010.

(6) ((~~This section expires July 1, 2023, pursuant to section 2(11), chapter 48, Laws of 2021, unless extended by law.~~)) The delivery service endorsement described in this section expires July 1, 2025, as set forth in section 1(4), chapter 279, Laws of 2023.

[Statutory Authority: 2021 c 48 § 2, RCW 66.08.071, 66.08.030 and 2021 c 48. WSR 22-01-052, § 314-03-510, filed 12/8/21, effective 1/8/22.]